Confidential



Agenda for

36th GST Council Meeting

25 July 2019

माल और सेवा कर परिषद
GOODS AND SERVICES TAX COUNCIL

File No: 377/36th GSTCM/GSTC/2019
GST Council Secretariat

Room No.275, North Block, New Delhi
Dated: 21 July 2019

Notice for the 36th Meeting of the GST Council scheduled on 25 July 2019

The undersigned is directed to refer to the subject cited above and to say that the 36th meeting of the GST Council will be held on **25th July 2019 (Thursday)** through Video Conference. The schedule of the meeting is as follows:

- Thursday, 25 July 2019: 15:00 Hrs. onwards (Through Video Conference)

2. The Agenda Items for the 36th Meeting of the GST Council will be communicated in due course of time.

3. Please convey the invitation to the Hon'ble Members of the GST Council to attend the meeting.

-sd-
(Dr. Ajay Bhushan Pandey)
Secretary to the Govt. of India and ex-officio Secretary to the GST Council
Tel: 011 23092653

Copy to:

1. PS to the Hon'ble Minister of Finance, Government of India, North Block, New Delhi with the request to brief Hon'ble Minister about the above said meeting.

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

3. The Chief Secretaries of all the State Governments, Delhi and Puducherry 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. Chairperson, CBIC, North Block, New Delhi, as a permanent invitee to the proceedings of the Council.

5. Chairman, GST Network

Agenda Items for the 36th Meeting of the GST Council on 25th July 2019

1. Confirmation of the Minutes of the 35th GST Council Meeting held on 21st June 2019
2. Deemed ratification by the GST Council of Notifications, Circulars and Orders issued by the Central Government
3. Decisions of the GST Implementation Committee (GIC) for information of the Council
4. Issues recommended by the Fitment Committee for the consideration of the GST Council
    i. Changes in GST rate on electric vehicles and related supplies
5. Any other agenda item with the permission of the Chairperson
6. Date of the next meeting of the GST Council

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Discussion on Agenda Items

Agenda Item 1: Confirmation of the Minutes of the 35th GST Council Meeting held on 21st June 2019

The 35th Meeting of the GST Council (hereinafter referred to as 'the Council') was held on 21st June, 2019 under the Chairpersonship of the Hon'ble Union Finance Minister, Ms. Nirmala Sitharaman (hereinafter referred to as the Chairperson). A list of the Hon'ble Members of the Council who attended the meeting is at **Annexure 1**. A list of officers of the Centre, the States, the GST Council and the Goods and Services Tax Network (GSTN) who attended the meeting is at **Annexure 2**.

2. The following agenda items were listed for discussion in the 35th Meeting of the Council:

1. Guidelines on data sharing with CAG by the Central and the State Tax Administration in GST regime
2. Confirmation of the Minutes of the 34th GST Council Meeting held on 19th March 2019
3. Deemed ratification by the GST Council of Notifications, Circulars and Orders issued by the Central Government
4. Decisions of the GST Implementation Committee (GIC) for information of the Council
5. Review of Revenue Position
6. Issues recommended by the Law Committee for the consideration of the GST Council
    i. Amendments in GST Laws
    ii. Update on the status of the issues referred to the Law Committee by the GST Council
    iii. Proposal for e-ticketing for cinema tickets
    iv. Clarification 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
    v. Proposed timeline for introduction of New Return system
    vi. Staggered extension of due date of filing returns in FORM GSTR-9, FORM GSTR-9A and reconciliation statement in FORM GSTR-9C
    vii. Proposal to extend the due date for filing of declaration in FORM GST ITC-04 for the period July 2017 to June 2019
7. Issues recommended by the Fitment Committee for the consideration of the GST Council
    i. Recommendations of Group of Ministers on Lottery
    ii. Changes in GST rate on electric vehicles and related supplies
    iii. Informing GST Council regarding direction of Hon'ble High Court of Delhi to examine the valuation mechanism prescribed for Solar Power Generating System (SGPS)
    iv. Review of GST Council recommendation for applying reduced rate of GST on sale and leasing of motor vehicles with effect from 1st July, 2017
8. Creation of the State and Area Benches of the Goods and Services Tax Appellate Tribunal (GSTAT)
9. Introduction of Electronic Invoicing System

10. Issues relating to National Anti-profiteering Authority
    i. Quarterly Report of the NAA (National Anti-profiteering Authority) for the quarter January to March 2019 for the information of the Council
    ii. Extension of tenure of National Anti-profiteering Authority
    iii. Standard Operating Procedure (SOP) for the field formations regarding Anti-profiteering investigations
11. Recommendations of Committee of Officers on use of RFID data for strengthening of E-waybill system under GST
12. Waiver of Interest on delayed receipt of Advance User Charges (AUC) from few States and CBIC
13. Any other agenda item with the permission of the Chairperson
    i. Blocking and unblocking of e-way bill facility as per the provision of Rule 138E of CGST Rules, 2017
14. Date of the next meeting of the GST Council

Preliminary Discussion:

3. On behalf of the Council, Dr. Ajay Bhushan Pandey, the Union Revenue Secretary and the Secretary to the Council (hereinafter referred to as the Secretary) welcomed Smt. Nirmala Sitharaman, Hon'ble Union Finance Minister as the new Chairperson of the GST Council. He also welcomed Shri Anurag Singh Thakur, Minister of State (Finance), Government of India as the new Member of the Council from the Central Government.

3.1. The Secretary placed on record the Council's appreciation of the exemplary contribution made by Shri Arun Jaitley, the earlier Union Finance Minister and Chairperson, GST Council in the roll out of GST and the working of the Council. In this regard, he read out the following resolution for adoption by the Council outlining his contribution which would then be presented to Shri Arun Jaitley as a token of appreciation from the GST Council:

"The Goods and Services Tax Council, in its thirty-fifth meeting held on 21st June 2019;

Having recalled the stellar role played by Shri Arun Jaitley, the earlier Union Finance Minister and Chairperson, GST Council in the roll out of GST;

Having reflected upon the leadership exhibited by him during discussion on the design of GST, in forging a consensus between the Centre and the States which had been elusive for more than a decade and half;

Noting the immense patience and erudition shown by him in ensuring that all contentious issues were discussed threadbare before arriving at a solution acceptable to all;

Having recollected the many number of instances in which his legal acumen guided the Council in its deliberations on difficult legal issues;

Expresses its gratitude and appreciation for the exemplary contribution made by him in making the GST Council a shining example of Cooperative Federalism that it has become today."

3.2. Shri Mauvin Godinho, Hon'ble Minister from Goa, suggested to add the following lines in the last sentence of the proposed resolution: "…which was also greatly responsible for rekindling a new nationalistic fervour cutting across political spectrum." The Council agreed to add this additional sentence in the resolution. Shri V. Narayanasamy, Hon'ble Chief Minister of

Puducherry stated that in arriving at consensus through negotiations and dialogues on all the issues of GST, the contribution of the former Finance Minister, Shri Arun Jaitley is highly laudable.

3.3. The Secretary also placed on record the Council's appreciation for the contribution of Shri Shiv Pratap Shukla, the then Minister of State (Finance) in the working of the Council and as the Convenor of the Group of Ministers on MSMEs.

3.4. Further, he informed that in view of the recent State Assembly elections, some of the erstwhile Council Members namely, Shri Yanamala Ramakrishnudu, the then Minister – Finance, Planning, Commercial Taxes & Legislative Affairs, Andhra Pradesh, Shri Shashi Bhusan Behera, the then Minister – Finance & Excise, Odisha and Shri R. B. Subba, the then Minister for Human Resource Development, Law & Parliamentary Affairs, Sikkim were no longer associated with the Council as its Members. He observed that they had all been part of the Council during its intensive deliberations preparatory to GST roll-out and placed on record the Council's appreciation for the contribution made by them to the working of the Council.

3.5. On behalf of the Council, he also welcomed the following new Members from the States: (i) Shri Niranjan Pujari, Minister of Finance & Excise, Odisha; (ii) Shri Buggana Rajendranath, Finance Minister, Andhra Pradesh; (iii) Shri B. S. Panth, Minister for Tourism, Civil Aviation, Commerce and Industries, Sikkim; and (iv) Shri Satpal Maharaj, Minister for Irrigation, Flood Control, Rain Water Harvesting and Water Management, Uttarakhand.

3.6. He also expressed the Council's deepest condolences at the untimely demise of Shri Prakash Pant, erstwhile Finance Minister of Uttarakhand who passed away on 5th June 2019. The Secretary recalled that Shri Pant was associated with the Council's deliberations since its 13th Meeting held on 31st March 2017 and attended 16 Council Meetings. He made very valuable contribution in the deliberations of the Council and actively highlighted the concerns of the Special Category States, MSMEs and Small taxpayers.

3.7. The Hon'ble Chairperson asked the House whether the resolution read out earlier extolling the contribution of Shri Arun Jaitley along with the proposed addition to it by the Hon'ble Minister from Goa was acceptable to all the Members. The Council unanimously approved the resolution along with the proposed addition. Thereafter, she made brief opening remarks.

3.8. In her opening remarks, she expressed her pleasure in welcoming her colleague, Minister of State of Finance, Shri Anurag Thakur, the Members of the GST Council from different States and UTs with legislatures, which also included two Hon'ble Chief Ministers and four Hon'ble Deputy Chief Ministers of States. She also welcomed all the senior officials from the Centre and the States.

3.9. She stated that since the inception of the GST Council on 15th September, 2016, it has done tremendous work and ushered in the most landmark indirect tax reform in the post-independent India. The benefits of GST were already visible. It has simplified the indirect tax landscape of the country, which was earlier marked by a completely bewildering variety of Central and State Tax levies. It has helped to consolidate and enhance tax collection. It has also led to a uniform, modern IT enabled tax administration which is uniform across the entire country. She added that they needed to carry forward the good work of the Council. There was more work to do on simplification of GST laws, rationalisation of rate structure, bringing in more

items into the sphere of GST and addressing any other issues which periodically gets raised by stakeholders. She observed that in a nutshell, there was a lot of work to do.

3.10. She observed that GST Council is a very successful example of co-operative federalism and one needs to preserve its character. Her predecessor, Shri Arun Jaitley about whom a generously worded resolution- and rightly so- was passed had done a yeoman's service in the roll out of GST and the working of the Council. His erudition, legal acumen coupled with his personal warmth and a consensual approach with which he led the Council is an example for them to emulate. The spirit so set forth will guide their work and periodically also refer to the various decisions taken.

3.11. She assured that it would be her endeavour to continue to uphold the glorious conventions of the Council - its hard work, focussed attention on the merits of the issue, sensitivity to the concerns of the Member States and of the ultimate stakeholders who they represent in the Council. She added that they would certainly benefit from one another's participation so that the milestone of simplifying the tax structure is reached for betterment of tax payers of India. She added that the endeavour of the Council should be to move towards greater and greater simplification at a good pace in order that the taxpaying segment feels that the GST Council has not lost its momentum and has the same traction as before. She assured that she would be all ears and work with the cooperation of all.

3.12. Shri Manpreet Singh Badal, Hon'ble Minister from Punjab, stated that this was virtually the start of the second innings of the GST and he proposed to make some suggestions regarding rules for the Council meetings. He stated that earlier, the Council meetings were being held at very short interval whereas now it was being held once in two months. Therefore, the Agenda notes should now reach the Members at least one week or five days before the meeting instead of the current practice of three days before the meeting. He made a second suggestion with regard to GST Implementation Committee (GIC). He recalled that powers of the Council were delegated to the GIC to take certain quick decisions. While this arrangement could be continued, there should be yearly rotation of 1/3rd of the GIC members, the oldest making way for the new. Further, barring some urgent issues, the matters such as interpretations of law should be placed before the Council for decision. Any circulars issued with the approval of GIC should first be sent to all States for comments. He also observed that one common refrain during the last one year had been that issues of interest to the States were not satisfactorily replied to or being included in the Agenda. He stated that it was suggested earlier also that the issues raised by different States, whether or not taken as an Agenda item, should be circulated for information to all States in a tabular form before a GST Council meeting. He further suggested that the Council should move towards creation of its own Secretariat with domain experts from economics and public finance. This would give a lot of domain knowledge to the Council, which would be useful as some of the decisions of the Council would be challenged in the Courts. He further recalled that they had earlier (in the 34th GST Council Meeting held on 19th March 2019) raised the issue of levy of GST on long-term leasing of land, which was to be referred to GoM on Real Estate. He stated that this should either be referred to GoM or should be taken up for decision in the next meeting of the Council.

3.13. After these preliminary discussions, the Hon'ble Chairperson requested the Secretary to take up individual agenda items for consideration of the Council.

Agenda Item 1: Guidelines on data sharing with CAG by the Central and the State Tax Administration in GST regime

4. Introducing this Agenda item, the Secretary informed that after the roll out of GST, the office of Comptroller and Auditor General of India (CAG) had been seeking data from the Tax administrations of the Centre and the State Government. States and CBIC had been requesting for evolving uniform guidelines for data sharing with the office of CAG with the approval of the Council. With a view to evolve such guidelines, a meeting chaired by the Special Secretary, GST Council Secretariat was held on 3rd May, 2019, which was attended by officers of State Tax administrations, Department of Revenue, CBIC, GST Council Secretariat and GSTN. After discussion, a set of broad guidelines were recommended for consideration of the Council as set out in the Agenda note. He further informed that this issue was discussed in the officers meeting held on 20th June, 2019 where the officers of CAG also made a presentation and thereafter the issue was discussed in detail. He informed that the officers of CAG had come to the Council to make a presentation and invited them to make the presentation.

4.1. Ms. Subhashini Srinivasan, Deputy CAG, in her introductory remarks, stated that their presentation would cover two aspects, namely, Format of the report of CAG and the Audit Approach under GST regime. She then invited Ms. M. Himabindu, Principal Director (Audit) to make the presentation, which is attached as **Annexure 3** to the Minutes.

4.2. In the first part of the presentation, the Principal Director (Audit), CAG, stated that under Article 151 of the Constitution, the reports of the CAG relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of the Parliament. Similarly, reports of the CAG relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State. She stated that the audit process normally follows the organisational structure of the audited entity. So, in pre-GST regime, separate revenue audit reports were tabled in Parliament and State legislature based on the tax laws administered by the Centre (Central Excise and Service Tax) and the State (VAT). She stated that in GST regime, there were areas of overlap in the functions of tax administrations due to cross empowerment. She pointed out that CGST, SGST and IGST was administered by both the Central and the State Tax officers and audit findings on either Central or State Tax Department might impact the Consolidated Fund of India as well as the Consolidated Fund of one or more States. She added that observations on GSTN's role and its IT system would be relevant for the Centre and all the States. She further stated that with uniform processes and procedures of audit across the country, it was proposed to have an all-India report on systemic issues, which would be presented in the Parliament. This Report would deal with systemic lapses, observations on implementation issues impacting policy decisions, findings on audit of GSTN, results of audit carried out with pan-India focus and findings on tax administration of CBIC. The State specific reports would be presented in the respective State legislatures containing results of audit of statutory functions carried out by the respective State Tax Departments. It was stated that the report structure might change as GST implementation unfolded further.

4.3. The second part of the presentation covered the issue of Audit Approach. The Principal Director (Audit), CAG, referred to the provisions of Section 16 and Section 18 of CAG's DPC Act (Duties, Powers and Conditions of Service Act). Under Section 23 of the DPC Act, CAG is authorised to make regulations in relation to scope and extent of audit and broad principles for audit of receipts and expenditure. Its regulations were notified in November, 2007 under which CAG is the sole authority to decide the scope and extent of audit to be conducted by him or on

his behalf. It also provides that audit may include online data, information and documents of the auditable entity (Regulation 16). As per Regulation 56, the Department concerned shall provide access to the assessment records and also any computerised system including the data bases maintained by it in hard copy or/and electronic form. Regulation 164 also provides that the auditable entity shall ensure that Audit has the right of access to the IT system, owned, maintained and operated either by the auditable entity or by any other agency on behalf of the auditable entity.

4.4. She further pointed out that CAG was progressing towards digital auditing, with greater focus on system lapses and field audit was proposed to be limited to the leads generated from data analytics. For this, the pre-requisite was regular and structured flow of data and access to pan-India data held by GSTN. She informed that based on discussions with the Department of Revenue and the GSTN and their suggestions, an API Data Scheduler had been developed, which would draw data from APIs of GSTN. It had been security audited and tested and was available for immediate use. It would provide read only data and there would be no impact on GSTN live data at all. Based upon queries on the data drawn through the Scheduler, risk-based audit would be carried out. They had their internal protocol for confidentiality and data security and any specific concerns raised would be addressed. She highlighted that in terms of Audit Regulations, the Centre and the States needed to ensure that CAG had access to data available with GSTN including through Data Scheduler. The scope of data should be as required by CAG for performing his duties under the DPC Act (Duties, Powers and Conditions of Service Act). She added that to begin with, the data would be drawn in respect of all States and CBIC though the API Scheduler and once area for audit was identified, at the unit level, full access to transaction level data would need to be provided to the audit team. In addition, access was also needed to review the back-office functions and reports being generated by CBIC and the States. It was also highlighted that CAG was agreeable to implement and maintain security procedures and measures in order to ensure the protection of data shared against the risks of unauthorised access. She added that once Tax Department was fully automated, they could conduct audit online.

4.5. The Deputy CAG stated that during the Officers meeting held on 20th June 2019, a few apprehensions were expressed like access to live data; whether the CAG should be looking at the entire data which may not be seen by the Tax officers and the need to take note that GST was in a transitional phase. She stated that CAG acknowledged the fact that GST was in transitional phase and also added that a 360-degree view of the data would help in giving concrete suggestions to further improve the system. She added that they needed 'read only' data as they did not intend to effect or cause any change in data.

4.6. The Secretary thanked the officers of CAG for their presentation and informed that the Council would further deliberate and take a decision on this issue. Thereafter, the CAG officers left the meeting.

4.7. Dr. Thomas T.M. Isaac, Hon'ble Minister from Kerala, stated that he had two comments on the presentation. The first was a point of caution that concurrent audit should not become counter-productive by infringing upon the quasi-judicial function of the tax administrators and before the latter had fully exhausted the entire process of revenue generation. The second was that they had a rather confusing experience with respect to digital audit. Such audit has scrutiny modules which will check the data to find consistencies which becomes part of the report. He stated that in the VAT regime, almost 20,000 objections were reported, which were mainly due to data mismatches and thus throwing out inconsistencies and therefore, it was important to have transparency in risk parameters which should be fully shared with the tax authorities. The

Secretary stated that there was a detailed discussion on this issue during Officers meeting on 20th June, 2019. On the CAG's presentation, the officers of the State and the Central Governments expressed certain reservations, particularly on sharing of live data, which could affect the functioning of the revenue administration. He suggested that this issue could be referred to the Law Committee for further deliberations. Shri Sushil Kumar Modi, Hon'ble Deputy Chief Minister of Bihar, and Shri Rajesh Agarwal, Hon'ble Minister from Uttar Pradesh, supported this suggestion. The Council agreed to this proposal.

5. For **Agenda item 1,** the Council took note of the first part of the presentation of the CAG relating to the Format of the Audit Reports of the CAG under GST. As regards the second part of the presentation on Audit Approach, the Council approved to refer the issue of data sharing with officers of CAG by the Central and State Tax administrations in GST regime to the Law Committee for further deliberations.

Agenda Item 2: Confirmation of the Minutes of the 34th GST Council Meeting held on 19th March 2019

6. The Secretary stated that during the Officers meeting held on 20th June 2019, only one comment had been received on the Minutes of the 34th Council Meeting (hereinafter referred to as the Minutes) from the State of Odisha suggesting a change in paragraph 14.2 of the Minutes with regard to the version of the Principal Secretary (Finance), Government of Odisha. They had suggested to replace the presently recorded version ("Shri Ashok Meena, ACS Finance, Government of Odisha stated that for Odisha, they would like to propose 2 Benches, one at Bhubaneshwar and the other at Cuttack, and that this information would be sent in writing too.") with the following: "Shri Ashok K.K. Meena, Principal Secretary, Finance Department, Government of Odisha, stated that for Odisha, they would like to propose State Bench either at Bhubaneswar or at Cuttack, and that this information would be sent in writing too." The Council agreed to the suggestion.

7. For **Agenda item 2,** the Council decided to adopt the Minutes of the 34th Meeting of the GST Council with the following change:

7.1. In paragraph 14.2. of the Minutes, to replace the version of Principal Secretary (Finance), Government of Odisha, with the following: "Shri Ashok K.K. Meena, Principal Secretary, Finance Department, Government of Odisha, stated that for Odisha, they would like to propose State Bench either at Bhubaneswar or at Cuttack, and that this information would be sent in writing too."

Agenda Item 3: Deemed ratification by the GST Council of Notifications, Circulars and Orders issued by the Central Government

8. The Secretary informed that notifications, circulars and orders issued till 12th March, 2019 were ratified during the 34th Meeting of the Council and now it was proposed to ratify notifications, circulars and orders issued after 12th March, 2019 and till 11th June, 2019, under the GST law by the Central Government. He informed that these notifications, circulars and orders were placed before the Officers meeting held on 20th June, 2019 as part of a presentation (attached as **Annexure 4** to the Minutes) and that the Officers had agreed to the same. He suggested that the Council could agree to grant deemed ratification to the notifications, circulars and orders. The Council agreed to the suggestion.

9. For **Agenda item 3,** the Council approved the deemed ratification of the following Notifications, Circulars and Orders issued by the Central Government after 12th March, 2019 and till 11th June, 2019, which are available on the website: www.cbic.gov.in

Act/Rules	**Type**	**Notification/Circular/Order Nos.**
CGST Act/CGST Rules	Central Tax	15 to 24 of 2019
	Central Tax (Rate)	3 to 10 of 2019
UTGST Act	Union Territory Tax (Rate)	3 to 10 of 2019
IGST Act	Integrated Tax (Rate)	3 to 9 of 2019
Circulars	Under the CGST Act	94 to 101 of 2019
ROD Orders	Under the CGST Act	4 to 5 of 2019
	Under the UTGST Act	3 of 2019

9.1. The Notifications, Circulars and Orders issued by the States which are *pari materia* with the above Notifications, Circulars and Orders were also deemed to have been ratified.

Agenda Item 4: Decisions of the GST Implementation Committee (GIC) for information of the Council

10. Introducing this Agenda item, the Secretary stated that the decisions of GIC taken between 18th March, 2019 (when the 34th GST Council Meeting took place) and 10th May, 2019 were placed before the Officers during the meeting held on 20th June, 2019 as a part of the presentation (attached as **Annexure 4** to the Minutes) for information. He added that the decisions of GIC were placed before the Council for information.

11. For **Agenda item 4**, the Council took note of the decisions taken by GIC between 18th March, 2019 and 10th May, 2019.

Agenda Item 5: Review of Revenue Position

12. The Agenda note covering the details of GST revenue during 2017-18, 2018-19 and April-May, 2019 and trends in return filing up to April, 2019 was placed before the Council for information.

12.1. Shri D. Jayakumar, Hon'ble Minister from Tamil Nadu, stated that he had circulated a written speech in which certain outstanding issues relating to IGST settlement were highlighted. In the written speech, the request of Tamil Nadu was reiterated for early settlement of the outstanding IGST amount due to the State for the Financial Year (FY) 2017-18. The net loss to Tamil Nadu from the incorrect dispensation adopted by the Union Ministry of Finance was estimated at Rs.4,459 crore. It was also brought to the notice of the Hon'ble Chairperson that a sum of Rs.386 crore was yet to be compensated for the FY 2017-18. It was further mentioned in the written speech that even after repeated assurances of the Centre that accumulated IGST would be settled then and there, a sum of Rs.50,000 crore was taken to the Consolidated Fund of India for the FY 2018-19 in the Revised Estimates. This non-settlement of accumulated amount under IGST account was creating uncertainties in the minds of the State on the assurances given by the Centre for settlement of IGST then and there in a transparent manner. He requested the Hon'ble Chairperson to intervene and settle all pending amounts due under the IGST to the State of Tamil Nadu at the earliest.

12.2. On this Agenda item, no discussion took place in the Council. The Council took note of the Agenda note.

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

Agenda Item 6(i): Amendments in GST Laws

13. The Secretary invited Shri Upender Gupta, Principal Commissioner (GST Policy Wing), CBIC, to make a presentation on this Agenda item. The Principal Commissioner (GST Policy Wing), CBIC, introduced the presentation (attached as **Annexure 5** to the Minutes) on the Agenda item. He informed that agenda related to the proposed law amendments as recommended by the Council in its earlier meeting, and in addition, two to three new amendments had also been proposed. He stated that the proposals were discussed during the Officers meeting held on 20th June, 2019 and there was by and large agreement on the proposals, except for a few. He informed that altogether 15 amendments were proposed under the CGST Act and one amendment was proposed under the IGST Act. Due to urgency of the matter, some of these provisions had been implemented earlier through rate notifications and now they were proposed to be incorporated into the Law. Shri Manish Sisodia, Hon'ble Deputy Chief Minister of Delhi, suggested that since these issues had already been discussed, the Council could confine its discussion to any specific inputs that may be given by any of the States. The Council agreed to the suggestion. The discussion on specific provisions is recorded as below:

Serial No.2: Section 10 – Composition levy

13.1. The Hon'ble Minister from Tamil Nadu stated that the time limit for exercising option to pay Composition Tax by small service providers was granted up to 30th April, 2019 by way of a circular. As these taxpayers are small having an annual turnover of Rs.50 lakh, they may file quarterly return, and, therefore, while taking up the proposal to amend Section 10, the time limit for exercising option by small service providers may be extended up to 31st July, 2019. The Hon'ble Chairperson suggested that the proposal of the Hon'ble Minister from Tamil Nadu could be approved. The Council agreed to the same.

Serial No.4: Section 25 – Procedure for Registration

13.2. The Hon'ble Minister from Uttar Pradesh stated that the provision of authentication of GST registration through Aadhaar number could get challenged in the court of law. He also expressed doubt regarding the efficacy of this provision as someone could give his servant's Aadhaar number as the proprietor of a company and carry out fraudulent transactions in crores of rupees. Subsequently there would hardly be any property available to recover the evaded tax from such fraudulent registrants. He suggested that physical verification of registrants should be considered seriously as a large number of 'laptop companies' were operating in the field.

13.3. The Secretary responded that as the Chairman of UIDAI (Unique Identification Authority of India), he had an opportunity to deal with the issue of privacy *vis-à-vis* the Aadhaar card and a seven-Judge Constitution Bench of the Hon'ble Supreme Court has held that while privacy was a fundamental right, it came with some limitations and the Parliament could impose restrictions relating to: (i) security of the nation; (ii) protection of vulnerable sections of society; and (iii) protection of revenue. He stated that a similar amendment was carried out under the Income Tax Act in 2017 under which Aadhaar was made compulsory for obtaining PAN. He added that the legality of the Aadhaar Act was also upheld by the Hon'ble Supreme Court. He explained that while evasion might not be completely stopped by inserting this provision, if a person's Aadhaar was available for a GSTIN, he could not disappear completely as was the case

today. He added that the Hon'ble Supreme Court ruled in favour of linking PAN with Aadhaar and GSTIN was also a type of tax identification number.

13.4. The Hon'ble Deputy Chief Minister of Delhi observed that the judicial limitation expressed by the Hon'ble Minister from Uttar Pradesh regarding the linkage of Aadhaar to GSTIN could be addressed by the proposed legislation. He stated that in his view, the limitations imposed for Aadhaar were broadly for things such as denial of subsidy, denial of admission in schools, pension etc. He stated that this amendment would be important in checking bogus billing through 'laptop shops'. The Hon'ble Minister from Uttar Pradesh stated that the problem regarding an individual committing tax fraud with no capacity to pay would continue. The Council agreed to the proposed amendment to Section 25 of the CGST Act.

Serial No.15: Section 171 – National Anti-Profiteering Authority and Provision to levy penalty on the profiteered amount

13.5. The Principal Commissioner (GST Policy Wing), CBIC, stated that during the Officers meeting, Dr. T. V. Somanathan, Commissioner, State Tax (CST), Tamil Nadu, had expressed certain reservations on the proposal to insert a penalty provision under Section 171 of the CGST Act. The CST, Tamil Nadu, stated that anti-profiteering provision was intended as a transitional provision with a specific time limit in view of the sudden changes in rates of GST followed by periodic rationalisation. Calculating profiteering involved ambiguities, and therefore, it might not be fair to impose penalty in every case. In view of this, further discussion was needed in the Council. It needed to be considered whether a new third authority should be empowered in GST for imposing any penalty.

13.6. The Hon'ble Minister from Punjab raised a query whether the amendment was proposed to be from retrospective effect. The Secretary clarified that it was not proposed to be from a retrospective date. Shri V.K. Garg, Advisor (Financial Resources) to the Chief Minister of Punjab stated that there were ongoing investigations by the anti-profiteering body where a complaint might have been filed six months back when there was no penal provision at that point of time but by the time the issue came up before NAA, the penalty provision might have been enacted. So, the question was, could penalty be imposed in such a case. He stated that generally penalty could not be imposed for acts done prior to enactment of the relevant penal provision. Further by the time power was given to NAA, its tenure might come to an end, thus making the amendment defunct. The Secretary stated that a law could operate retrospectively in two ways – first, the order is issued by the anti-profiteering body from the date when the section for penalty comes into effect and the provision is applied and second, it could be in the case of an on-going investigation. He stated that this issue was legal and it could be further discussed with the Union Law Ministry. He added that the option was either not to accept this proposed amendment or to accept it in principle subject to drafting suggestions of the Union Ministry of Law.

13.7. The Hon'ble Deputy Chief Minister of Bihar stated that there should be a penalty provision for cases involving profiteering. He observed that the tax rates would also be changed in future and where profiteering was established, a penalty of 10% of the profiteered amount was justifiable. The Hon'ble Minister from Uttar Pradesh supported the view of the Hon'ble Deputy Chief Minister of Bihar.

13.8. The Hon'ble Chairperson stated that a step-by-step decision could be taken. The first question was whether the Council wanted to extend the tenure of the National Anti-Profiteering Authority (NAA). The second question was the ones raised by the States of Tamil Nadu and

Punjab regarding desirability of inserting a penal provision for profiteering and the third was that there should be a penal provision for profiteering. She then invited comments of the Members on these aspects.

13.9. The CST, Tamil Nadu stated that his State was not in favour of permanent extension of the Authority. The Hon'ble Deputy Chief Minister of Bihar stated that since a number of orders had been passed by the NAA in the pending cases, to implement those orders, it was necessary to extend the period of NAA further. Otherwise these orders would have no value without their enforcement. He suggested that the tenure of the NAA should be extended to implement various orders of the Courts and to deal with the pending cases. He further stated that penalty should be imposed where an anti-profiteering order was passed holding that profiteering had taken place and where the profiteered amount was not deposited within 30 days of the passing of the order. The Secretary stated that the proviso in the proposed amendment showed that the law was meant to be prospective in nature. He also informed that during the Officers meeting held on 20th June, 2019, the proposal for extension of the tenure of the NAA was discussed and considering the number of pending cases and the likelihood of more rate changes in future, it was recommended to extend the tenure of the NAA by two years and to also explore in parallel as to what options were available to have an anti-profiteering mechanism on a permanent basis.

13.10. The CST, Tamil Nadu, stated that they did not have strong objection to the proposal and could go along with the decision of the Council on the subject of penalty for profiteering. However, to illustrate the complications involved, he gave an example of a restaurant where the GST rate had changed from 18% with input tax credit to 5% without input tax credit. On such an issue, profiteering became difficult to calculate, and therefore, penalty would become subject to greater legal scrutiny. The Hon'ble Chairperson stated that if a person against whom profiteering was established did not pay the penalty amount within 30 days, he also had the option to file an appeal.

13.11. Shri Arvind Agarwal, ACS, Gujarat, stated that the tenure of the NAA should be extended by two years. Shri Srikar M.S., CST, Karnataka, stated that if profiteered amount was deposited within 30 days of the passing of the order, then no penalty would be payable whereas the party still had an option to go in appeal. Shri Shanti Kumar Dhariwal, Hon'ble Minister from Rajasthan, stated that in the law, there was no sunset clause for anti-profiteering and the same was provided for only in the Rules. He stated that this appeared to be contradictory. He further stated that as per the agenda note, more than 900 cases were pending at different levels as regards profiteering was concerned and hence it was necessary to extend the tenure of NAA. The Hon'ble Chairperson intervened and enquired whether NAA should be converted into a permanent body. The Hon'ble Minister from Rajasthan stated that he meant to say that the tenure of NAA should be extended. The Secretary stated that as informed earlier, the matter was discussed in the meeting of the Officers held on 20th June 2019 and it was agreed that for the time being, the tenure of NAA might be extended for two years, as its term was ending in November, 2019. He further stated that in the months to come, a Committee of Officers could deliberate on the relevant provisions in the Act and the Rules relating to NAA, to examine whether any change was required. The Council could consider their recommendation and changes, if any, in the Act and the Rules might be considered after due deliberation in the Council. The Hon'ble Deputy Chief Minister of Delhi also suggested that the tenure of NAA could be extended by two years at this juncture and later the Council might take a view whether it should be made permanent or not.

13.12. Captain Abhimanyu, Hon'ble Minister from Haryana stated that he would like to just bring in the historic perspective behind the creation of the NAA. The Council had discussed about

this and a lot of debate had taken place whether to have the NAA at all or not. He distinctly remembered that the Chief Economic Advisor of the Government of India was completely against the proposed institution and advised that it must not be formed at all. However, the Council Members believed that they would need an authority with some teeth to come down harsh and strong on any such company during the transition phase that indulged in profiteering at the cost of the taxpayer and the exchequer during the transition period of conversion from old regime to the GST regime. There would be companies who would make extra profits and might not pass on the benefits which was the main purpose of bringing in GST as the benefits must reach the end consumer. So originally, the Council felt that it had to be a transition provision but it might be needed for some more time. Thus, the sunset clause was provided only in the Rules. However, since the Council was constantly revising the rates of various commodities/services, this would lead to opportunities for making undue profit and so long as the Council was revising the rates, this authority would be needed. Thus, the intent of the Council, while forming NAA was always that it could not exist in eternity and one day would have to come to an end when GST would function smoothly on its own and would be able to take care of profiteering by itself.

13.13. The Hon'ble Deputy Chief Minister of Bihar stated that there was a provision for four Technical Members in the NAA i.e. two from the Central Government and two from the States. For representation from the States, the requirement was that an officer should have served as a Commissioner for one year. He stated that due to frequent changes in posting of officers in the States, it was not possible to get officers from the States fulfilling this criterion. He suggested that the rank of the State officer for appointment as a Technical Member in the NAA should be changed to that of an Additional Commissioner and this would ensure proper representation from the States in the NAA. The Secretary suggested that this issue could be referred to the Law Committee for consideration. The Council agreed to this suggestion. The Council agreed to the proposed amendment to Section 171 of the CGST Act. The Council also agreed to the suggestion of extending the tenure of NAA by two years.

Serial No.9: Section 50 – Interest on delayed payment of tax

13.14. Shri H.K. Dwivedi, Additional Chief Secretary (Finance), West Bengal, stated that his State supported the proposed amendment and suggested that this should be given retrospective effect as it was a beneficial legislation. The Secretary enquired about the views of the Law Committee regarding enacting this provision with retrospective effect. The Principal Commissioner (GST Policy Wing), CBIC, stated that the Law Committee had considered this issue and they were of the view that since a large number of taxpayers would have paid interest on the full amount, a retrospective amendment could lead to a situation where the Government would be forced to pay large amounts of refund. It was, therefore, felt that it would be better to enact the legislation with prospective effect. The Secretary observed that given the financial outgo and complications in the IT system, enacting this amendment with retrospective effect could create problems.

13.15. The CST, Tamil Nadu, stated that the question of amendment had arisen due to the judgment of the Hon’ble High Court of Telangana. In his view, it was never the intention to levy interest on gross amount and the Hon’ble High Court judgement had resulted in it being interpreted as the gross amount. He added that there could be a few taxpayers who would have paid but the vast majority of taxpayers would have not paid. Therefore, if this provision was not enacted with retrospective effect, it would create problems for the taxpayers and would be a subject of lot of representations. Dr. P.D. Vaghela, Chief Commissioner, State Tax, (CCST), Gujarat, stated that when the law was framed, the intention of the law was clearly to pay interest

on the delayed payment on the gross amount of the tax payable. If now a relaxation was being proposed and if it was done with retrospective effect, it would lead to floodgates of refund claims. The Hon'ble Deputy Chief Minister of Bihar stated that the amendment should be on prospective basis in order to avoid potential complications. The Secretary observed that in taxation matters, even the orders of Hon'ble Courts were mostly with prospective effect and suggested that this provision should be enacted with prospective effect. The Council agreed to this suggestion.

13.16. Shri Somesh Kumar, Principal Secretary (Finance), Telangana, stated that interest was normally chargeable on the gross amount of tax and it was incumbent upon everyone to file return on time. He suggested that some more amendment should be carried out in law to charge differential rates of interest for non-payment of tax. If tax was paid late by say three months, the rate of interest could be 18%; and if tax was paid even later, say beyond six months, the rate of interest could be 24%. He further added that the interest amount should be auto-generated in the system. The Secretary stated that this suggestion could be referred to the Law Committee for consideration and then brought before the Council. The Council agreed to this suggestion.

14. **For Agenda item 6(i)**, the Council approved the changes proposed in the CGST law as indicated in the Agenda note with the following additions:

(i) The provision for levy of penalty by National Anti-profiteering Authority under Section 171 of the CGST Act to be finalised in consultation with the Union Law Ministry;

(ii) The Law Committee to examine whether two Members of the National Anti-profiteering Authority to be drawn from the States should be of the rank of Additional Commissioner instead of the present rank of Commissioner;

(iii) The Law Committee to examine whether the amount of interest payable should be calculated by the Common Portal and whether there should be a graded system of charging interest based on the period of default in tax payment.

Agenda Item 6(ii): Update on the status of the issues referred to the Law Committee by the GST Council

15. The Principal Commissioner (GST Policy Wing), CBIC, stated that this Agenda item covered an update on the status of issues referred to the Law Committee by the GST Council. The first issue related to exclusion of brick kilns, menthol and sand mining activity from the benefit of Composition scheme. He stated that earlier during the VAT regime, the Composition Scheme was capacity based whereas in the GST Law, it was turnover based. The Law Committee, after taking into account the inputs received from the various States, had suggested to exclude these three items from the Composition scheme. However, during the Officers meeting held on 20th June, 2019, the State of Haryana had suggested to keep these items under the Composition scheme and the State of Odisha had suggested to further exclude stone crushing activity from the Composition scheme.

15.1. The Hon'ble Minister from Haryana stated that there were approximately 3000 brick kiln units in his State. He added that brick kiln business was very small in scale and carried on mostly in rural areas and it was very difficult to monitor and get the desirable tax revenue from them. In the VAT regime, the Composition scheme on brick kilns worked well and the State got an annual revenue of almost Rs.90 crore from this industry. However, post-GST, revenue from brick kilns had declined to Rs.50-55 crore per annum. He stated that if brick kiln was removed from the Composition scheme, it would be very difficult to carry out checks by the tax machinery and there was a likelihood that even the present amount of revenue would be lost. In this view, he suggested to continue brick kilns under the Composition scheme. He also suggested that the best that could be done was to either increase the rate of tax under composition scheme or to introduce

an element of capacity size on the brick kilns and the large brick kilns could be brought out of the composition scheme and normal GST rate could be levied. As regards menthol and sand mining, he stated that his State had no objection to them being removed from the Composition scheme.

15.2. The Hon'ble Deputy Chief Minister of Bihar stated that under VAT, brick kilns and sand mining had a separate tax regime, which was mostly capacity based. Now under GST, they were paying very little tax. It was also difficult to track them because most of them were located in rural areas. Therefore, a separate Composition scheme for brick kiln, sand mining, stone crushing, etc. should be explored. He stated that no revenue would come to the States even if these items were removed from the Composition scheme. He suggested that a Committee of Officers could be constituted to examine the possibility of devising a special Composition scheme for sand mining, brick kilns, stone crushing and menthol. The Hon'ble Chairperson proposed that a Committee of Officers could be constituted to examine this issue. The Secretary stated that officers from Haryana, Bihar, Odisha and Uttar Pradesh could be its members. He added that any other State willing to be part of the Committee could inform the GST Council Secretariat. The Council agreed to these suggestions.

15.3. The Principal Commissioner (GST Policy Wing), CBIC, stated that the second issue related to introduction of e-Way bill system for movement of gold. He informed that after deliberations, the Law Committee recommended that the present exclusion of movement of gold from e-Way bill system may continue. However, during discussion in the Officers meeting held on 20th June, 2019, the State of Kerala suggested that e-Way bill system should also cover movement of gold.

15.4. The Hon'ble Minister from Kerala stated that movement of gold should not be excluded from the provisions of e-Way bill system. He added that security concerns and law and order problems should not stand in the way of curbing revenue leakages. He stated that as per the initial report of the CEA, the expected revenue from gold at the rate of 5% of tax was Rs.10,000 crore. In the pre-GST regime, the revenue collected from tax on gold was approximately Rs. 630 crore at an effective tax rate of 1.25% as they had a Composition Scheme for them. However, at the existing rate of 3% of tax on gold in the GST regime, the revenue earned was only Rs. 244 crore. He added that it was very easy for gold dealers to carry gold in suitcases and make sale of gold at the customer's premises. In order to plug the loophole and to address revenue concern, it was of paramount importance that the e-Way bill system should be introduced for the movement of gold. He added that suggestion of the Law Committee for encrypted e-Way bill should be implemented in a fixed timeline and this could not be left to an indefinite future. The Hon'ble Chairperson suggested that the Law Committee could look into this issue again and also invite officers from Kerala during this meeting and then put up the proposal before the Council. The Hon'ble Minister from Haryana stated that on the proposal of having encrypted e-Way bill, GSTN should also come up with some suggestions/guidelines and a time frame for its implementation. The Hon'ble Chairperson suggested that both these issues could be discussed in the Law Committee. The Council agreed to the same.

16. **For Agenda item 6(ii),** the Council approved the following:

(i) To constitute a Committee of Officers (which should have representation from the States of Bihar, Haryana, Odisha, Uttar Pradesh and any other willing State) to examine a special Composition scheme for sand mining, brick kilns, stone crushing and menthol.

(ii) The Law Committee to re-examine introduction of e-Way bill system for movement of gold and to take the views of the State of Kerala on the same. The Law Committee to also examine the modalities of introducing an encrypted e-Way bill system for movement of gold in consultation with GSTN along with a suggested timeframe.

Agenda Item 6(iii): Proposal for e-ticketing for cinema tickets

17. The Principal Commissioner (GST Policy Wing), CBIC, stated that during discussion in the Officers meeting held on 20th June, 2019, there was agreement among States on this Agenda item and it was agreed that presently compulsory e-ticketing shall apply only for multiplexes. The Hon'ble Minister from Kerala stated that compulsory e-ticketing should not be confined to multiplexes and that this provision should also apply to single screen cinema halls. He informed that the State of Tamil Nadu had introduced Entertainment Tax over and above GST and even this should be brought under the purview of e-ticketing. The Hon'ble Minister from Tamil Nadu stated that they would agree to have this provision only for multiplexes. The Hon'ble Minister from Maharashtra suggested that compulsory e-ticketing should apply only to multiplexes and its extension to single screen theatres could be examined after one year. ACS, Gujarat also suggested that e-ticketing should be confined to multiplexes and not to single screen cinema halls at this stage.

17.1. The Hon'ble Minister from Kerala stated that there was no tax rate distinction and this was only a procedural matter to ensure that tax was paid, and therefore, there was no ground to make a distinction between multiplexes and single screen cinema halls. He emphasised that single screen cinema halls were also under obligation to pay GST. He suggested that if single screen cinema halls faced some financial burden, the State Government could make available free software to them.

17.2. The Hon'ble Minister from Odisha stated that in his State, maximum single screen theatres were located in rural areas and there was no internet connectivity in rural areas. The Hon'ble Minister from Kerala responded that connectivity conditions were different from place to place. In Kerala, it was possible to provide for e-ticketing in all areas and it would be desirable to have some flexibility from State to State. He stated that theatre owners did not want the Local Government to put their seal on the tickets. He reiterated that in administrative matters, flexibility should be available to the States. The Hon'ble Deputy Chief Minister of Bihar supported the proposal of the Hon'ble Minister from Kerala and suggested to allow State specific procedures.

17.3. The Hon'ble Minister from Uttar Pradesh pointed to the proviso under Rule 54(4A) of the CGST Rules, which stated that a supplier of such service in a screen other than multiplex screens, may at his option, follow the above procedure. He stated that this would allow Kerala to exercise some flexibility in taking action for compulsory e-ticketing. The CST, Tamil Nadu stated that this option was made available to theatre owners and not to the State. The Hon'ble Chairperson stated that at this stage, let the option be operated at the theatre-owner level and suggested that the proposed rules could be approved. The Council agreed to the same.

18. **For Agenda item 6(iii),** the Council approved the proposed insertion of sub-Rule 4A to Rule 54 and insertion of clause (c) in the fourth proviso to Rule 46 of the CGST Rules, as presented in the Agenda notes subject to legal vetting by the Union Law Ministry. *Pari materia* changes would also be required in the respective SGST Rules.

Agenda Item 6(iv): Clarification 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

19. The Principal Commissioner (GST Policy Wing), CBIC, stated that during the Officers meeting held on 20th June, 2019, there was no agreement on this Agenda item. The State of Punjab had expressed apprehension that by issuance of this circular, almost 90% taxpayers might become non-compliant for their past practice as the CGST Act did not make Input Service Distributor (ISD) provision compulsory. He also expressed that revenue implication was not much as input tax credit would be availed except where the taxpayers were dealing in exempted goods, such as Food Corporation of India. He further informed that the State of Karnataka had suggested not to issue any circular where the Authority for Advance Ruling had given a ruling. He stated that in this view, during the officers meeting on 20th June 2019, it was recommended to defer this agenda item for further examination by the Law Committee. The Secretary suggested that the Council could agree to this suggestion. The Council agreed to the same.

20. **For Agenda item 6(iv)**, the Council approved to defer its consideration and the Law Committee to examine it further.

Agenda Item 6(v): Proposed timeline for introduction of New Return system

21. The Principal Commissioner (GST Policy Wing), CBIC, stated that this Agenda item was discussed during the Officers meeting held on 20th June, 2019 and there was complete agreement on the proposed timeline for introduction of the new return system. The Hon'ble Deputy Chief Minister of Bihar enquired whether GSTN would be ready for the new return system as per the given timeline. The Secretary informed that the timelines had been proposed after discussing the same with GSTN, and as such, they would be in a position to adhere to the timeline.

22. **For Agenda item 6(v)**, the Council approved the transition plan and the timeline of the new return system, as set out in the Agenda note.

Agenda Item 6(vi): Staggered extension of due date of filing returns in FORM GSTR-9, FORM GSTR-9A and reconciliation statement in FORM GSTR-9C

23. The Principal Commissioner (GST Policy Wing), CBIC, stated that this Agenda item was discussed during the Officers meeting held on 20th June, 20019 and there was difference of views on whether there should be a staggered timeline for filing returns by taxpayers with an annual turnover of more than Rs.5 crore and less than Rs.5 crore and by the Composition taxpayers or whether one uniform timeline should apply for all types of taxpayers.

23.1. The Secretary explained the rationale for the proposed staggered timeline. He stated that by 20th June, 2019, the monthly return would be filed and then Composition and Quarterly return filing would take place. In view of this, extension was proposed on a staggered timeline basis. He added that during the Officers meeting held on 20th June, 2019, it was pointed out that different dates could create complications.

23.2. The Hon'ble Deputy Chief Minister of Bihar suggested that only one date for filing of annual return should be kept and suggested that this date should be 30th September, 2019. The Hon'ble Chairperson observed that instead of staggering the date for filing annual return, it could be extended with one timeline. She further stated that income tax returns were also filed around

this time, and therefore, suggested that the date for filing of annual return could be 31st August, 2019. The Hon'ble Minister from Kerala supported the proposal and stated that annual return should be filed as early as possible as its assessment would augment GST revenue. Shri Ashok K.K. Meena, Principal Secretary (Finance), Odisha, supported the proposal to have a single date for filing of annual return and that it could be extended to 31st August, 2019.

23.3. The ACS (Finance), West Bengal, stated that while his State agreed to extension of date for filing annual return FORM GSTR-9 and FORM GSTR-9A, they proposed that FORM GSTR-9C (Reconciliation Statement) should be dispensed with for the Financial Year 2017-18. He stated that the trade associations had informed that the Reconciliation Statement was complicated and a hefty sum was being charged by the chartered accountants for completing this FORM and thus, it was increasing the cost of compliance. He added that in his estimate, almost 90% of Tax officers would have no capacity to read audit reports, and therefore, it might not serve much purpose and would only add to the thickness of the files. The Hon'ble Minister from Punjab supported the suggestion of the ACS (Finance), West Bengal.

23.4. The CCST, Gujarat, stated that the FORM GSTR-9C allowed reconciliation between differences in the various returns filed. If this Reconciliation Statement was not available, the tax officers would have a field day in raising numerous queries during audit. Therefore, taking Reconciliation Statement was in the interest of taxpayers. The Principal Secretary (Finance), Telangana, supported the views of the CCST, Gujarat. He added that during interaction at different fora, a point was raised that the requirement of filing HSN Code had now become 8-digit level instead of the earlier 4-digit level and this needed to be looked into. The Principal Commissioner (GST Policy Wing), CBIC, clarified that the requirement was to furnish 2-digit and 4-digit level HSN Codes by taxpayers with annual turnover up to Rs.1.5 crore and beyond Rs.1.5 crore respectively. 8-digit HSN Code was required to be furnished only for imports and exports. He clarified that there was a dropdown menu in the relevant column in the return and the taxpayers could choose the required number of HSN Code from this dropdown menu.

24. **For Agenda item 6(vi),** the Council approved to have a single date for filing of annual return in FORM GSTR-9, FORM GSTR-9A and Reconciliation Statement FORM GSTR-9C and the date of filing these returns was extended to 31st August, 2019.

Agenda Item 6(vii): Proposal to extend the due date for filing of declaration in FORM GST ITC-04 for the period July 2017 to June 2019

25. The Principal Commissioner (GST Policy Wing), CBIC, stated that during discussion on this Agenda item in the Officers meeting held on 20th June, 2019, the CST, Tamil Nadu, had suggested (i) to waive the requirement of filing FORM ITC-04 for the first Financial Year (i.e. 2017-18), and to make it applicable from 1st April, 2018; and (ii) to extend the date for filing the FORM ITC-04 to 31st August, 2019. He informed that as the last date for filing FORM ITC-04 was 30th June, 2019, it would be advisable to extend the date for filing FORM ITC-04 to 31st August, 2019 and then to examine the suggestion of Tamil Nadu separately in the Law Committee. The Council agreed to this suggestion.

26. **For Agenda item 6(vii),** the Council approved to extend the date for filing of FORM ITC-04 to 31st August, 2019 and the Law Committee to examine whether the requirement of filing FORM ITC-04 should be waived for the Financial Year 2017-18 and place its recommendations before the Council.

Agenda Item 7: Issues recommended by the Fitment Committee for the consideration of the GST Council

Agenda Item 7(i) – Recommendations of Group of Ministers (GoM) on Lottery

27. The Secretary invited Shri Manish Kumar Sinha, Joint Secretary (JS), TRU II to introduce the agenda before the Council. The JS, TRU II, stated that in the 32nd GST Council meeting held on 10.01.2019, a proposal for rationalization of GST rate on Lottery was moved and the Council had decided to constitute a Group of Ministers (GoM) to look into various issues relating to GST on Lottery. Before the presentation on Lottery, he requested the Hon'ble Finance Minister from Maharashtra, Shri Sudhir Mungantiwar, the Convenor of GoM on Lottery, to make opening remarks on the issue.

27.1. The Hon'ble Finance Minister from Maharashtra stated that the first meeting of GoM on Lottery was held on 18th February, 2019 to discuss the rate of tax on lottery. All the facts and figures discussed in this meeting were presented before the Council in its 33rd meeting held on 24th February, 2019. On 11th June 2019, the GoM met again and 8 States gave their views on rate of tax on lottery and either the representatives of the State or the Ministers themselves were present during the discussion. Three States felt that the status quo on dual rate should continue. Four States felt that in GST regime, since there was no instance of any goods or services where two rates of tax were applicable on the same item, lottery should also have a single rate, either 18% or 28%. Punjab Government had submitted that dual rate might continue but there was a case pending in the Hon'ble Supreme Court and hence, if necessary and required, a common rate of 18% could be agreed to. Thus in the GoM, no consensus could be arrived at. Accordingly, two views were presented before the Council i.e. either (i) two rates should continue, or (ii) a single rate should be prescribed since, in the GST regime, dual rate was not prevailing on any item. In view of the above, the Council had to take a view whether the rate of tax should continue to be 12% and 28% as prevailing now, or a single rate of 18% or 28%, whichever was agreed to, be adopted. He stated that on other matters, the Joint Secretary, TRU-II could proceed and make the presentation.

27.2. The Joint Secretary TRU II made a presentation which is attached as **Annexure 6** to the Minutes. He stated that as per terms of reference of the GoM, the following issues were placed before the GoM:

a. Whether two rates for GST on lottery should continue;
b. Whether private persons were misusing the lower GST rate of 12%;
c. To examine enforcement issues including legal and appropriate tax rates to address the problem;
d. Issues referred by Hon'ble Supreme Court in WP (C) No. 961/2018.

Out of the 4 listed issues, the last one refers to a Supreme Court Writ Petition where the Hon'ble Court took a note that there was a GoM on Lottery and directed that the GoM might give its views on the issues raised in the Writ Petition.

27.3. The prevailing tax structure of lottery and issues related to it were explained by him as follows:

i. When the lottery was supplied from State A to State B, the tax rate applicable was 28% under reverse charge.

ii. When it was supplied within the State, then if it was (a) State lottery, the rate applicable was 12% and (b) if it was Authorized by State, the rate applicable was 28%,

iii. In case of inter-State supply, some difficulty was being noticed, in relation to the destination principle and this matter had been referred to the Fitment Committee by the GoM. It was noticed that the difficulty could be addressed by removing the existing exemption on the inter-State supply.

iv. Thus, there were overall six issues before the GoM, where except GST rate on supply of lottery, there had been unanimity in the GoM on the remaining five issues namely,-
   a. ensuring destination principle for supply so that GST revenue accrues to the consuming state;
   b. valuation to be adopted for charging GST;
   c. to address the Constitutional challenges to levy GST on lottery as 'Goods;
   d. regulations under online lottery system.,
   e. miscellaneous issues referred to GoM, similar to lottery

The GoM had recommended that there was no consensus on the rate of lottery. The details on this had already been explained by the Convenor of GoM prior to his presentation. Thus, the GST Council might decide on the appropriate rate structure on supply of lottery and given the fact that it was a sin good, the rate of tax should be 18% or 28%, as decided by the Council.

27.4. He thereafter explained the recommendation of the GoM on these issues which were as under;

a. On the issue of destination principle, the GoM had noted that there already existed a decision in the 28th Meeting of the Council, which suggested certain changes in the rules and a circular was to be issued. Kerala Government had already implemented it and the other States were requested to implement the changes in the rules as suggested. The existing supply frame work had one particular drafting issue which was flagged by Advisor, Punjab Government, Shri V.K. Garg and would be examined by the Fitment Committee and corrective action would be taken after discussion within Fitment Committee.

b. As far as 'valuation' and Constitutional challenge to levy of GST issue was concerned, it had arisen out of Supreme Court Writ petition whether "lottery" was a 'Goods' or not. After considerable deliberation in the framing stage of law, initially, the Council had decided that lottery would be 'Goods'. The GoM had also recommended that the present position of the law should be forcefully explained to the Hon'ble Supreme Court that lottery should be continued to be taxed as 'Goods'.

c. As far as online lottery was concerned, the recommendation of GoM was that the experience of the State Government of Kerala and West Bengal indicated that banning of online lottery had led to the increase in revenue. Therefore, other State governments might consider examining that aspect. Maharashtra had volunteered to submit a draft on regulation of online lottery, which would be examined in consultation with Ministry of Home Affairs with whom the subject lies at present.

d. As far as multiple representations from Associations on other issues were concerned, like the rate and valuation issues of Casinos, Horse Racing, Online Gaming, Betting, although, a little beyond the terms of reference, but having received those representations, the GoM had directed that they might be forwarded to the Fitment Committee and Law Committee. Once the recommendations of the Fitment Committee and the Law committee on the subject were received, they would be brought before the Council either through GoM or directly as directed by the Union Finance Minister.

27.5. JS TRU II concluded his presentation with the submission that there was no unanimity on the rate of tax on lottery, whereas on all other issues there was unanimity in the GoM. As far as the issue of rate on Lottery was concerned, the Council might take a decision.

27.6. The Hon'ble Minister from Punjab asked Shri V.K. Garg, Advisor (Financial Resources), Punjab to present the issues noticed by Punjab, for consideration of the Council. Advisor (Financial Resources), Punjab stated that Punjab had been liberal on all the suggestions and the matter was pending before the Hon'ble Supreme Court where the Attorney General of India (herein after referred as the Attorney General) had given an assurance that the matter would be examined by the GoM. He sought permission to place some facts needing attention before the Council. He felt that the Council had two issues to decide - the first was whether there could be two rates for lottery and then what should be those rates. Further, if it was decided to keep a single rate, then what should be that single rate.

27.7. He stated that a lot of emphasis had been placed on the Kolkata High Court Judgement where the Hon'ble Court had upheld the possibility of two rates on lottery. However, what the petitioner raised before the Hon'ble Kolkata High Court was relating to Article 304 of the Constitution which provides that the States could not discriminate between locally produced goods and goods imported from other States. The provisions of Article 304 was binding on all the policy makers. The question was therefore whether discrimination or differentiation had been made in the case of lottery or not. He added that very strict interpretation would be that no discrimination had been made, because a State-run lottery and lottery authorized by the State, through distributors, are two separate items and therefore, they could have two rates i.e.12% and 28%. Therefore, the State was not discriminating when a lottery of North Eastern State, say Sikkim, was being supplied in the same State. However, it was possible to take a contrary view that while one State which was able to run the lottery through its own State-run mechanism would not allow other States to enter the State and that situation would be a discrimination. Thus, to their understanding this question had not yet been decided at the highest level as there was no other product in the entire GST which was being discriminated on the grounds of 'where it was being produced'. There had been other means of discrimination based on price mechanism, such as hotel accommodation, type of restaurant etc. but no product had been discriminated on the grounds of where it was produced.

27.8. He further stated that the differentiation between a State-run lottery and a lottery authorized by a State had been upheld by the Hon'ble Supreme Court in the case of J.K. Bharti vs State of Maharashtra, for the purpose of regulation and control for its proper conduct. However, it seemed that the differentiation in the said case was in the context of regulation and control and not specifically in terms of differential tax structure. He added that there was reference in the agenda note to the J.K. Bharti case, but it was delivered in a different context i.e. licensing and regulations of lottery and not on tax rates. Thus, to the understanding of the Punjab Government, two rates in lottery might continue for the time being and this issue might be referred for the opinion of the Attorney General who would anyway argue the case in the Supreme Court. Hence, Punjab recommended that an opinion from Attorney General of India should be sought on this issue and tax rate then could be decided subsequently; whether it would be a single rate or dual rate was the prerogative of the Council.

27.9. The Advisor (Financial Resources), Punjab further stated that the second question was as to what should be the rate and whether abatement should be given or not. In this regard, he drew the attention of the Council to the fact that globally, while making valuation of a product or services, where part of the consideration was returned to the same class of people, (as for example, in insurance product, where substantial amount of premium was returned to the insured

if something happened to him), tax was calculated on the net value. However, in India, the law was for taxing on the gross value. Since in the later part of the agenda, the Council was going to discuss on the same issue for casinos, horse racing, betting etc. and if it was prepared to accept their submission of taxing them on abated value of these supplies, then Punjab felt that the same logic be applied to lottery as well. Further, if a case for abatement was not made out for lottery, then it should be closed for every other similar supply. He stated that the final suggestion of Punjab was as follows:

a. Issue of possibility of different rate might be referred to the Attorney General and Attorney General should comment whether or not Article 304 of the Constitution was breached.
b. Lottery should be taxed on 40% of the face value because every State would have at least 60% going back as prize money and the tax rate should be 28%.
c. On the destination principle, the Council had already recommended to GoM and also agreed to correct the aberration as suggested by Punjab.

27.10. The Hon'ble Chief Minister of Puducherry, Shri V. Narayansamy stated that the Council had deliberated the issue of Lottery several times and two propositions stood before the Council *vis a vis* tax rate: -

a. Tax rate on lottery controlled by the State;

b. Tax rate on Lottery authorized by the State where agents had been given authorization. Whether the State Government had control or not was a separate issue. Therefore, on the same services or goods when it was directly run by the State, it was different from that authorized by the State Government; hence two different rates of 18% and 28% might be applicable.

c. The Hon'ble Kolkata High Court had clearly opined that there could be two rates and it was not illegal to charge two rates. Therefore, the present system should continue.

27.11. The Hon'ble Chairperson stated she would like to have a view on the issue from each State. She further stated that as rightly pointed out by the Hon'ble Chief Minister of Puducherry, a lot of discussion had already been held on this issue, so it would be interesting to know the views of each of the States.

27.12. Shri H.K. Dwivedi, ACS, Finance, West Bengal stated that Dr. Amit Mitra, Hon'ble Finance Minister, West Bengal was one of the members of the GoM on Lottery. West Bengal was the highest tax collecting State as far as lottery was concerned, and it was more than Rs 3000 crore. There was no illegality in having two rates on lottery, one on lottery directly run by the State Government and the other authorized by the State Government as the matter had already been upheld by the Hon'ble Kolkata High Court. Although, the matter was now before the Hon'ble Supreme Court, his State would like the present system to continue, unless it was held *ultra vires* of Article 305 of Constitution. In case the Council chose to decide a single rate, the applicable rate proposed by them was 28% and not 18%, as lottery was a sin good.

27.13. Shri Rajesh Agarwal, Shri D. Jayakumar, Shri Niranjan Pujari, Shri Jishnu Deb Varma, Shri C.P. Singh, the Hon'ble Ministers from Uttar Pradesh, Tamil Nadu, Odisha, Tripura, Jharkhand respectively and Shri K.K. Sharma, Advisor to Governor, Jammu & Kashmir as well as Principal Secretary, Finance from Telangana, Assistant Commissioner, CT from Meghalaya, Principal Secretary, CT, Registration and Excise from Madhya Pradesh, and Additional Chief Secretary from Gujarat stated that lottery was banned in their State. Further, Gujarat supported the view to obtain the opinion of the Attorney General to remove the deadlock in the Council.

27.14. The Hon'ble Deputy Chief Minister of Delhi stated that although Delhi had no tax on lottery, he felt that when GST was being implemented, both the States and the Centre, had given up many of their rights and hence the federal character of decision making should be kept alive in the Council. He further stated that the Council should give importance to different views of States and States thinking differently should be given adequate space. He opined that the Council should take into account as to how to protect the interest of Kerala and the view of Punjab should also be given due weightage. He added that the Council should wait for the opinion of the Attorney General as also submitted by Punjab before any final decision on rates was taken.

27.15. The Hon'ble Deputy Chief Minister of Bihar stated that there should be one tax on Lottery. It was necessary because North Eastern States were losing revenue due to this dual rate and lottery was one of the main sources of their revenue. He further stated that though he was not sure about the legal position, however, he felt that there should not be dual rate. Moreover, rate should be 18% because he believed that no goods should be taxed at 28%. He concluded that he preferred the principle of one commodity, one tax.

27.16. Shri Kesonyu Yhome, CST, Nagaland opined that there should be a single highest tax rate applicable to all the lotteries. Shri Th. Radheshyam Singh, Hon'ble Minister from Manipur and Shri Kaliana Ralte, CST, Mizoram also supported single rate of tax for lottery.

27.17. Shri B.S. Panth, Hon'ble Minister from Sikkim stated that it should be one nation, one tax and that he expressed solidarity with the views of States of Assam, Arunachal Pradesh, Goa and Maharashtra in supporting a single rate of GST on lottery. In his written statement, he stated that there was no denying the fact that irrespective of the lottery being run by the State or authorized by the State, it was a good having negative social impact. From this point of view, a lower rate of tax prescribed at the rate of 12% on even one type of lottery was not justified. Hence, he requested the Council to prescribe a single rate of GST at the rate of 18% all across the country for all categories of lottery. The dual rate of GST on lottery had put the lottery trade of smaller States in competitively disadvantageous position. The meagre source of revenue of the geographically deprived North Eastern States had actually dried up, since sale of lottery had dropped consistently, after introduction of GST.

27.18. The Hon'ble Minister from Kerala stated that he would like the *status quo* to continue. He stated that lottery was not a normal good but it was a sin good and hence there were stringent regulations under the Central Lottery (Regulation) Act for running the lottery. Hence, most States had opted out because of its addictive and gambling nature. The only reason it was accepted was for its revenue which could be used by the State for the common good. In his written speech, he stated that Kerala was a major lottery organizing State, the revenues of which were utilized for development purposes, particularly health assurance programmes. The State had stood against lottery malpractices by unscrupulous agents under the garb of running State authorized lotteries. State run lotteries were different from other betting and gambling activities, wherein the strict constructs in the Lotteries (Regulation) Act and Rules had provided the legal frame work for mitigating the vices associated with other betting and gambling activities. The provisions in the Regulation Act controlled the supply chain of lotteries, unlike other businesses. He further stated that the GST rate on lottery had been deliberated in detail in the 17th Meeting of the Council held on 18th June 2017. The Council, while deliberating GST rate on lottery, focussed on social and ethical issues also and decided to implement differential rate of GST considering all the issues raised by the State Governments. The then Hon'ble Chairperson had observed, "there were clear conditions between the State-run lotteries and the State authorized lotteries and this could be the principle used to distinguish the lotteries and tax them differently". Nothing new had since then surfaced that warranted the reconsideration of what had been deliberated and concluded in the

17th Council Meeting. He further stated that once the middlemen joined the picture, whose aim was profit maximization, the stringent conditionalities of Central law regulating the lottery were violated as these persons had scant respect for law. As stated earlier, the issue of differential rate of taxation had been subjected to legal scrutiny in W.P. No. 18424/ (W) of 2017 in the High Court of Kolkata, which was upheld by the Hon'ble Court. The writ petition challenging the Constitutionality of differential rate of GST on Lotteries had been filed by Teesta Distributors etc. who were the members of All India Federation of Lottery Trade and Allied Industries and who had represented currently before the Council for the removal of the differential rate of GST.

27.19. In his written speech, he further stated that the higher rate of GST on the lotteries authorized by State Governments in no way affected the revenue of the small State Governments. The States that conducted their lottery through the agencies (Distributors) got the Minimum Guaranteed Revenue (MGR) and not the net sales proceeds. The MGR as per the agreement with the agencies was paltry and this had been pointed out by the Comptroller & Auditor General of India. Kerala conducted its Lottery through the Lottery Department of the State Government. The entire sales proceeds were remitted to the Consolidated Fund of the State Government and the expenses including the prize money was met from the Consolidated Fund and the same has been lauded in Comptroller & Auditor General Reports. The C&AG reports reflecting misuse of lottery system and revenue loss by Marketing Agents (MAs) through far less payments of MGR to the Government exchequer were already in the public domain. He, therefore, submitted that the differential rate of GST on the State-run lotteries and the State authorized lotteries, which was conducted through the MAs might be considered in the background of the above discussed facts and audit reports.

27.20. He continued in the written speech that this agenda item was placed in the 31st GST Council Meeting held on 22nd December, 2018, based on the proposal submitted by All India Federation of Lottery Trade and Allied Industries. As per the scheme of the Lotteries (Regulation) Act, one cannot recognize them as licensees of the Government to run the lotteries but only as commission agents of the Government. Hence, they had no locus standi to raise the issue of taxation before the GST Council. The general contention was that irrespective of the judgement of the Hon'ble High Court of Kolkata, a single rated tax should be levied on lotteries as GST had converted India into a unified single market. Lottery was a sin/ demerit good and the differential high tax rates lead to black marketing. There was no point in hiking the rate of GST on State run Lotteries since even otherwise, the net proceeds as well as tax would go to the public exchequer whereas the case of the State authorized lotteries was different where lower tax would only benefit the private players.

27.21. He further stated that he was quite aware of the grievances of the North Eastern States who wanted to enter in the Kerala market, since they were losing revenue. Hence, he proposed in the Council that, if any other State wanted to sell lottery in Kerala, the Kerala administration would accept the responsibility to become their distributor and also guarantee minimum revenue that would be 50% more than what they were getting.

27.22. In his written speech, with respect to the recommendation of the GoM on Agenda item 2 of the report 'ensure destination principle of supply so that GST revenue accrues to the consuming State", his State was of the definite view that the decision of the 28th Council Meeting held on 21st July 2018 had to be implemented in toto. In 28th Council Meeting, it was mandated that the lottery organizing States and consuming States might frame the following rules under lottery (Regulation) Act.

a. An organizing State shall sell lottery tickets meant for a particular State to a distributor located and registered in that State only.

b. A distributor located and registered in a State selling tickets of another organizing State should buy such tickets directly from the organizing State Government.
c. It should be compulsory to print "For SALE IN___ONLY" on each paper lottery ticket.

Accordingly, the State of Kerala had framed the rules. The above recommendations were aligned with the Lotteries (Regulation) Act and Rules. Unlike other businesses, the supply chain and accounts of lotteries was specially determined by the Lotteries Regulation Act and Rules. Recognizing this type of subcontracting in GST law would be ultra vires to the Lottery Regulation Act and Rules. Thus, any deviations from the decision of the GST Council would amount to recognizing a supply chain in lotteries which was illegal under the Lotteries Regulation Act. This would also result in inefficient control mechanisms by the organizing States as they would get only a paltry amount to their exchequer.

27.23. Thus, in his written speech, he stated that the position of his State on the issues for consideration before the Council was summarized as below:

a. The differential rate of GST for State organized lotteries and State authorized lotteries (12% and 28% respectively) should continue.
b. Regarding the place of supply rules for paper lotteries, decision of the 28th GST Council Meeting should be strictly adhered to for reasons cited above. Any deviation would be ultra vires to Lottery Regulation Act and Rules and as such, it should not be made.
c. Present system of valuation of lottery on MRP should continue as it ensures more transparency. Lotteries should be traded as "goods" only.
d. Kerala was an online lottery free zone and under no circumstances, Government of Kerala would permit sale of online lotteries within the State.

Kerala was willing to negotiate with the North Eastern States to address their concern regarding revenue from lotteries and he pleaded that this agenda might be deferred giving room for further negotiations.

27.24. Shri M.S. Srikar, CST, Karnataka stated that there was intelligible distinction between the two types of Lotteries. Further, as regards the question whether there should be a single rate or double rate, his State would go with the consensus decision of the Council. The Hon'ble Minister from Jharkhand stated that in his State, there was no Lottery. Further, he believed that lottery should be banned. However, if the Federal structure was at stake, then the Council should go for a single rate and that too, the highest rate, because he believed in one nation, one rate. Advisor (I/c Finance) to Governor of Jammu & Kashmir stated that there was no lottery in his State and he would go with consensus on the subject.

27.25. The Hon'ble Minister from Goa stated that he was also a member of the GoM on Lottery and a lot of deliberation had been done on the subject. Now Punjab was of the view that the Council should wait for the decision of the Hon'ble Supreme Court. Further, the Hon'ble Supreme Court had clearly opined that the views of the GST Council should be made known to them by a specific date. Thus, the Council needed to decide first on it. On all other occasions, the Council had converged to a decision but on lottery, no consensus was emerging. The smaller States like Goa and other North Eastern States were being punished for the sake of revenue of the bigger States. He further stated that in his opinion, there should be one single rate as Goa preferred one nation, one tax. He also stated that he wanted to present the case of taxation of Casinos, where no other State was impacted as Casinos were only in Goa. He was not requesting for reducing the rate and was agreeable to any rate that was decided by the Council through consensus. However, the problem was regarding methodology and procedure for deciding the value for tax purpose i.e. face value or bet amount. It would be fair if bet amount was taxed,

whereas, as on date, it was being taxed on face value. Hence, effectively, it was taxed at every bet or round; which would result in closure of casino. After mining had been stopped in Goa, the casino was a major source of revenue to the State and had also become a huge employment generating industry. The only proposal was that this matter should be referred to the Fitment Committee or the Law Committee so that the methodology and the tax on only bet amount could be decided.

27.26. Shri Suresh Bhardwaj, the Hon'ble Minister from Himachal Pradesh, Capt. Abhimanyu, the Hon'ble Minister from Haryana, Shri Buggana Rajendra Nath, the Hon'ble Minister from Andhra Pradesh and the Secretary and Commissioner, State Tax from Chattisgarh submitted that lottery was banned in their States and its tax rate did not impact them. Shri Chowna Mein, the Hon'ble Minister from Arunachal Pradesh stated that lottery was a major source of revenue and the State supported one uniform tax rate on lottery, both for State run and State authorized lottery. Shri Anurag Goel, CST, Assam, stated that he was asked by Hon'ble Finance Minister to present his view which was that lottery was the only commodity which had two different rates, based on its origin. There should not be any differential rate structure. There should be a single rate of tax at 28% because Lottery is a sin good. If tax was lowered to 18%, it would send a wrong message. Further, the smaller States did not like the idea that some other State collected revenue in place of them or compensates them and would like to maintain independence in running the lottery.

27.27. The Secretary stated that after hearing the views of all the States, to sum up, since the case was pending in the Hon'ble Supreme Court due to parties filing appeal against the Kolkata High Court judgement, Council had to take view on the issue of tax rate. Further, the issue before the Council was that when the Council talked about a single rate, the question was not whether it was desirable or not. The question was whether single rate was legal or not. Further, the Hon'ble Kolkata High Court had only said that two rates were possible, but it did not mean that single rate should be avoided. Therefore, to keep a single or double rate for a supply was the discretion of the Council and if the Council thought fit, it could go for single rate or double rate. Hence, in his opinion, at this stage, waiting for court judgement or waiting for the opinion of the Attorney General of India, was not required. However, when the Council had heard the views of the respective States, it appears that the States of Punjab, Puducherry, West Bengal, Delhi, Kerala and Karnataka wanted to maintain status quo. Rest of the States either did not have lottery or favoured single rate. Further, some States had expressed opinion on tax rate to be 18%, while some wanted it to be fixed at 28%.

27.28. The Hon'ble Chairperson stated that for the sake of clarity, she would like to know, which States did not have any interest on the topic; how many States had no views and how many States would like to go with a single rate. ACS (Finance), West Bengal stated that they were comfortable with either of two proposals i.e. single or the double rate. ACS, Gujarat said that although the State did not have any lottery, but the State had a view on it. As a matter of principle, a single rate would be appropriate because two rates went against the structure of GST. The Hon'ble Chairperson desired to know, how many States would support a single tax rate on lottery whether or not themselves having lottery in the State. The States of Assam, Uttar Pradesh, Telangana, Sikkim, Rajasthan, Punjab, Gujarat, Bihar, Tripura, Odisha, Maharashtra, Manipur, Mizoram, Meghalaya, Nagaland, Goa, Himachal Pradesh, Jharkhand, Arunachal Pradesh and Jammu & Kashmir preferred single rate. The States of Madhya Pradesh, Kerala, Puducherry and Karnataka responded that they preferred two rates. The States of Haryana, Tamil Nadu and Andhra Pradesh responded that they did not have any opinion on the subject. The State of Delhi supported the opinion of Punjab to obtain the opinion of Attorney General before taking any decision.

27.29. The Hon'ble Chairperson then asked Punjab to explain what exactly was the issue on which they would like to have the opinion from the Attorney General. The Advisor (Financial Resources), Punjab stated that in the judgement of the Hon'ble Kolkata High Court, the petitioner had raised the issue of Article 304. Article 304 stated that the States could not distinguish between locally produced goods and the goods produced in other States. The Kolkata High Court judgement had never discussed Article 304 and had said that since the Council had already decided the issue unanimously, let the two rates continue. Therefore, in legal parlance, the Hon'ble Kolkata High Court had not addressed the issue which the petitioner raised regarding Article 304. Now, this matter was pending before the Hon'ble Supreme Court. Hence, the Punjab Government's request before the Council was that the issue had not yet attained finality. The Attorney General had given an undertaking in the Hon'ble Supreme Court that the matter would be placed before the Council. Hence, it was necessary that Council also consulted the Attorney General whether the Council's thinking was right or not. He further clarified that it should be clarified by him as to whether the Council had the power to discriminate a supply based on who produced it, because under GST, tax was on consumption and not production. Who made the supply was not important, item consumed was important. Thus, whether State supplied it or the authorized distributor supplied it - what the customer got was lottery. Therefore, there was possibly a breach of the basic essence of GST. The Hon'ble Chairperson stated that as per Punjab's submission, the Council appeared to be breaching the basic essence of GST, when a supply was happening with different tax rates. She stated that, on this issue, opinion of the Attorney General could be sought and then placed before the Council. Thereafter, the Council could take a view on the opinion given by the Attorney General. Later on, it might go to the Fitment Committee for recommending a tax rate.

27.30. The Secretary stated that when the Council approached the Attorney General, it had to frame a question i.e. whether the Council had the power to fix one rate or not. ACS, Gujarat stated that it might also be prudent to add one supplementary question as to whether State run and State authorised lottery was a single good or two different goods, since legality regarding distinction between State authorized and State-run lottery had been raised. If the Attorney General opined that it was one good then the law was very clear and one could not have different tax rates. However, if they were treated as two different goods, then there could be a different tax rate for each. The Secretary stated that even if the Attorney General opined that it was two different goods, the Council could have a single rate.

27.31. The Hon'ble Chairperson intervened and stated that the Council was the final authority in deciding the rates. Hence, it would not be proper to seek rate question from the Attorney General. The Hon'ble Minister from Kerala stated that while there was no need for the issue to be referred to the Attorney General in view of the fact that the issue of differential rates had been settled by the decision of the Hon'ble High Court of Kolkata, if it all the same was to be referred, it should be limited to the question being framed as proposed by the State of Punjab and not to bring in further complications as being proposed by the State of Gujarat since in any event, even in the current GST regime, there are several goods which have differential rates as for instance footwear, readymade garments, cinema tickets etc., He added that there was another issue on which also the Council might seek the opinion of the Attorney General. This was regarding Place of Supply Rules for 'paper lotteries' during 28th GST Council Meeting held on 21st July 2018 for which a decision had been taken which stood till date. However, additional clause had been introduced which enabled the distributor in another State to operate lottery without having direct proximity with the organizing State which is ultra vires as per the Central Lottery Regulation because GST Council did not have any right to take decision contrary to the Lottery Regulation Act. The GST Council could fix the appropriate rate but did not have the right to infringe upon

the Lottery Regulation Act, regarding the procedure as to how lottery should be organized in a State. Therefore, it appeared to be inconsistent with the law and this matter should also be consulted with the Attorney General.

27.32. The Hon'ble Chairperson suggested that when the opinion of Attorney General was sought, this dimension as expressed by the Hon'ble Minister from Kerala could also be mentioned specifically as to whether the provision was violating the Lottery Regulation Act. The Hon'ble Minister from Kerala stated that on this issue many cases were pending at various stages in the Courts and in other fora. The Hon'ble Chairperson asked whether the Hon'ble Minister from Kerala was suggesting that it was *ultra vires* to discuss this issue with the Attorney General. Shri Manoj Joshi the ACS, Finance and Taxes, Kerala clarified that the destination principle was already established as per the decision in the 28th Council Meeting held on 21st July 2018 which was in consonance with the provisions of the Lotteries Regulation Act. The State of Kerala had strongly objected to the departure from this principle in the last meeting of the GoM and there was an overall consensus in the GoM (other than the Hon'ble Minister from Goa) that the issue need not be taken up for further consideration and that States should be asked to implement the connected rules under the Lotteries (Regulation) Act to address the issue. Hence, their stand was that the decision of the 28th Council Meeting should be implemented by all concerned States by amending necessary rules as had been done by Kerala. Further, Kerala insisted upon the distributor operating any State authorized lottery in another State (the consuming State) on having a direct contract/registration with the organizing State from whom the distributor should get the tickets directly and pay tax on reverse charge mechanism. There shall not be two distributors - one in the organizing State and the other in the consuming State. Thus, the proposal put up in the notes to the GoM and once again incorporated in the Agenda note for the 35th Council Meeting whereby two distributors were being permitted - one in the organizing State who sold the tickets to the distributor in the consuming State and that the former being exempt from GST while GST to be charged to the latter who discharged it under reverse charge mechanism was a non-starter and would lead to not only revenue leakages but much more importantly, a host of malpractices. He finally concluded that since in any case, the issue of differential rates on State run and State authorized lotteries was being referred to the Attorney General, this issue of ensuring destination principle for State authorized lotteries by allowing two distributors with the distributor in the consuming State having no direct link with or responsibility towards discharge of non-tax revenues to the organizing State should also be referred to the Attorney General since the proposal in the Agenda note appeared *ultra vires* of the Lotteries (Regulation) Act.

27.33. The Hon'ble Chairperson summed up the views of the Council members and proposed that based on the suggestion which had come from the State of Punjab, along with the proposal of the State of Kerala for including the additional point regarding the decision in the 28th Council Meeting on the subject, the issue could be referred to the Attorney General for his opinion. Further, after the opinion was received from the Attorney General, it would be presented to the Council for decision on the tax rate. The Council agreed to the proposal.

28**.** For **Agenda items 7(i)**, the Council approved to refer the following two issues to the Attorney General of India, for his opinion before the Council took a final view on the GST rate on Lottery:

a. Whether the levy of differential tax rates on lottery i.e. @ 12% on State-run lottery and @ 28% on lottery authorised by a State was violative of Article 304 of the Indian Constitution, and

b. Whether or not Place of supply Rules of lottery, where supply made from one State to another through two distributors, one located in the organising State and the other in the

consuming State, with distributor in the consuming State having no direct link with or responsibility towards discharge of non-tax revenue to the organizing State, is *ultra vires* of the Lotteries (Regulation) Act, 1998

The draft of the issues to be referred to the Attorney General to be finalized after taking inputs as necessary.

Agenda Item 7(ii): Changes in GST rate on electric vehicles and related supplies

29. Shri G.D. Lohani, Joint Secretary, TRU-I introducing the agenda stated that the proposal for rate rationalisation was intended to promote e-vehicles as these were environment friendly, while their penetration was quite low. Further, electric vehicles were essential for the country in order to reduce the country's import dependence on petroleum products. In the past too, the Council had been sensitive on this issue, in the sense that electric vehicles, alternate fuel, bio fuel etc. had been encouraged by reducing the rate of tax on them.

29.1. He further stated that the electric vehicles attracted 12% tax and the proposal was to reduce it to 5%. The other part of the proposal was to reduce rate of tax on electric vehicle chargers to 12% which was very essential for operation of electric vehicles. Further, the current production volume of electric vehicles was low and hence the costs were very high. The revenue implication of the proposal was also not significant. The proposal was being placed before the Council in line with the policy of encouraging cleaner vehicles including electric vehicles.

29.2. Starting the discussion on the agenda item, Shri Manu Shrivastava, Principal Secretary, Madhya Pradesh felt that GST on e-vehicle chargers should also be 5%. The Hon'ble Chief Minister of Puducherry also supported this view and felt that electric vehicle chargers should also have equivalent rate of 5%, being the component of the electric vehicle. The Secretary suggested that since the matter had not been examined by the Fitment Committee which was the normal practice of the Council, the proposal should be forwarded to the Fitment Committee for examination and then it might be discussed in the next meeting of the Council.

29.3. The Hon'ble Minister from Goa stated that even though this was a desirable proposal, it had to be kept in mind that while promoting electric cars, the Council should not forget other relevant factors relating to the automobile/ car industry, which at present were producing diesel and petrol cars. Further, the automobile sector was one of the biggest generators of employment and there would be certain cascading effects, if the Council gave a big push to the electric cars. He added that while the electric cars should be promoted, at the same time, the Council needed to balance other factors as well. Thus, while the need to protect the environment, encourage alternative fuel etc., was there, but if the policy moved very fast in that direction, the entire edifice of employment generation, economic factors and so many other things could come falling down. He stressed that all the Members of the Council needed to recognise as to what he meant to say. It was not the question of automobile companies; it was the matter of the economy as a whole and generation of employment itself.

29.4. The Secretary thereafter proposed that the three items mentioned in the agenda, as mentioned below, might be referred to the Fitment Committee and then discussion could be done in the next meeting of the Council:

a. To reduce GST rate on all electric vehicles;
b. To reduce GST rate on electric vehicle charger;
c. Exemption from levy of GST on hiring of electric buses by local authorities

The Council agreed to this suggestion.

30. For **Agenda item 7(ii)**, the Council approved to refer the three items as mentioned below to the Fitment Committee for its consideration and to place its recommendations before the GST Council:

a. Reduction of GST rate on all electric vehicles;
b. Reduction of GST rate on Electric Vehicle charger;
c. To exempt levy of GST on hiring of electric buses by the local authorities.

Agenda Item 7(iii): Informing GST Council regarding direction of Hon'ble High Court of Delhi to examine the valuation mechanism prescribed for Solar Power Generating System (SGPS)

31. The Secretary requested the Joint Secretary (JS), TRU-I, to brief the Council on the aforesaid agenda. The JS, TRU-I, stated that this agenda was only for information of the Council regarding the judgement of the Hon'ble Delhi High Court in two cases where the Hon'ble High Court had directed that the Council might consider the issues raised by the Solar Power Generating Systems dealers and Wind Turbine manufacturers.

31.1. In the past, there were disputes about the applicable tax rate structure. The tax rate structure recommended by the Council in the month of December, 2018 was fixed in such a manner so as to conclude associated disputes. The Advance Ruling Authority in Maharashtra had taken a contrary view; and hence a formulation was recommended by the Council where on deemed basis, the supply was split into two parts i.e. 30% of the project value was apportioned for the services and remaining 70% of the value was apportioned towards the goods. However, writ petitions have been filed before the Hon'ble High Court stating that apportionment of value in 70:30 ratio was adverse to the sector and it should be either 90:10 or 85:15. The Hon'ble Delhi High Court had ordered that both the cases should be heard by the Central Government and after that the representation should be taken to the Council. He informed that one meeting with the petitioners had already been done and the Central Government had sought some information. Solar power association had furnished the information. Information was, however, awaited from the Wind Turbine dealers. He added that on receipt of information, the issue would be examined by the Fitment Committee, and thereafter, a detailed proposal would be placed before the Council. He stated that at this stage, this agenda item was only for information of the Council. The Council took note of it.

32. For **Agenda item 7(iii)**, the Council took note of the development and agreed that the items mentioned in the agenda shall be considered by the Fitment Committee and its recommendations be tabled in the next GST Council meeting.

Agenda Item 7(iv): Review of GST Council recommendation for applying reduced rate of GST on sale and leasing of motor vehicles with effect from 1st July, 2017

33. At the request of the Secretary, Joint Secretary TRU-II, introduced the agenda item. He informed that this proposal was to review a decision taken in the past, in relation to leased vehicles. When GST was implemented, the rate of tax had gone up on this item. On 6th October, 2017 in the 22nd Council Meeting, a decision was taken that a concessional tax rate at the rate of 65% of the tax rate applicable to fresh vehicles would apply to the vehicles which were leased before the date of implementation of GST. Thus, a prospective notification was issued as any retrospective change of tax rate would have had to be part of the Finance Bill specifically mentioning so.

33.1. He stated that this change would be required to be included in the Union Finance Bill, as well as in the State Finance Bill, if the proposal was to be agreed to. He informed that while

examining the proposal in all respects, the field realities were also ascertained. It was found that association IVOLO (Indian Vehicle Operating Lease Organisation), which was not the end user but dealt with 40% of leased vehicles, had already collected and deposited the taxes in the exchequer at the full rate, since at that point of time, no notification giving retrospective effect was issued. Hence, to carry out legislative changes to give an exemption for the past period for which the tax had already been collected and deposited would lead to consequential complex changes including notifying a special procedure, to enable the end users of these vehicles to take refund which would be a very small amount. Hence the compliance cost might be higher than the individual refund amounts which would be required to be paid. In view of this, it was proposed that the status *quo* be maintained for the period 1st July 2017 to 12th October 2017, for which the taxes had already been collected and deposited with the exchequer. In the meeting of the Officers held on 20th June, 2019, there was a general consensus that this would be the right solution. He suggested that the Council may approve this proposal. The Council approved the same.

34. For **Agenda item 7(iv)**, the Council approved that the *status quo* be maintained in respect of rate of GST on sale and leasing of motor vehicle for the period from 1st July 2017 to 12th October 2017 and no retrospective revision in tax rate need to be carried out.

Agenda Item 8: Creation of the State and Area Benches of the Goods and Services Tax Appellate Tribunal (GSTAT)

35. The Secretary introduced the agenda and stated that in terms of Section 109 of the CGST Act, 2017, Goods and Service Tax Appellate Tribunal were required to be constituted by the Government on the recommendation of the GST Council. Further, in the 28th Meeting held on 21st July 2018, the Council approved the constitution of Goods and Services Tax Appellate Tribunal (GSTAT) and creation of National Bench of GST Appellate Tribunal at New Delhi with three Regional Benches at Mumbai, Chennai and Kolkata.

35.1. He stated that in its 34th Meeting held on 19the March 2019, the Council took note of the proposals received from 19 States and UTs regarding the number of Benches and the places to establish State/Area benches. Further, proposals had been received from 7 more States/ UTs as per details contained in the agenda note.

35.2. He further stated that the State of Jammu & Kashmir had informed that they had constituted their State bench *vide* Notification No. SRO 447 dated 23.10.2017 for the State of Jammu & Kashmir under Section 109 of the Jammu & Kashmir Goods and Services Tax Act, 2017. In addition, Department of Revenue *vide* their OM No. A50050/150/2018-CESTAT had proposed clubbing of GSTAT State bench for UT (without legislature) and creation of a common bench with the adjoining State. Some States, namely Madhya Pradesh, Rajasthan, Meghalaya and Mizoram had not yet sent any proposal to the GST Council Secretariat for setting up the Benches of GSTAT. Further, North Eastern States, namely Arunachal Pradesh, Manipur, Nagaland and Sikkim had indicated that the State Bench of GSTAT was not required to be located in their State and it was opined during the Officers meeting held on 20th June 2019, that their State Bench for the time being could be clubbed with State bench of a neighbouring State such as Assam. This had been incorporated in the proposal in respect of the States of Arunachal Pradesh, Manipur, Nagaland and Sikkim with GSTAT State bench proposed at Guwahati.

35.3. Shri Alok Sinha, ACS Uttar Pradesh stated that although the State Government had proposed for setting up of a State bench in Allahabad and 4 area benches in Ghaziabad, Lucknow, Varanasi and Agra, the same had been challenged before the Hon'ble High Court, Lucknow bench. The Hon'ble High Court had quashed the instant proposal and ordered for considering the earlier proposal of the State Government recommending constitution of 1 State Bench with 20

Area Benches. He informed that the State Government was contemplating filing an Appeal in the Supreme Court and requested that Government of India may also file an appeal against the High Court's order, as it was respondent no 1.

35.4. The ACS Gujarat stated that the Government of Gujarat had reconsidered the proposal and now proposed that location of State bench for Gujarat should be at Ahmedabad with two Area benches at Surat and Rajkot. A written communication in this regard would be sent soon to the GST Council Secretariat.

35.5. Accordingly, the Secretary after taking into account the above modifications, placed the proposal before the Council to:

(i) Consider and recommend formation of the State and Area Benches as per the details contained in Table-1 below except for the State of Uttar Pradesh, which shall be considered separately.

Table-1: Proposed Location of the State and Area benches of GSTAT

S. No.	Name of State/ Union Territory	Recommend Location for State Bench at	Recommend Location for Area Bench at
1	Andhra Pradesh	Vijayawada	Vishakhapatnam and Tirupati
2	Assam	Guwahati	No Bench
3	Bihar	Patna	-Do-
4	Chhattisgarh	Raipur	-Do-
5	Delhi	New Delhi	-Do-
6	Goa	Panaji	-Do-
7	Gujarat	Ahmedabad	Surat and Rajkot
8	Haryana	Hisar	No Bench
9	Himachal Pradesh	Shimla	-Do-
11	Jharkhand	Ranchi	-Do-
12	Karnataka	Bengaluru	-Do-
13	Kerala	Thiruvananthapuram	-Do-
14	Maharashtra	Mumbai	Pune and Nagpur
15	Odisha	Cuttack	No Bench
16	Puducherry	Pondicherry	-Do-
17	Punjab	Chandigarh	-Do-
18	Tamil Nadu	Chennai	-Do-
19	Telangana	Hyderabad	-Do-
20	Tripura	Agartala	-Do-
21	Uttar Pradesh	Allahabad	Ghaziabad, Lucknow, Varanasi and Agra
22	Uttarakhand	Dehradun	No Bench
23	West Bengal	Kolkata	Two Area Benches at Kolkata
24	Arunachal Pradesh	Common State Bench of GSTAT at Guwahati, Assam	
25	Manipur		
26	Nagaland		
27	Sikkim		
UTs (without legislature)			
28	Andaman & Nicobar	State Bench of West Bengal (Kolkata)	
29	Dadra & Nagar Haveli	State Bench of Maharashtra (Mumbai)	
30	Daman & Diu	State Bench of Maharashtra (Mumbai)	
31	Lakshadweep	State Bench of Kerala (Ernakulum)	

32	Chandigarh	State Bench of Punjab (Chandigarh)

(ii) Take note of the fact that Jammu & Kashmir had constituted their State bench vide Notification No. SRO 447 dated 23.10.2017 issued under Section 109 of the Jammu and Kashmir Goods and Services Tax Act, 2017.

(iii) Take note that the proposal for setting up benches by States, namely Madhya Pradesh, Rajasthan, Meghalaya and Mizoram having not been received from the State Governments, would be considered as and when it was received.

36. For **Agenda item 8**, The Council approved the following:

(i) Recommend creation of the State Benches and Area Benches of the GSTAT as per the details contained in Table -1 in paragraph 35.5 above, except for the State of Uttar Pradesh;

(ii) Separately consider the constitution of benches in Uttar Pradesh;

(iii) Consider the proposal for setting up GSTAT benches by four States, namely Madhya Pradesh, Rajasthan, Meghalaya and Mizoram, as and when it is received;

(iv) Take note of the constitution of Jammu & Kashmir GST Appellate Tribunal in terms of proviso to Section 109(6) of the CGST Act, 2017.

Agenda Item 9: Introduction of Electronic Invoicing System:

37. The Secretary introduced the agenda item regarding generation of e-invoice and stated that the agenda was before the Council for considering the benefits of e-invoices and that, at least preparation should start for generation of e-invoice and its reporting on GST portal, because this would help the entire GST eco-system, in the long run. The advantages and salient features of the proposal, as stated in the agenda are summarised as below:

a. The e-invoicing can accelerate the business process automation, reduce compliance burden and improve ease of doing business. Moreover, the immediate capture of the details of transaction helps in easing compliance burden, by facilitating auto drafting of returns. Further, under the current system, there was a gap between time of generation of invoices and time of filing of Returns (GSTR-1, GSTR-3B, GSTR-4 etc.), which left scope for misdeclaration or errors in submitting returns.
b. For taxpayers, backward integration and automation of tax relevant processes replaces manual and periodic reporting of forms, separate GST declarations, separate tax accounting etc., Thus, tax collection and refund can be done seamlessly and it also results in early settlement of payable and receivables. It also reduces the need for post audit systems of invoice matching drastically, as it ensures in real-time that fiscal documents are tax compliant. On the other hand, it leads to significant reduction of the tax evasion, which paves the way for better management of taxes and human resources.
c. In order to crystalize the ideas towards generation of e-invoice, a Committee of Officers (CoO) on generation of electronic invoice on GST portal was constituted under the Convenorship of Dr. Rajeev Ranjan, Special Secretary, GST Council Secretariat with officers from CBIC, States, GST Policy Wing, TRU-I & TRU- II, Department of Revenue and GSTN as members. During deliberations in all these meetings, it was observed that the idea of e-invoice on voluntary basis for large taxpayers in B2B segment was worth considering and it needed to be explored positively.

d. NIC had demonstrated a prototype for reporting of e-invoice that would have backward integration with e-way bill and was further working on it.
e. The Committee of Officers has recommended the proposal of introducing e-invoices on a voluntary and optional basis for business to business (B2B) supplies with some caveat and accordingly sub-committees of officers have been constituted to work out the technical parameters and legal and policy framework for e-invoicing.

37.1. The Secretary stated that in view of the overall aim to continue to simplify the GST regime, the idea of implementation of e-invoice on voluntary basis for large taxpayers in B2B segment was worth considering. The taxpayers would not be required to submit invoice data multiple times for return and e-way bill and that too in separate formats, as is the case today. He also mentioned that this issue was discussed in the meeting of the Officers held on 20th June 2019. The Centre had shared details relating to the generation of fake invoices with the States along with a detailed presentation regarding the technical development on e- invoices by GSTN. Hence, he submitted that the proposal in the agenda may be approved by the Council.

37.2. The Hon'ble Deputy Chief Minister of Delhi stated that due to paucity of time, the revenue position could not be discussed and the bogus billing presentation was also not made. Since Delhi's revenue was decreasing for the last few months and one of the major reasons was bogus billing and sealing of premises, the Government of Delhi was concerned.

37.3. The Secretary stated that the issues of bogus billing and fake invoices were discussed in the meeting of the Officers held on 20th June, 2019 along with the steps to be taken to curb bogus billing and most of the States had agreed to it. Hence, the officers should go ahead with the suggested measures since no law amendment was required, it being only an issue of enforcement. He further stated that in the next Council meeting, a detailed presentation would be made on it. Further, to consider what changes would be required in the law for curbing bogus billing, a proper proposal would be brought before the Council at appropriate time. He suggested that Council could give in principle approval to launch a pilot project on voluntary basis for online generation of B2B e-invoices from January,2020. The Council approved the same.

37.4. The proposal of generation of e-invoicing as above was placed before the Council for consideration and approval.

38. For **Agenda item 9**, the Council approved, in principle, to launch a pilot project on voluntary basis for online generation of B2B e-invoices from January 2020.

Agenda Item 10: Issues relating to National Anti-profiteering Authority

Agenda Item 10(i): Quarterly Report of the NAA (National Anti-profiteering Authority) for the quarter January to March 2019 for the information of the Council

39. The Secretary introduced this Agenda item pertaining to various issues relating to the National Anti-profiteering Authority (NAA) and stated that it had been discussed in detail in the officers meeting on held on 20th June 2019. He further stated that for the Agenda item 10(i), it was informed that the overall performance of NAA in the last quarter (**January, 2019 to March, 2019)** of the Financial Year 2018-19 was as under:

Performance of National Anti-Profiteering Authority (January, 2019 to March, 2019):

Opening Balance	No. of Investigation Reports received from DGAP during the quarter	Disposal of Cases (during Quarter)				Closing Balance	Amount of Profiteering established	
		Total Disposal during quarter	No. of cases where Profiteering established	No. of cases where Profiteering not established	No. of cases referred back to DGAP		No. of cases	Amount (Rs.)
37	29	22	8	14	3	41	8	44.48 crore

40. For **Agenda item 10(i)**, the Council took note of the performance of the National Anti-profiteering Authority**.**

Agenda Item 10(ii) – Extension of tenure of National Anti-profiteering Authority

41. Introducing this agenda item, the Secretary stated that the anti-profiteering provisions were introduced in the GST vide Section 171 of the CGST Act, 2017 and this did not provide for any sunset clause. However, in terms of Rule 137 of CGST Rules, 2017 the tenure of NAA was only for two years, from the date on which the Chairman assumed charge of his office. The Chairman, NAA had joined the Authority on 1st December, 2017 and thus the tenure of NAA would expire on 30th November, 2019. He said that this issue was discussed in detail while discussing Agenda Item 6(i), sl. no.15 (relating to insertion of a provision to levy penalty for profiteering) and the Council had concluded that the tenure of NAA would be extended by two years. He suggested that the Council may approve this proposal. The Council approved the proposal.

42. For **Agenda item 10(ii)**, the Council approved to extend the tenure of National Anti-profiteering Authority for a further period of two years beyond 30 th November 2019 i.e. upto 30th November 2021.

Agenda Item 10(iii): The Standard Operating Procedure (SOP) for the field formations regarding Anti-profiteering investigations

43. The Secretary stated that this Agenda item had also been discussed in detail in the Officers meeting held 20th June 2019. The NAA had proposed to issue a Standing Operating Procedure (SOP) for Central GST and State GST officers to strengthen the mechanism of verification of profiteering by the officers as soon as any GST rate reduction /additional ITC benefits was made available to a business. It contained the role to be played by officers posted in CGST and SGST Field Formations/ Investigative Agencies/ Verification Teams and Audit. It also contained details about complaint filing by jurisdictional officers as per Rule 128 of CGST Rules. He suggested that the Council may approve, in principle, the SOP proposed by the NAA. The Council agreed to the same.

44. For **Agenda item 10(iii)**, the Council approved, in principle, the Standard Operating Procedure for the GST field formations regarding Anti-profiteering investigations.

Agenda Item 11: Recommendations of Committee of Officers on use of RFID data for strengthening of e-Way bill system under GST

45. The Secretary introduced the agenda item and stated that the said Report had been circulated to States separately for information and a brief discussion took place on this agenda item during the Officers meeting held on 20th June 2019. The Hon'ble Deputy Chief Minister of Delhi requested to share the presentation on RFID with the States and the Secretary assured that

the same would be circulated to the States. The major conclusions and recommendations of the Committee contained in the report were as follows: -

45.1. Conclusions drawn in the Report:

a. Presently, FASTag distribution stood at 4.6 million out of which 40% were commercial vehicles. Further, the study of EWB Database showed that EWBs had been generated for 11.3 million unique vehicles. Given the gap, the present distribution outreach and numbers, RFID tag permissible under Rule 138A of the CGST Rules should be made mandatory preferably by 1st April 2020. However, in the meantime, NETC FASTag data may be considered as authentication for the movement of goods and Rule 138 (9) of the CGST Rules may be suitably amended to disallow the cancellation of corresponding EWBs.

b. One of the Major initiatives taken by NHAI/IHMCL is for inclusion of State toll plazas under NETC programme to facilitate cashless toll payments for the customers throughout the country. There is a provision for financial assistance also in the Scheme guidelines. States could make use of these schemes for the implementation of cashless toll payment which shall ensure more coverage of FASTag acceptance across the Nation.

c. The report also dwelt upon scheme for setting up RFID infrastructure in certain regions. While toll plazas were available across the National Highways and State Highways, there were parallel roads available for the users at few places. There were also certain regions of the country which did not have any toll plaza infrastructure that were required to be installed to capture the movement of the vehicles through RFID tags at identified locations. States, therefore, needed to identify such locations and arrange for necessary RFID infrastructure in order to track the vehicle movement. Karnataka had done the pilot for similar scenario which could be adopted by other States. The committee had suggested that RFID based tracking infrastructure at such locations could be rolled out under the aegis of a centrally sponsored scheme under suitable cost sharing formula with the assistance of MoRTH (Ministry of Road Transport and Highways).

45.2. **Recommendations**:

a. Based on the above conclusions, the Committee recommended that, FASTag based EWB tracking mechanism should be adopted by GST Council. Integration of NETC system with EWB system would exhibit a classic case of convergence of two flagship programmes of the Government complementing one another. The integration would prove to be beneficial for both the programmes.

b. Government could consider formulating a centrally sponsored scheme in this regard, where RFID based tracking infrastructure at identified locations should be installed under the aegis of the centrally sponsored scheme under suitable cost sharing formula with the assistance of MoRTH.

45.3. The Secretary suggested that the Council could give in principle approval to implement the recommendations of the Committee of Officers on use of RFID data for strengthening e-waybill system under GST. The Council agreed to the same.

46. For **Agenda item 11**, the Council agreed, in principle, to the implementation of the recommendations of Committee of Officers on use of RFID data for strengthening of e-Way bill system under GST.

Agenda Item 12: Waiver of interest on delayed receipt of Advance User Charges (AUC) from a few States and CBIC

47. The Secretary requested the Principal Commissioner, GST Policy Wing, CBIC to introduce this agenda item. The Principal Commissioner, while introducing the agenda item stated that an objection had been raised by CAG as to why interest had not been levied in case of late payment by States and CBIC on the user charges paid to GSTN. He stated that the matter was discussed in the Officers meeting held on 20th June, 2019 and there was unanimity that for the first-year, interest could be waived but with the condition that after July 31st 2019, payment should be made on time and any delayed payment would attract interest as per the decision of the Council while approving the payment of Advance User Charges.

47.1. The Secretary explained the background of the agenda and stated that the Council had approved revenue model under which States and CBIC had to pay user charges to GSTN on account of the services provided by GSTN. The said revenue model had penal interest clause if the payment was delayed. In case of some States and CBIC, payment was delayed and the C&AG took an objection that interest should have been charged on the delayed payment and why the interest had not been charged. So, the proposal before the Council was that it being the payment of the first year of implementation of GST, interest could be waived. However, future payments by States and CBIC should be made in time.

47.2. The Hon'ble Minister from Haryana stated that waiver of interest would set a wrong precedent. Thus, it should be a one-time decision, so that it did not open the gates for States and CBIC for future delays. However, Council also needed to consider as to whether it could take such risk for future and wade into a domain which was a debatable issue. Hence, he suggested that the views of all the members might be sought before finally arriving at the decision of waiving of interest. He concluded that his feeling was that it would set up a wrong precedent.

47.3. The Hon'ble Chairperson invited the views of the other Members of the Council. The Deputy Chief Minister of Bihar stated that GSTN was a non-profit company and was not supposed to make any profit; so, if one-time waiver was proposed, he did not see any serious repercussions on this account.

47.4. The Secretary stated that, during the Officers meeting held on 20th June 2019, it was discussed that some of the States had paid the user charges on time, some had paid in advance also and some had delayed the payment. Even CBIC's payment had been delayed for one instalment. But the fact remained that payment should have been made in time and the Hon'ble Minister from Haryana had pointed out that if Council gave waiver, it might encourage late payments in future, which should not happen. Thus, whatever decision be taken by the Council, late payment should not happen in future. He also suggested that Advance User Charges for FY 2017-18 and 2018-19 should be paid by the States positively by 31st July 2019 failing which interest on delayed payment may be levied by GSTN as per the approved Revenue Model.

47.5. The Hon'ble Minister from Punjab stated that it was embarrassing to note that Punjab was a defaulter; he felt that his State was also owed money which it had not received till date from the Central Government, and he was agreeable if the amount was deducted from the due amount payable to Punjab. The Hon'ble Chairperson responded that the Council was not looking at Punjab as a defaulter State.

47.6. After due deliberation, the Council approved the proposal of waiver of interest on delayed receipt of Advance User Charges (AUC) from a few states and CBIC, as contained in the Agenda note.

48. For **Agenda item 12**, the Council approved the following:

i. The States and CBIC which had not yet paid the Advance User Charges (AUC) for FY 2017-18 and 2018-19 would be asked to pay their share positively by 31st July 2019 failing which interest on delayed payment of AUC may be levied by GSTN as per the approved Revenue Model.

ii. The interest payable by the defaulting Governments due to delayed payment of AUC up to 31st July 2019 be waived off. This would be a one-time waiver.

Agenda Item 13: Any other agenda item with the permission of the Chairperson

Agenda Item 13(i): Blocking and unblocking of e-way bill facility as per the provision of Rule 138E of CGST Rules, 2017

49. The Principal Commissioner (GST Policy Wing), CBIC, stated that the provisions of Rule 138E of the CGST Rules had been made operational with effect from 21st June, 2019 *vide* Notification No. 22/2019-Central Tax dated 23rd April, 2019. This provides that e-Way bill cannot be generated by a registered person, whether as a supplier or a recipient, if he has not furnished his returns for two consecutive tax periods. The proviso to Rule 138E of the CGST Rules provides that the Commissioner can allow generation of e-Way bill even if the returns for two consecutive tax periods have not been furnished subject to such conditions and restrictions, as may be specified by him. He added that the GSTN/NIC had developed FORM GST EWB-05 and FORM GST EWB-06 to operationalize the facility provided in the proviso to Rule 138E. However, these two FORMS had not yet been approved by the Law Committee and not notified so far. Also, the API integration relating to the said FORM was required to be completed by Model-1 States/CBIC. In view of this, it was proposed that the provisions of Rule 138E of the CGST Rules for blocking of e-Way bills on account of non-filing of returns for two consecutive tax periods may be deferred and introduced after two months i.e. with effect from 21st August, 2019. It was proposed to amend Notification No.22/2019-Central Tax dated 23rd April, 2019 accordingly. The Principal Commissioner (GST Policy Wing), CBIC informed that this issue was discussed during the Officers meeting held on 20th June, 2019 and there was unanimity amongst officers to extend the date by two months. He suggested that the Council may also agree to this suggestion. The Council agreed to the same.

50. **For Agenda item 13(i),** the Council approved to defer introduction of provision of Rule 138E regarding blocking of e-Way bills on account of non-filing of returns for two consecutive tax periods by 2 months and to make this provision effective from 21st August, 2019.

Other Issues

51. ACS, Finance, West Bengal stated that the Hon'ble Finance Minister of West Bengal, Dr. Amit Mitra had written a letter to the Hon'ble Union Finance Minister regarding inverted duty structure of 'wagon industry' and he had requested that it might be sent to the Fitment Committee for taking a view. Hon'ble Chairperson acknowledged that she had received the letter and that it would be sent to the Fitment Committee.

51.1. The Hon'ble Ministers from Tamil Nadu, Kerala and Sikkim circulated written speeches during the Council Meeting. The relevant portions of the speeches have been incorporated in the discussions on the Agenda items concerned. Some additional points mentioned in the written speeches are summarized in the subsequent paragraphs.

51.2. Hon'ble Minister from Tamil Nadu stated that his State's proposal for reconsideration of tax rate on 70 commodities and 8 services be also examined by the Fitment Committee. In the

written speech, the Hon'ble Minister from Tamil Nadu stated that requests for exemption/reduction in rate of tax may be considered with regard to sago, safety matches, fishing requisites, non-woven bags made from polyester/fibre, handloom textiles, Bhavani carpet, Bhavani mat, rice bran, aluminium waste and scrap/circles/utensils not operated by pressure and electricity, rice and other cereal put up in unit container and sold with a brand name, products made out of leaves of palm tree, coconut tree, banyan tree and banana tree, cheroots, wet grinder, jobwork relating to engineering components.

51.3. Hon'ble Minister from Tamil Nadu, in his written speech, suggested that since GSTN had become a Government Company, its Directors should be collectively chosen by the States instead of deciding the same by the GST Council Secretariat. He further suggested that the functioning of the GSTN needed to be discussed since there were instances of delay in implementing the decisions of the GST Council. He remarked that several representations on transitional issues were sent to GSTN for redressal through IT Grievance Redressal Committee, which were negated by the Committee forcing the taxpayers to approach the Courts. He further referred to a decision taken in the 29th GIC Meeting held on 11th June 2019 regarding the issue of Geo-tagging of registered persons under GST and stated that Tamil Nadu had desired that the matter be brought before the Council. He suggested that only non-urgent matters, unanimous decisions alone may be approved in GIC and proposal with dissent by any member of GIC may be placed before the GST Council.

51.4. The Hon'ble Minister from Sikkim, in his written speech, referred to an email dated 26th July, 2017 and a reminder-email dated 9th August, 2017 to the Secretary to the Council to inform that inconsistency between the provision of registration in GST law and the online registration application had an impact on the protection of interests of locals in the State of Sikkim. The online software does not require an applicant to mention the licence number that permits him to operate the business. The Hon'ble Minister, referring to paragraph 47.10 of the Minutes of 21st Meeting of the Council held on 9th September, 2017 at Hyderabad, stated that the State of Sikkim had raised the issue and the Council was requested to direct the GSTN to make necessary changes in the registration module. It was further requested that the Council may direct the GSTN to expedite the process of modification of online registration application and create a field for inclusion of licence number also. Another issue raised in the written speech was regarding consignment value for applicability of Waybill provision. It was pointed out that a D.O. letter No.68/CMO/2019 dated 4th January, 2019 on this subject was addressed by the then Hon'ble Chief Minister of Sikkim to the then Hon'ble Chairperson of the GST Council. It was pointed out that due to variation in the provision of law and corresponding Rule, uncertainty had crept in in understanding the Waybill mechanism. He also requested to arrange to clarify that the meaning of the consignment value is sum of value of all goods carried in one vehicle or vessel or any other means of transportation by amending the Explanation 2 of Rule 138(1) of the CGST Rules, 2017. Thereafter, the Explanation 2 of Rule 138(1) of the Sikkim GST Rules, 2017 shall also be amended accordingly.

Agenda Item 14: Date of the next meeting of the GST Council

52. This Agenda item was not taken up for discussion.

53. The meeting ended with a vote of thanks to the Chair.

Annexure 1

List of Hon'ble Ministers who attended the 35th GST Council Meeting on 21st June 2019			
Sl. No	**State/Centre**	**Name of Hon'ble Minister**	**Charge**
1	Govt of India	Ms. Nirmala Sitharaman	Union Finance Minister
2	Govt of India	Shri Anurag Singh Thakur	Minister of State (Finance)
3	Andhra Pradesh	Shri Buggana Rajendranath	Finance Minister
4	Arunachal Pradesh	Shri Chowna Mein	Finance Minister
5	Bihar	Shri Sushil Kumar Modi	Deputy Chief Minister
6	Delhi	Shri Manish Sisodia	Deputy Chief Minister
7	Goa	Shri Mauvin Godinho	Minister for Panchayat
8	Gujarat	Shri Nitinbhai Patel	Deputy Chief Minister
9	Haryana	Capt. Abhimanyu	Excise & Taxation Minister
10	Himachal Pradesh	Shri Suresh Bhardwaj	Minister (Education)
11	Jammu & Kashmir	Shri K. K. Sharma	Advisor to Governor (I/c Finance)
12	Jharkhand	Shri C.P. Singh	Minister - Department of Urban Development, Housing and Transport
13	Kerala	Dr. Thomas T M Isaac	Finance Minister
14	Madhya Pradesh	Shri Priyavrat Singh	Minister for Energy
15	Maharashtra	Shri Sudhir Mungantiwar	Finance Minister
16	Manipur	Shri Th. Radheshyam Singh	Minister for Education and Labour & Employment
17	Odisha	Shri Niranjan Pujari	Finance Minister
18	Puducherry	Shri V. Narayanasamy	Chief Minister
19	Punjab	Shri Manpreet Singh Badal	Finance Minister
20	Rajasthan	Shri Shanti Kumar Dhariwal	Minister for Local Self Government, Urban Development and Housing, Law and Legal affairs, Parliamentary affairs
21	Sikkim	Shri. B.S. Panth	Minister for Tourism, Civil Aviation, Commerce and Industries
22	Tamil Nadu	Shri D. Jayakumar	Minister for Fisheries and Personnel & Administrative Reforms
23	Tripura	Shri Jishnu Dev Varma	Deputy Chief Minister
24	Uttar Pradesh	Shri Rajesh Agarwal	Finance Minister
25	Uttarakhand	Shri Satpal Maharaj	Minister for Irrigation and Tourism

Annexure 2

Officials who attended the 35th GST Council Meeting on 21 June 2019			
Sl No	**State/Centre**	**Name of the Officer**	**Charge**
1	Govt. of India	Dr. A. B. Pandey	Revenue Secretary
2	Govt. of India	Dr. Krishnamurthy Subramanian	Chief Economic Adviser
3	Govt. of India	Shri Pranab Kumar Das	Chairman, CBIC
4	Govt. of India	Dr. John Joseph	Member (Tax Policy), CBIC
5	Govt. of India	Shri Sandeep M Bhatnagar	Member(GST &Inv), CBIC
6	GST Council	Dr. Rajeev Ranjan	Special Secretary, GST Council
7	Govt. of India	Shri J P S Chawla	Pr. CCA
8	Office of CAG of India	Ms. Subhashini Srinivasan	Dy. C&AG
9	Office of CAG of India	Shri S.K. Jaiswal	Director General, DGACR
10	Office of CAG of India	Ms. M. Himabindu	Pr. Director (GST-I), C&AG
11	Office of CAG of India	Shri Satish Sethi	Pr. Director (GST-II) C&AG
12	Office of CAG of India	Ms. R. Monica	Dy. AG, AG(ERSA)
13	Govt. of India	Shri Anil Kumar Jha	Additional Secretary, DoR
14	Govt. of India	Shri G.D. Lohani	Joint Secretary, TRU I, DoR
15	Govt. of India	Shri Manish Kumar Sinha	Joint Secretary, TRU II, DoR
16	Govt. of India	Shri Upender Gupta	Pr. Commissioner (GST), CBIC
17	Govt. of India	Ms. Arachana Pandey Tiwari	DG, GST, CBIC
18	Govt. of India	Shri Yogendra Garg	Pr. ADG, GST, CBIC
19	Govt. of India	Ms. V. Usha	Pr. Commissioner, CBIC
20	Govt. of India	Shri S.K. Rehman	ADG, GST, CBIC
21	Govt. of India	Shri D.S. Malik	DG (M&C)
22	Govt. of India	Shri Rajesh Malhotra	ADG (M&C)
23	Govt. of India	Shri B N Sharma	Chairman, NAA
24	Govt. of India	Shri Pramod Kumar	Deputy Secretary, TRU-II, DoR
25	Govt. of India	Shri N Gandhi Kumar	Deputy Secretary, DoR
26	Govt. of India	Shri Amaresh Kumar	Joint Comm., GST Policy Wing

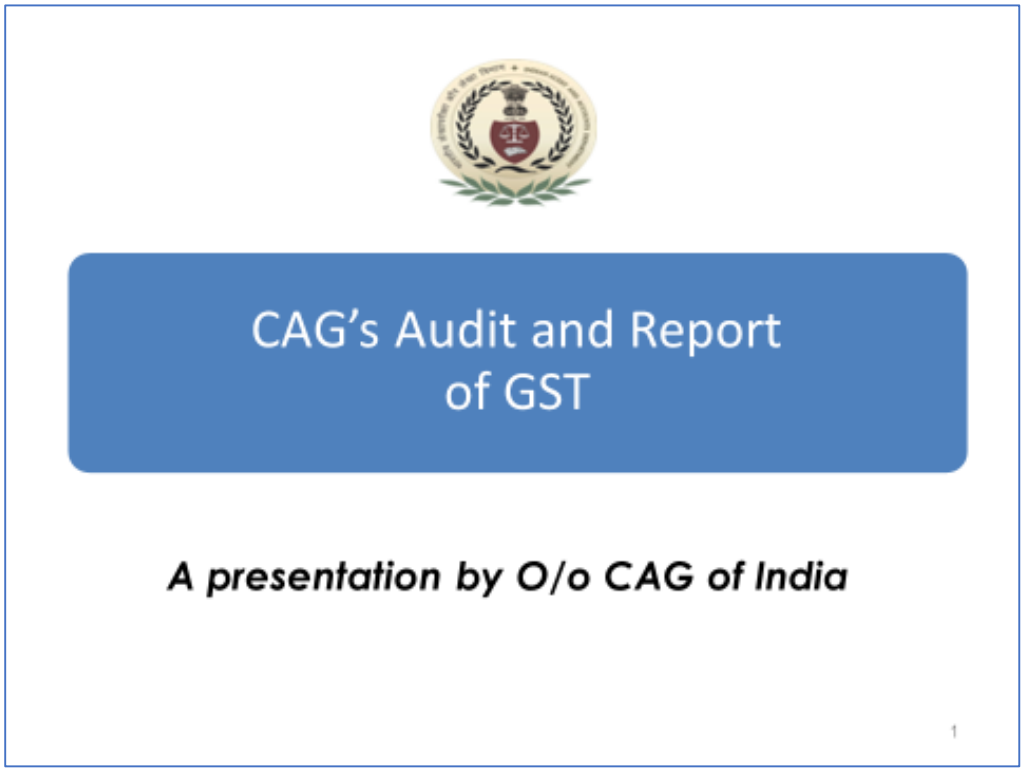
27	Govt. of India	Shri Nimba Ram	Joint Comm., GST Policy Wing
28	Govt. of India	Shri Susanta Mishra	Technical Officer, TRU-II, DoR
29	Govt. of India	Shri Harish YN	OSD, TRU-II, DoR
30	Govt. of India	Ms. Nisha Gupta	Dy. Comm., GST Policy Wing
31	Govt. of India	Shri Siddharth Jain	Dy. Comm., GST Policy Wing
32	Govt. of India	Shri Vikash Kumar	Dy. Comm., GST Policy Wing
33	Govt. of India	Satvik Dev	Dy. Comm., GST Policy Wing
34	Govt of India	Ms. Deepika Singh	Dy. Commissioner, GST Policy Wing
35	Govt. of India	Shri Achin Garg	Asst. Comm., GST Policy Wing
36	Govt. of India	Shri Priyabrata Pramanik	Additional Commissioner, TPRU
37	Govt. of India	Shri Vipul Bansal	PS to Union Finance Minister
38	Govt. of India	Shri Vivek Singh	APS to Union Finance Minister
39	Govt. of India	Shri Nikhil Varma	OSD to MoS (Finance)
40	Govt. of India	Shri Debashis Chakraborty	OSD to Finance Secretary
41	Govt. of India	Dr. Abhishek Chandra Gupta	OSD to Chairman, CBIC
42	Govt of India	Shri Himanshu Pathak	Assistant Director, PIB
43	GST Council	Shri Shashank Priya	Joint Secretary
44	GST Council	Shri Dheeraj Rastogi	Joint Secretary
45	GST Council	Shri Rajesh Agarwal	Director
46	GST Council	Shri G.S. Sinha	Director
47	GST Council	Shri Jagmohan	Director
48	GST Council	Ms. Ujjaini Datta	Director
49	GST Council	Shri Arjun Meena	Dy. Commissioner
50	GST Council	Shri Rakesh Agarwal	Dy. Commissioner
51	GST Council	Shri Rahul Raja	Under Secretary
52	GST Council	Shri Mahesh Singarapu	Under Secretary
53	GST Council	Shri Debasish Dutta	Under Secretary
54	GST Council	Shri Mukesh Gaur	Superintendent
55	GST Council	Shri Vipul Sharma	Superintendent
56	GST Council	Shri Sarib Sahran	Superintendent

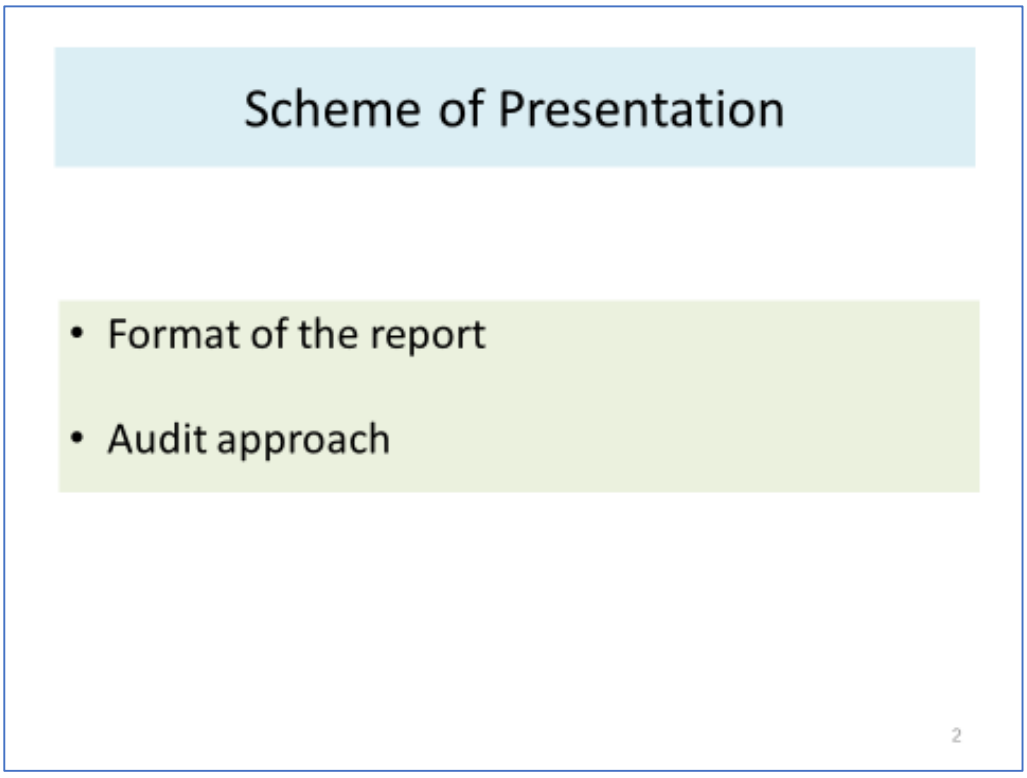
57	GST Council	Shri Amit Soni	Superintendent
58	GSTN	Shri Prakash Kumar	CEO
59	GSTN	Dr. Abhishek Gupta	EVP, GSTN
60	GSTN	Shri Vashishta Chaudhary	SVP (Services)
61	GSTN	Shri Jagmal Singh	VP(Services)
62	GSTN	Shri Sarthak Saxena	OSD to CEO
63	GSTN	Shri Krishna Prasad	AVP, General Administration
64	Govt. of India	Shri M. Subramanyam	Commissioner, Bengaluru Zone, CBIC
65	Govt. of India	Shri Kishori Lal	Pr. Commissioner, Chandigarh Zone, CBIC
66	Govt. of India	Shri Pramod Kumar	Pr. Commissioner, Delhi Zone, CBIC
67	Govt of India	Shri Sanjay Mahendru	Commissioner, Mumbai Zone, CBIC
68	Govt of India	Shri Yogesh Agarwal	Commissioner, Meerut Zone, CBIC
69	Govt of India	Shri R.S. Maheshwari	Commissioner, Bhopal Zone, CBIC
70	Govt of India	Shri K.V.S. Singh	Commissioner, Nagpur Zone, CBIC
71	Govt. of India	Shri R.C. Sankhla	Commissioner, Lucknow Zone, CBIC
72	Govt. of India	Shri S. Kannan	Commissioner, Chennai Zone, CBIC
73	Govt. of India	Shri Vijay Mohan Jain	Commissioner, Panchkula Zone, CBIC
74	Govt. of India	Shri Virender Choudhary	Pr. Commissioner, Vadodara Zone, CBIC
75	Govt. of India	Dr. Tejpal Singh	Pr. Commissioner, Ahmedabad Zone, CBIC
76	Govt. of India	Shri Milind Gawai	Commissioner, Pune Zone, CBIC
77	Govt. of India	Shri Srinivas Mandalika	Pr. Commissioner, Hyderabad Zone, CBIC
78	Govt. of India	Shri M. Srihari Rao	Commissioner, Vishakhapatnam Zone, CBIC
79	Govt. of India	Shri Nitin Anand	Commissioner, Ranchi Zone, CBIC
80	Andhra Pradesh	Dr D. Sambasiva Rao	Special Chief Secretary, Revenue
81	Andhra Pradesh	Shri Peeyush Kumar	Chief Commissioner, State Tax
82	Andhra Pradesh	Shri T Ramesh Babu	Commissioner, State Tax
83	Arunachal Pradesh	Shri Anirudh S Singh	Commissioner (Tax & Excise)
84	Assam	Shri Anurag Goel	Commissioner, State Tax
85	Bihar	Dr Pratima	Commissioner and Secretary, State Tax

86	Bihar	Shri Arun Kumar Mishra	Additional Secretary, State Tax
87	Bihar	Shri Ajitabh Mishra	Joint Commissioner, State Tax
88	Chandigarh	Shri Jitender Yadav	Excise and Taxation Commssioner
89	Chandigarh	Shri Ramesh Chaudhury	Asst. Commissioner, State Tax
90	Chhattisgarh	Ms. Reena Babasaheb Kangale	Secretary and Commissioner, State Tax
91	Delhi	Shri H Rajesh Prasad	Commissioner, State Tax
92	Delhi	Shri Rajesh Goyal	Addl. Commissioner (Policy), State Tax
93	Delhi	Shri AK Singh	Dy. Secretary – Finance
94	Goa	Shri Ashok Rane	Addl. Commissioner, State Tax
95	Gujarat	Shri Arvind Agarwal	Addl Chief Secretary, Finance
96	Gujarat	Dr. P. D. Vaghela	Chief Commissioner, State Tax
97	Gujarat	Shri Riddhesh Raval	Dy. Commissioner, State Tax
98	Haryana	Shri Sanjeev Kaushal	Addl Chief Secretary, E & T Dept
99	Haryana	Shri Amit Agrawal	Excise & Taxation Commissioner
100	Haryana	Shri Vijay Kumar Singh	Addl. Commissioner, State Tax
101	Haryana	Shri Rajeev Chaudhary	Jt. Commissioner, State Tax
102	Himachal Pradesh	Shri Jagdish Chander Sharma	Principal Secretary (E&T)
103	Himachal Pradesh	Shri Rajeev Sharma	Commissioner of State Tax & Excise
104	Himachal Pradesh	Shri Rakesh Sharma	Joint Comm., State Tax & Excise
105	Jammu & Kashmir	Dr. Arun Kumar Mehta	Financial Commissioner
106	Jammu & Kashmir	Shri P. K. Bhatt	Commissioner, State Tax
107	Jharkhand	Shri Prashant Kumar	Secretary & Commissioner State Tax
108	Jharkhand	Shri Santosh Kumar Vatsa	Spl. Secretary of State Taxes
109	Jharkhand	Shri Brajesh Kumar	State Tax officer
110	Karnataka	Shri M.S. Srikar	Commissioner, State Tax
111	Kerala	Shri Manoj Joshi	ACS (Finance & Taxes)
112	Kerala	Smt Tinku Biswal	Commissioner State Tax
113	Madhya Pradesh	Shri Manu Shrivastava	Prl. Secretary (State Tax, Registration, Excise)
114	Madhya Pradesh	Shri DP Ahuja	Commissioner, State Tax

115	Madhya Pradesh	Shri Sudip Gupta	Jt. Commissioner, State Tax
116	Maharashtra	Shri Rajiv Jalota	Commissioner, State Tax
117	Maharashtra	Shri Kiran Shinde	Dy. Commissioner, State Tax
118	Manipur	Shri Rakesh Ranjan	Principal Secretary (Finance)
119	Manipur	Ms. Jaspreet Kaur	Commissioner, State Tax
120	Manipur	Shri Y Indra Kumar	Asst. Commissioner, State Tax
121	Meghalaya	Shri Kitbokson War	Asst. Commissioner, State Tax
122	Mizoram	Shri Kailiana Ralte	Commissioner, State Tax
123	Mizoram	Shri R. Zosiamliana	Jt. Commissioner, State Tax
124	Nagaland	Shri Kesonyu Yhome	Commissioner, State Tax
125	Odisha	Shri Ashok K K Meena	Pr. Secretary(Finance)
126	Odisha	Shri Ananda Satapathy	Special Commissioner, State Tax
127	Odisha	Shri Nidhi Kumar Rautray	Addl. Secretary
128	Puducherry	Shri Manickadeepan	Commissioner, State Tax
129	Puducherry	Shri K Sridhar	Dy. Commissioner, State Tax
130	Punjab	Shri V. K. Garg	Advisor (Financial Resources) to CM
131	Punjab	Shri Vivek Pratap Singh	Excise & Taxation Commissioner
132	Punjab	Shri Pawan Garg	Dy. Commissioner, E&T
133	Rajasthan	Dr. Manju Rajpal	Secretary Finance (Budget)
134	Rajasthan	Dr. Preetam B Jasvant	Commissioner, State Tax
135	Rajasthan	Shri Ketan Sharma	Addl. Commissioner, GST, State Tax Dept
136	Sikkim	Shri Manoj Rai	Addl. Commissioner, State Tax
137	Tamil Nadu	Shri Ka. Balachandran	Principal Secretary
138	Tamil Nadu	Dr. T.V. Somanathan	ACS/Commissioner State Tax
139	Tamil Nadu	Shri C. Palani	Jt. Commissioner, State Tax
140	Telangana	Shri Somesh Kumar	Pr. Secretary (Finance)
141	Telangana	Shri M.S. Reddy	Special Commissioner
142	Telangana	Shri Sai Kishore	Joint Commissioner, State Tax
143	Tripura	Shri Sudip Bhowmik	Dy Commissioner, State Tax
144	Tripura	Shri Ashin Barman	Superintendent of State Tax

145	Uttar Pradesh	Shri Alok Sinha	ACS, State Tax
146	Uttar Pradesh	Shri C. P. Mishra	Joint Commissioner, State Tax
147	Uttar Pradesh	Shri Sanjay Pathak	Joint Commissioner, State Tax
148	Uttarakhand	Ms. Sowjanya	Commissioner, State Tax
149	Uttarakhand	Shri Piyush Kumar	Addl. Commissioner State Tax
150	Uttarakhand	Shri B. B. Mathpal	Addl. Secretary (F)
151	Uttarakhand	Shri S. S. Tiruwa	Dy. Comm, State Tax
152	West Bengal	Shri H. K. Dwivedi	Addl Chief Secretary, Finance
153	West Bengal	Ms. Smaraki Mahapatra	Commissioner, State Tax
154	West Bengal	Shri Khalid A Anwar	Joint Secretary, Finance


CAG's Audit and Report of GST
A presentation by O/o CAG of India
1


Scheme of Presentation
• Format of the report
• Audit approach
2

Article 151 - Audit reports

(1) The reports of the CAG relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament.

(2) The reports of the CAG relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State.

3

Format of the report

- Our audit process and reporting normally follows the Organisation Structure of the audited entities.
- **Current Report Structure**
  - Separate reports placed in Parliament and State Legislatures ***as per Tax laws administered.***
  - Eg. Audit Reports on Central Excise and Service Tax placed in Parliament and VAT reports included in Revenue Audit reports of the States.

4

Format of the report

Areas of overlap in GST regime

- Administration of CGST, SGST and IGST by both Central and State Tax officers
  - Audit findings on either Central or State Tax department might impact consolidated Fund of India as well as one or more states.
  - Eg. Failure of any tax department to detect payment of tax at wrong rate, due to misclassification, impacts CGST and SGST.
- Observations on GSTN's role and its IT systems are relevant for Centre and all the States.
- Uniform processes and procedures.

5

Format of the report

Projected Report structure under GST

- All India report which will be presented in the Parliament:
  - Systemic lapses – in view of uniform procedures
  - Observations on implementation issues impacting policy decisions
  - Findings on audit of GSTN
  - Results of audits carried out with pan-India focus
  - Findings on tax administration of CBIC

6

Format of the report

Projected Report structure under GST (Cont…)

- State specific reports which will be presented in the respective State Legislatures:
  - Results of audit of statutory functions carried out by respective tax departments
- Report structure might change as GST implementation unfolds further

7

AUDIT APPROACH

Section 16 of CAG's DPC Act: Audit of Receipts

It is the duty of the CAG

- to audit all receipts payable into the Consolidated Fund and
- to satisfy himself that the rules and procedures in that behalf are
  - ✓ effectively designed
    - to secure a check on the assessment, collection and proper allocation of revenue
  - ✓ and are being duly observed
- to make for this purpose such examination of the accounts as he thinks fit and report thereon

9

CAG's DPC Act and Regulations

- CAG is the sole authority to decide the scope and extent of audit and call for data, information, documents and records which might be relevant to audit.

- The auditable entity shall provide access to all data including computerized systems and databases maintained either by the auditable entity or on their behalf.

10

Audit approach

- Progressing towards Digital auditing
  - Focus more on system lapses
  - Limited field audit based on leads generated from data analytics
- Pre-requisites for audit
  - Regular and structured flow of data
  - Access to pan-India data held by GSTN

11

Audit approach

- Based on discussions with DoR and GSTN and their suggestions, an API Scheduler has been developed which will draw data using APIs already developed by GSTN
  - Security audited, tested and available for immediate use.
  - Will provide read only data and there will be no impact on GSTN live data at all
- Based upon data drawn through the scheduler, risk based audits will be carried out
- For Confidentiality and data security, we have internal protocols and any specific concerns raised will be addressed

12

Proposed broad guidelines for data sharing with CAG

- The scope of data to be shared should be as required by CAG for performing his duties as per the CAG's (DPC) Act
- To begin with, data will be drawn in respect of all States and CBIC through API Scheduler
- Access to Unit level transactional data, back office functions and reports being generated by tax authorities is needed
- CAG agrees to implement and maintain security procedures in order to ensure the protection of data shared against the risks of unauthorised access

13

35th Meeting of GST Council



Deemed ratification & GIC decisions

21.06.2019

Agenda

- **Agenda No. 3 :** Deemed Ratification of Notification / Circulars issued post 34th Meeting of GST Council
- **Agenda No. 4 :** Decisions taken by the GIC post 34th Meeting of GST Council

2

Agenda No. 3
Deemed Ratification

- Ratification of following notifications, Circulars & Orders issued post 34th GST Council meeting (held on 19th March, 2019):

Act/Rules	Type	Notification/Circular/Order Nos.
CGST Act/CGST Rules	Central Tax	15 to 24 of 2019
	Central Tax (Rate)	3 to 10 of 2019
UTGST Act	Union territory Tax (Rate)	3 to 10 of 2019
IGST Act	Integrated Tax (Rate)	3 to 9 of 2019
Circulars	Under the CGST Act	94 to 101 of 2019
RoD Orders	Under the CGST Act	4 to 5 of 2019
	Under the UTGST Act	3 of 2019

3

Agenda No. 4
GIC decisions post 34nd GST Council Meeting (1/10)

Decision of 26th GIC meeting (22.03.19)

- Extension of due date for filing of declaration in **FORM GST ITC-04** for the period July 2017 to March 2019 from 31.03.19 to 30.06.19
  - ✓NN 15/19 – CT dated 28.03.19 issued
- Circular clarifying refund related issues under GST
  - ✓Circular No. 94/13/2019-GST dated 28.03.19 issued
- Circular regarding verification for grant of new registration
  - ✓Circular No. 95/14/2019-GST dated 28.03.19 issued

4

Agenda No. 4
GIC decisions post 34nd GST Council Meeting (2/10)

Decision of 26th GIC (22.03.19)

- Amendment to CGST Rules in respect of apportionment of ITC in case of demerger
  - ✓NN 16/19 – CT dated 29.03.19 issued
- Circular to provide clarification in respect of transfer of ITC in case of death of sole proprietor
  - ✓Circular No. 96/15/2019-GST dated 28.03.19 issued
- Insertion of Rule 88A in respect of the order of utilization of ITC
  - ✓NN 16/19 – CT dated 29.03.19 issued

5

Agenda No. 4
GIC decisions post 34nd GST Council Meeting (3/10)

Decision by Circulation (04.04.19)

- Circular to clarify the manner in which a registered person opting for new composition scheme is required to intimate the tax authorities regarding the same and the manner in which he could opt out of this scheme
  - ✓Circular No. 97/16/2019-GST dated 05.04.19 issued

6

Agenda No. 4
GIC decisions post 34nd GST Council Meeting (4/10)

Decision by Circulation (05.04.19)

- Provisional settlement of an additional IGST amount of Rs. 12,000 crores, 50% to the Centre and 50% to the States, on *ad hoc* basis
  - ✓Order No. F. No. S-34011/21/2018-ST-1 DoR dated 12.04.19 issued

Decision by Circulation (10.04.19)

- Extension of due date for filing of **FORM GSTR-1** for the month of March, 2019 for two days, i.e. till 13.04.2019 and to extend the due date for filing of **FORM GSTR-7** for the month of March, 2019 for two days, i.e. till 12.04.2019
  - ✓NN 17/19 – CT & 18/19 – CT both dated 10.04.19 issued

7

Agenda No. 4
GIC decisions post 34nd GST Council Meeting (5/10)

27th GIC Meeting (15.04.19)

- Circular to clarify about utilization of ITC on account of insertion of the rule 88A of the CGST Rules
  - ✓Circular No. 98/17/2019-GST dated 23.04.19 issued
- Quarterly Payment and Annual Returns for Composition Taxpayers: Notification under section 148 notifying special procedure for registered persons who have opted for existing or new composition scheme
  - ✓NN 21/19 – CT dated 23.04.19 issued

8

Agenda No. 4
GIC decisions post 34nd GST Council Meeting (6/10)

27th GIC Meeting (15.04.19)

- Removal of Difficulty Order for extending the time limit for revocation of cancellation of registration and to issue a related Circular
  - ✓ RoD No. 5/19-GST dated 23.04.19 issued
  - ✓ Circular No. 99/18/2019-GST dated 23.04.19 issued
- Effective date for restriction on furnishing of information in PART A of **FORM GST EWB-01** as per rule 138E of CGST Rules
  - ✓NN 22/19 – CT dated 23.04.19 issued

9

Agenda No. 4
GIC decisions post 34nd GST Council Meeting (7/10)

27th GIC Meeting (15.04.19)

- Amendment in CGST Rules:
  i. Insertion of proviso to sub-rule (1) of rule 23
  ii. Amendment to rule 62 to provide for quarterly payment and filing of annual return by those taxpayers who are availing new composition scheme
  iii. Insertion of Instruction No. 17 in **FORM GST REG-01** to indicate whether taxpayers wants to avail benefit of new composition scheme
  iv. Insertion of **FORM CMP-08** to provide for a quarterly statement for payment of self-assessed tax was needed to be prescribed for registered persons who have opted for existing or new composition scheme
  - ✓NN 20/19 – CT dated 23.04.19 issued

10

Agenda No. 4
GIC decisions post 34nd GST Council Meeting (8/10)

27th GIC Meeting (15.04.19)

- Clarification on Seed Certification Tags and exemption of GST for those availing benefit of Sl. no. 41 of notification No. 12/2017 – CT (R) dated 28.06.17
  - ✓Circular No. 100/19/2019-GST dated 30.04.19 issued
  - ✓ Circular No. 101/20/2019-GST dated 30.04.19 issued

Decision by Circulation (22.04.19)

- Proposal for extension of due dates for furnishing **FORM GSTR-3B** for the month of March, 2019 by 3 days i.e. till 23.04.2019 (post-facto) due to technical issues in the common portal
  - ✓NN 19/19 – CT dated 22.04.19 issued

11

Agenda No. 4
GIC decisions post 34nd GST Council Meeting (9/10)

Decision by Circulation (04.05.19)

- FAQs on Real Estate sector
  - ✓FAQs on Real Estate Sector vide F.No. 354/32/2019-TRU dated 07.05.19 issued

Decision by Circulation (09.05.19)

Proposal to extend the time-limit for 10 days i.e. (from 10.05.19 to proposed 20.05.19) to exercise the option by the promoters/builders to pay tax on construction of apartments in a real estate project at the old rates of 12%/8% with ITC

- ✓NN 10/19 – CT (R) dated 10.05.19 issued
- ✓NN 09/19- IT (R) dated 10.05.19 issued
- ✓NN 10/19- UT (R) dated 10.05.19 issued

12

Agenda No. 4
GIC decisions post 34nd GST Council Meeting (10/10)

Decision by Circulation (10.05.19)

- Extension of due date for furnishing of **FORM GSTR-1** and **FORM GSTR-3B** in specified districts of Odisha in the aftermath of Cyclone 'Fani' up to 10.06.19 & 20.06.19 respectively
  - ✓ NN 23/19- CT dated 11.05.19 issued
  - ✓ NN 24/19 – CT dated 11.05.19 issued
- FAQs (part II) on Real Estate sector
  - ✓FAQs (part II) on Real Estate Sector vide F.No. 354/32/2019-TRU dated 14.05.19 issued

13

35th Meeting of GST Council



Issues for consideration
21.06.2019

Agenda

- **Agenda No. 6 :**
  - **(i)** – Proposed Law Amendments
  - **(i)** – Detailed proposed Amendments
  - **(ii)** – Update on issues referred to Law Committee
  - **(iii)** – Proposal for e-ticketing for Cinema tickets
  - **(iv)** – Clarification on Cross-charge
  - **(v)** – Timeline for introduction of New Return System
  - **(vi)** – Extension of due date for furnishing of Annual Returns
  - **(vii)** – Extension of due date for furnishing of GST FORM ITC-04
- **Table Agenda**

2

Agenda No. 6(i)
Proposed amendments to the CGST Act (1/4)

Sl. No.	Section	Proposal
1.	2	Consequential amendment in view of amendments in Chapter XVII (CAAAR)
2.	10	Proposal to bring into Act, the alternative composition scheme for supplier of services which was earlier introduced w.e.f. 01.04.2019 *vide* notification No. 2/2019-CT (Rate) dated 07.03.2019
3.	22	Proposal to bring into Act, the higher threshold exemption limit of Rs. 40 lakhs for supplier of goods which was earlier introduced w.e.f. 01.04.2019 *vide* notification No. 10/2019-CT dated 07.03.2019
4.	25	Provision to check bogus registrations by linking to AAdhhar

3

Agenda No. 6(i)
Proposed amendments to the CGST Act (2/4)

Sl. No.	Section	Proposal
5.	31A	Provision for supplier to mandatorily offer facility for digital payments by buyer
6.	39	Prescribing annual return & quarterly payment by composition taxpayer
7.	44	Provision to empower the Commissioner to extend the due date for furnishing Annual return in **FORM GSTR-9/9A/9C** which was earlier done vide issuance of RoD
8.	49	Provision to transfer amount from one head to another in electronic cash ledger
9.	50	Provision to levy interest on net tax liability

4

Agenda No. 6(i)
Proposed amendments to the CGST Act (3/4)

Sl. No.	Section	Proposal
10.	52	Provision to empower the Commissioner to extend the due date for furnishing the monthly statement in **FORM GSTR-8** & annual statement by e-commerce operator which was which was earlier done vide issuance of RoD
11.	53A	Provision to transfer amount from one head to another in electronic cash ledger
12.	54	Provision to enable disbursement of refund by a single Authority

5

Agenda No. 6(i)
Proposed amendments to the CGST Act (4/4)

Sl. No.	Section	Proposal
13.	Chapter XVII	Provision to establish a Centralized Appellate Authority for Advance Ruling (CAAAR)
14.	168	Consequential amendment in view of amendment in section 44 & 52
15.	171	Provision to levy penalty on the profiteered amount

6

Agenda No. 6(i)
Proposed amendment to the IGST Act (1/1)

Sl. No.	Section	Proposal
1.	17A	Provision to transfer amount from one head to another in electronic cash ledger

7

Agenda No. 6(ii)
Update on issues referred to Law Committee (1/1)

- Issue of exclusion of Brick Kilns, Menthol and Sand Mining activities from the benefit of Composition scheme
  - ✓ LC noted that the value addition in case of Brick Kilns, Menthol and Sand Mining activities were of a substantial degree with hardly any ITC
  - ✓ Recommend denial of benefit of Composition Scheme to these categories of items
- Introduction of e-Way bill system for movement of gold
  - ✓ LC observed that security concerns exist in transport of Gold
  - ✓ Recommended that e-Way bills may not be insisted upon
  - ✓ Possibility of encrypted e-Way bills may be explored

8

Agenda No. 6(iii)
Proposal for e-ticketing for Cinema tickets (1/3)

- In the 31st Meeting held on 22.12.2018, Council agreed to the suggestion that States may issue electronic tickets and that the LC to formulate rules in this regard
- LC recommended the following:
  - ✓ insertion of sub-rule (4A) of rule 54; and
  - ✓ amendments in the fourth proviso to rule 46 of the CGST Rules
- LC also recommends that e-ticketing may not be mandatory for suppliers other than multiplexes

9

Agenda No. 6(iii)
Proposal for e-ticketing for Cinema tickets (2/3)

- Amendment to Rule 54

Sl. No.	Rule	Proposed amendments (shown in red colour)
1.	54	**Rule 54 : Tax invoice in special cases** … "(4A) A registered person supplying services by way of admission to exhibition of cinematograph films, shall be required to issue a tax invoice electronically and for this purpose the electronic ticket issued by him shall be deemed to be a tax invoice for all purposes of the Act, even if such a ticket does not contain the details of the recipient of service but contains the other information as mentioned under rule 46: Provided that supplier of such service in a screen other than multiplex screens may, at his option, follow the above procedure."

10

Agenda No. 6(iii)
Proposal for e-ticketing for Cinema tickets (3/3)

- Amendment to Rule 46

Sl. No.	Rule	Proposed amendments (shown in red colour)
2.	46	**Rule 46: Tax invoice** … … Provided also that a registered person may not issue a tax invoice in accordance with the provisions of clause (b) of sub-section (3) of section 31 subject to the following conditions, namely,- (a) the recipient is not a registered person; ~~and~~ (b) the recipient does not require such invoice, and (c) the supplier is not engaged in supply of services by way of admission to exhibition of cinematograph films

11

Agenda No. 6(iv)
Clarification on Cross-charge (1/2)

- Representations have been received regarding
  - ✓ Taxability of services provided by an office of an organization in one State to the office of that organization in another State, both being distinct persons
  - ✓ distribution of ITC in respect of input services procured by the HO but attributable to the HO and /or various Branch Offices
  - ✓ treatment of expenses incurred by the HO on the procurement, distribution and management of common input services
  - ✓ treatment of services provided by the HO
- LC has recommended clarifying the issues vide issuance of a Circular

12

Agenda No. 6(iv)
Clarification on Cross-charge (2/2)

- Salient features of the clarification
  - ✓ There is a need to apportion expenses incurred by one office for provision of output services to another office for distinct persons
  - ✓ Such apportionment/valuation of supply shall be done on the basis of information maintained by a company in its normal course of working and no additional record keeping is required
  - ✓ The only exception to this principle would be distribution of ITC in respect of input services procured (from a third party) by one office and distributed to the others for which ISD provisions apply

13

Agenda No. 6(v)
Timeline for introduction of New Return System (1/1)

- New return model could not be introduced from 01.04.2019
- Proposed that the new return system may be introduced in a phased manner to give ample opportunity to taxpayers as well as the system to adapt
  - ➢ From October, 2019 onwards, **FORM GST ANX-1** shall be made compulsory for large taxpayers
  - ➢ For October and November, 2019, large taxpayers would continue to file **FORM GSTR-3B** on monthly basis and will file **FORM GST RET-01** for December, 2019
  - ➢ Small taxpayers would stop filing **FORM GSTR-3B** and would start filing **FORM GST PMT-08** from October, 2019 and would file their first **FORM GST-RET-01** for the quarter October, 2019 to December, 2019 from 20.01.2020
  - ➢ From January, 2020 onwards, **FORM GSTR-3B** shall be completely phased out

14

Agenda No. 6(vi)

Extension of due date for furnishing Annual Returns (1/1)

- Difficulties being faced by taxpayers in filing **FORM GSTR-9**, **FORM GSTR-9A** and reconciliation statement in **FORM GSTR-9C**
- Due date for filing these returns/reconciliation statement may be extended, by issuance of Removal of Difficulties (RoD) order, in a staggered manner as below:

FORM	Taxpayer	Aggregate Turnover	Date
FORM GSTR-9/9C	Normal	> Rs. 5 crores	**31.07.2019**
FORM GSTR-9/9C	Normal	Rs. 2 crores to Rs. 5 crores	**31.08.2019**
FORM GSTR-9	Normal	< Rs. 2 crores	**30.09.2019**
FORM GSTR-9A	Composition	-	**30.09.2019**

15

Agenda No. 6(vii)

Extension of due date for FORM GST ITC-04 (1/1)

- Due to certain system related issues, **FORM GST ITC-04** has not been deployed yet on the common portal and the same would be deployed only around 22.06.2019
- The last date for furnishing declaration in **FORM GST ITC-04** for July, 2017 to March, 2019 is 30.06.2019 and for April, 2019 to June, 2019 is 25.07.2019
- Sufficient time to the trade and industry to furnish the said declaration may be provided
- Therefore, it is proposed that due date for furnishing **FORM GST ITC-04** for the period July, 2017 to June, 2019 may be extended till 31.08.2019

16

Table Agenda : Blocking of E-Way Bill facility

- Restriction on E-Way bill generation for non-filer of returns for two consecutive tax periods.
- Made effective from 21st June 2019 through rule 138E
  - ✓ Notn. No. 22/2019 dated 23.04.2019
- System to provide for automatic blocking and unblocking of E-Way Bill
- Provisio to Rule 138E empowers Commissioner to allow for generation of E-Way on case to case basis, even when returns for two consecutive tax periods are not filed
- To operationalize this facility relevant forms have not been approved by the law committee and not yet notified

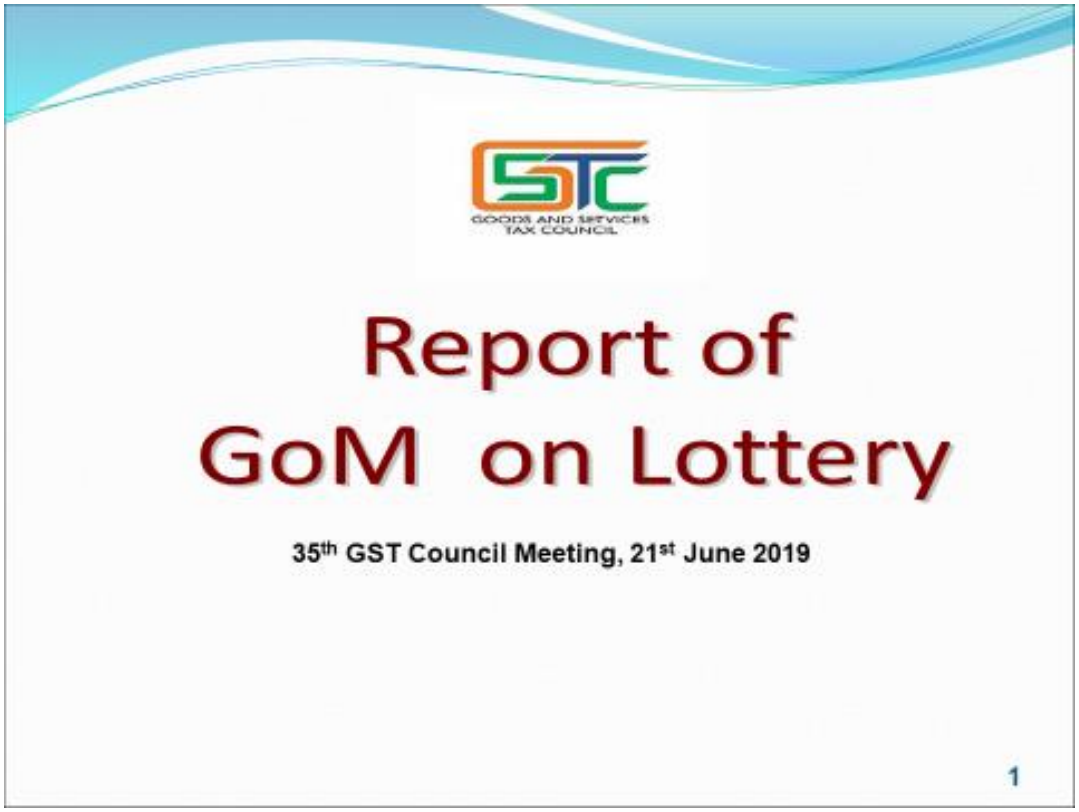
17

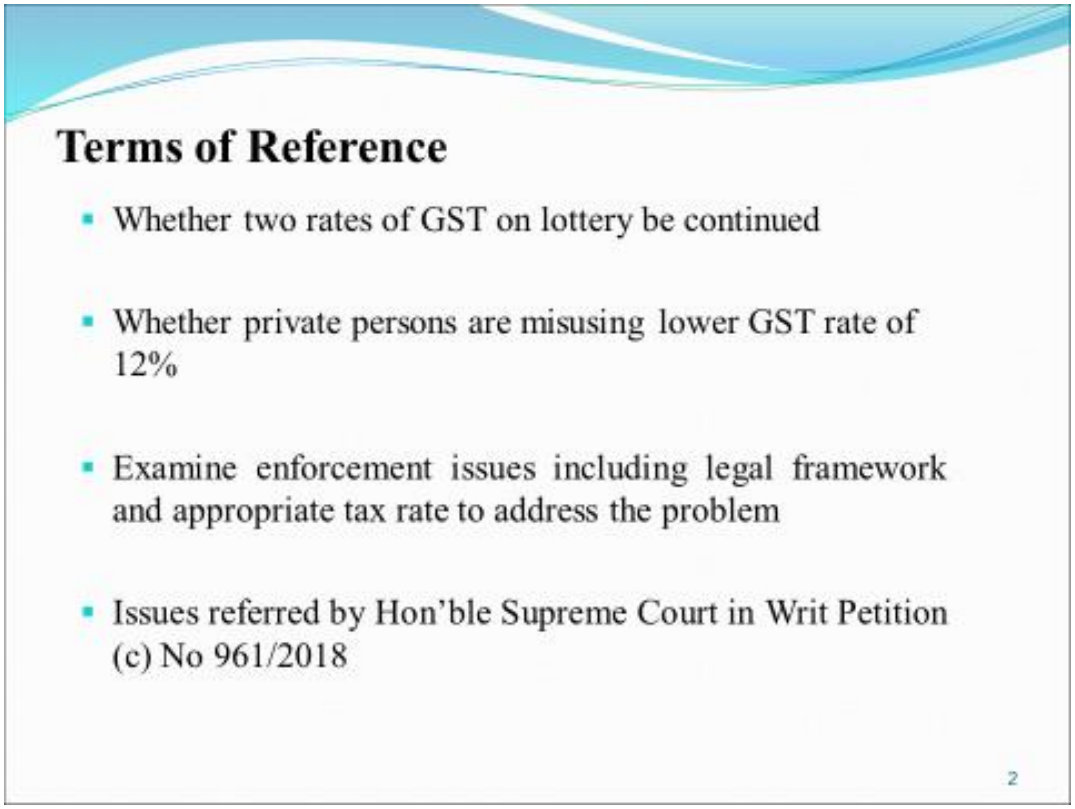
Table Agenda : Blocking of E-Way Bill facility

- Options for discussion :-
  - ✓ To implement the blocking of E-Way Bill from 21st June as has been notified
  - ✓ To extend the time limit for blocking of E-Way Bills till such date the forms are notified and made available for both Model-1 and Model-2 States

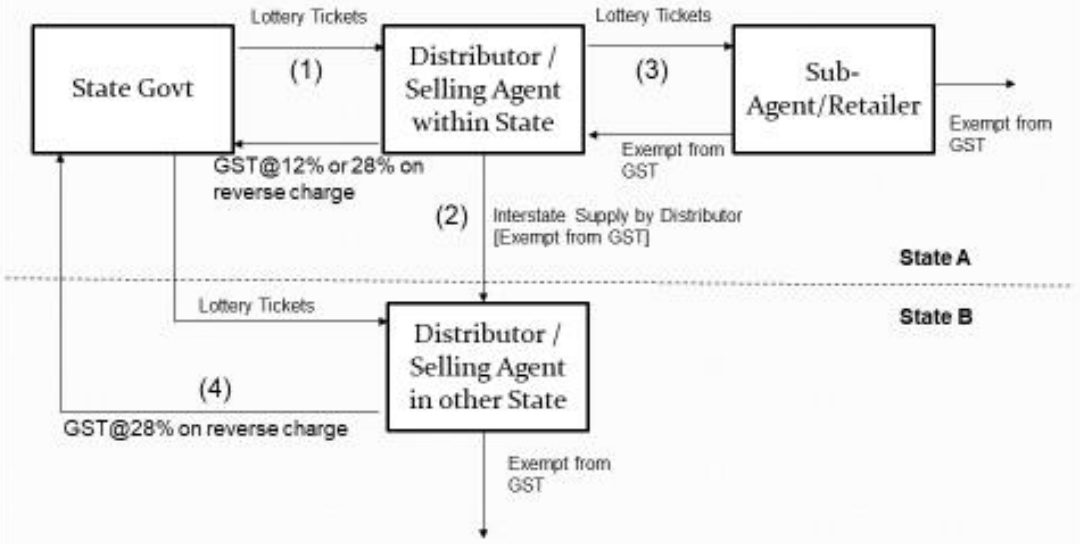
18

Annexure 6


GOODS AND SERVICES TAX COUNCIL
Report of
GoM on Lottery
35th GST Council Meeting, 21st June 2019
1


Terms of Reference
Whether two rates of GST on lottery be continued
Whether private persons are misusing lower GST rate of 12%
Examine enforcement issues including legal framework and appropriate tax rate to address the problem
Issues referred by Hon'ble Supreme Court in Writ Petition (c) No 961/2018
2

Existing GST Provisions on Lottery



3

Issues Before GoM

1. GST rate on supply of lottery
2. Ensure destination principle for supply so that GST revenue accrues to the consuming state
3. Valuation to be adopted for charging GST
4. Address the Constitutional challenge to levy of GST on Lottery as 'Goods'
5. Regulation of online lottery
6. Miscellaneous Issues similar to Lottery

4

Issue 1: GST Rate on Supply of Lottery

Recommendation of GoM on Lottery: -

- *There was no consensus on the need for a new rate of GST on lottery.*
- *Details regarding the position of individual States is provided in the Report of GoM on Lottery.*
- *GST Council may decide appropriate rate structure on the supply of lottery. Given that this is a sin goods, rate of tax should be high i.e. 28% or 18%.*

5

Issue 2: Ensure Destination Principle For Supply So That GST Revenue Accrues to Consuming State

Recommendation of GoM on Lottery: -

- *GoM decided that:*
  (a) the States should frame rules expeditiously as approved by the 28th GST Council and
  (b) a circular on the operational details would be issued once the necessary changes in the lottery rules have been made by the lottery organising States.
- *The existing exemption on inter-state supply by a distributor/selling agent in supplying State to the other agents in consuming may be examined in the Fitment Committee for removal, if this is leading to loss of revenue to the consuming State [Supply (2) in Slide 3 refers].*

6

Valuation of Lottery in GST (Issue 3) and Treatment of lottery as 'goods'(Issue 4)

Recommendation of GoM on Lottery: -

- *GST should continue to be levied on face value of lottery which includes prize money as per the existing provisions i.e Rule 31A of CGST Rules*
- *Supply of lottery should continue to be treated as actionable claims and goods, thus, leviable to GST as per the existing provisions of GST law.*

7

Regulation of Online Lottery(Issue5) and Misc. Issues similar to Lottery (Issue 6)

Recommendation of GoM on Lottery: -

- *The State governments are empowered by existing lottery laws to ban online lottery. Experience shows that banning online lottery leads to good growth of revenue on paper Lottery.*
- *Maharashtra volunteered to submit a draft on online lottery regulation.*
- *The rate and valuation issues of Casinos, Horse Racing, Online Gaming, Betting may be referred to Fitment/Law Committee and then taken to GST Council.*

8

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

In the 22nd meeting of the GST Council held at New Delhi on 06th 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 35th meeting held on 21th June, 2019, the GST Council had ratified all the notifications, circulars, and orders issued before the 12th June, 2019.

2. In this respect, the following notifications, Circulars and Orders issued after 12th June, 2019 and till 19th July, 2019, 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.
CGST Act/CGST Rules	Central Tax	25 to 34 of 2019
	Central Tax (Rate)	11 of 2019
UTGST Act	Union territory tax (Rate)	11 of 2019
IGST Act	Integrated Tax (Rate)	10 to 11 of 2019
Compensation to States Act	Compensation Cess (Rate)	1 of 2019
Circulars	Under the CGST Act	102 to 108 of 2019
ROD Orders	Under the CGST Act	6 of 2019

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

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

GST Implementation Committee (GIC) took certain decisions between 11th May 2019 and 19th July 2019. Due to the urgency involved, some decisions were taken after obtaining approval by circulation amongst GIC members. The details of the decisions taken are given below:

28th GIC Meeting- 27th May 2019

2. The 28th Meeting of the GIC was held on 27th May 2019. The following agenda items were discussed and decided:

Agenda item 1: Proposed timeline for introduction of New Return System

3. Sh. Upender Gupta, Pr. Commissioner, GST Policy Wing, CBIC stated that The GST Council in its 31st Meeting held on 22.12.2018 decided that the new return filing system shall be introduced on a trial basis from 01.04.2019 and on mandatory basis from 01.07.2019. As the new return model could not be introduced from 01.04.2019, a meeting was held with the officials of GSTN wherein it was informed that the software was in development phase. It was also proposed that the new system may be introduced in a phased manner to give ample opportunity to taxpayers as well the system to adapt.

He informed that the State of Gujarat had suggested following three changes to the transition plan:

i. In paragraph 3.1 (iv) the term 'larger taxpayers' would mean taxpayers having annual turnover above Rs. 5 crore;
ii. In paragraph 3.1(iv) the term 'smaller taxpayers' would mean taxpayers having annual turnover upto Rs. 5 crore;
iii. In paragraph 3.1(viii) after the words 'all taxpayers' to add 'excluding the composition taxpayers'.

3.1 The GIC approved the suggested roadmap for introduction of New Return System with minor changes as suggested by the State of Gujarat. However, the implementation timeline with respect to October 2019 may be revisited based on the experience at the field level and put up for the consideration of the GST Council. It was also decided that the suggested roadmap would be shared with trade and industry through a press release and also with all the field formations. Accordingly, this roadmap was shared with the industry through a Press Release on 11th June 2019 and the same was also placed before the GST Council in its 35th Meeting held on 21st June 2019.

Agenda item 2: Proposal for clarification regarding GST liability on levy of additional / penal interest

4. Pr. Commissioner, GST Policy Wing, CBIC informed that a circular was proposed to be issued regarding applicability of GST on delayed payment charges in case of late payment of Equated Monthly Instalments (EMI) based on various representations received from trade and industry. The issue was applicability of GST on additional/penal interest on the overdue loan as to whether it would be exempt from GST in terms of Sl. No. 27 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 or would such penal interest be treated as consideration for liquidated damages amounting to a separate taxable supply of services under GST covered under entry 5(e) of Schedule II of the Central Goods and Services Tax Act, 2017 (hereinafter referred

to as the CGST Act) i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act".

4.1. It was proposed to be clarified that (a) as per the provisions of sub-clause (d) of sub-section (2) of section 15 of the said Act, the amount of penal interest is to be included in the value of supply of taxable goods or services if charged by the supplier supplying taxable goods or services. Accordingly, the penal interest would be taxable as it would be included in the value of the goods/services, irrespective of the manner of invoicing, (b) 'Penal interest' charged on supply of services by an independent/different supplier by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount would be exempted from GST, (c) any service fee/charge or any other charges that are levied for delayed payment would not fall under the definition of interest, and accordingly will not be exempt.

4.2. The GIC approved the proposal and the draft circular clarifying issues regarding GST liability on levy of additional/ penal interest. It also approved that similar Circular would be issued by the States. Accordingly, the implementing Circular No. 102/21/2019-GST dated 28th June 2019 was issued.

Agenda item 3: Proposal for extension of due date for filing returns in FORM GSTR-7

5. Pr. Commissioner, GST Policy Wing, CBIC informed that Law Committee had deliberated upon reports from various States that a large number of returns in **FORM GSTR-7** could not be filed by the deductors within the stipulated date on account of various reasons as reported below:

a. In spite of entering data of tax deduction in Table 3 of **FORM GSTR-7**, the data is not saved and the summary page in the system is showing "nil" deduction;
b. Cash ledger of the DDO reflects only a part of the actual deposit of deducted amount;
c. In spite of ARN being generated upon filing of **FORM GSTR-7** for January 2019, system displays Error Message (Error Code RET00012) that Return filing process has not yet been completed for the previous period while attempting to file **FORM GSTR-7** for February 2019.

5.1. Hence, a notification was proposed to be issued for extension of the last date for furnishing return in **FORM GSTR-7** for the months of **October, 2018 to July, 2019** till **31.08.2019**.

5.2. The GIC approved the proposal and the draft notification for extension of the last date for filing the returns in **FORM GSTR-7**. It was decided that the States were not required to issue the corresponding SGST notification. Accordingly, the implementing Notification No. 26/2019-Central Tax dated 28th June 2019 was issued.

Agenda item 4: Issues regarding e-way bill in case of bulk cargo movement

6. Pr. Commissioner, GST Policy Wing, CBIC informed that Law Committee discussed the references received regarding the consignments undergoing multimodal transhipments facing serious difficulties despite bona fide attempt to comply with the provisions relating to e-way bills. The Law Committee recommended that to resolve the above issue, there is a requirement to amend rule 138(10) of the CGST Rules, 2017 and its proviso. which is part of Agenda Note No. 8 below. Further there is a requirement to amend the FAQ on e-way bill as available on page number 13 of the Said FAQs.

6.1. The FAQ proposed to be modified is as follows (underlined and italics):

"How to generate e-way bill, if the goods of one invoice is being moved in multiple vehicles simultaneously?

Where the goods are being transported in a semi knocked down or completely knocked down condition *or being bulk cargo or being transported through multi-modal means of transport*, the EWB shall be generated for each of such vehicles based on the delivery challans issued for that portion of the consignment as per rule 55 of CGST Rules, 2017 which provides as under:

a. Supplier shall issue the complete invoice before dispatch of the first consignment;
b. Supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;
c. each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and
d. Original copy of the invoice shall be sent along with the last consignment.

Please note that multiple EWBs are required to be generated in this situation. That is, the EWB has to be generated for each consignment based on the delivery challan details along with the corresponding vehicle number."

6.2. The GIC approved the proposal for amendment of FAQs on e-way bill and the amended FAQ has been issued on 28th June 2019.

Agenda item 5: Amendment to notification No.50/2017-Customs dated 30.06.2017 with respect to requirement of 'end-use certificates' to be issued by and Bond to be submitted to GST Officers

7. Pr. Commissioner, GST Policy Wing, CBIC informed that the agenda was initially sent by the State of Karnataka for having uniform practise of monitoring of end used based notifications being followed regarding the format and the manner of issuance of end use certificates and the monitoring thereof and the same was discussed in the Law Committee. The Law Committee had recommended that the notification No.50/2017-Customs may be amended and the duty of issuing end use certificate along with other related responsibilities may be entrusted to the Customs officers instead of GST officers because the imports were done at the Customs station and it will ensure uniformity in practice while verifying the requirement laid in the said notification.

7.1. ACS, Haryana stated that the GST officers should be part of the process and he sought more time for wider consultation on the issue with other neighbouring States and requested to defer the agenda for revisiting it on a later date.

7.2. The GIC decided to defer the agenda. It was also decided that Pr. Commissioner, GST Policy Wing, CBIC would share the background papers including the proposal of the State of Karnataka with the GIC.

Agenda item 6: Clarification in respect of liability to pay interest and recovery of unpaid interest on self-assessed tax as per return

8. Pr. Commissioner, GST Policy Wing, CBIC informed that various representations have been received seeking clarity regarding liability towards interest for delayed / non-payment of tax and manner of recovery of interest. Further, at present there is no functionality for auto calculation of interest on the common portal. In the Writ Petition No. 44517 of 2018 (M/s. Megha

Engineering & Infrastructure Ltd.), the Hon'ble High Court of Telangana in its judgement dated 18.04.2019 has held that till the amendment in Section 50 of the CGST Act is carried out, the taxpayer will be liable to pay the interest on the gross tax liability and not the net tax liability. Accordingly, an agenda note on the issue, along with a draft Circular was discussed in the Law Committee. The Law Committee, after deliberation, recommended that instead of issuing a circular, the judgement of the Hon'ble High Court of Telangana might be circulated to all the GST field formations for initiating action for recovery of interest.

8.2. In view of the above, the issue was placed before the GIC for deliberations and decision as to whether:

a. draft circular might be issued clarifying payment of interest for delayed / non-payment of tax and manner of recovery of interest; or
b. the judgement of Telangana High Court might be circulated for initiating suitable action for recovery of interest.

8.3. The State of Tamil Nadu was not in favour of the proposal and Dr. P D Vaghela, Chief Commissioner, State Tax (CCST), Gujarat stated that the current law stands till the amendment to Section 50 would be carried out as per recommendation of the Council. Therefore, the Circular might not be required to be issued. CST, West Bengal also agreed with the views of Gujarat.

8.4. Since, no consensus was reached on the issue, GIC agreed not to take any action at this point of time.

Agenda item 7: Clarifications on issues relating to Place of Supply of certain services

9. Pr. Commissioner, GST Policy Wing, CBIC informed that various representations have been received seeking clarity in respect of following two issues: (a) place of supply relating to services provided by ports to clients registered in other States. Representation on the issue was received from CST, Odisha through GST Council Secretariat, (b) place of supply in the case of services rendered on unpolished diamonds received from abroad, which are exported after cutting, polishing etc. Representation on the issue was received from WSDM (Worldwide Small Diamonds Manufacturing Pvt. Ltd.). The Law Committee had recommended that the position may be clarified by way of issuance of circular covering both the issues.

9.2. The GIC approved the proposal and the draft circular in respect of Place of Supply. It was also decided that States would issue similar circular. Accordingly, the implementing Circular No. 103/22/2019-GST dated 28th June 2019 was issued.

Agenda item 8: Proposal for amendment in the CGST Rules, 2017

10. Pr. Commissioner, GST Policy Wing, CBIC informed that the Law Committee had deliberated upon several issues and recommended changes in the CGST Rules. In addition to the changes in the CGST Rules, changes in the FORMS had also been recommended by the Law Committee. To summarise, the changes were recommended in the following Rules and FORMS:

a. Insertion of rule 10A
b. Insertion of new clause in rule 21
c. Amendment to rule 66, rule 67 and rule 87
d. Amendment to rule 91, rule 92 (4), insertion of new sub-rule (4A) in rule 92 and amendment to rule 94
e. Amendment to rule 138(10)
f. Amendment to rule 138E

g. Changes in FORM GST REG-01
h. Amendment in FORM GST REG-07
i. Amendment in FORM GST-REG-12
j. Amendment to Annual Return in FORM GSTR-9
k. Amendment to FORM GST DRC-03

10.1. The GIC approved the proposal to amend the CGST Rules, 2017. It was also decided that *pari materia* changes would also be required to be carried out in the respective SGST Rules. Accordingly, the implementing notification No. 31/2019 – Central Tax dated 28th June 2019 was issued.

29th GIC Meeting- 11th June 2019

11. The 29th Meeting of the GIC was held on 11th June 2019. The following agenda items were discussed and decided:

Agenda item 1: Specifying the due date for furnishing of return in FORM GSTR-3B and details of outward supplies in FORM GSTR-1 for the period July, 2019 to September, 2019

12. Pr. Commissioner, GST Policy Wing, CBIC informed that a revised timeline for introduction of the new return system was discussed and approved in the 28th meeting of the GIC held on 27th May 2019. As per the proposed road map, the details of outward supplies in **FORM GSTR-1** will be phased out by September, 2019 for large taxpayers and by December, 2019 for small taxpayers. Similarly, the return in **FORM GSTR-3B** will be completely phased out only by January, 2020 for large taxpayers. Small taxpayers would not be required to file the return in **FORM GSTR-3B** from October, 2019 onwards. He added that since the new return system was expected to be introduced in a phased manner from September, 2019 onwards, the present system of filing return on monthly basis in **FORM GSTR-3B** and monthly / quarterly furnishing of details of outward supplies in **FORM GSTR-1** was required to be notified for the period July, 2019 to September, 2019.

12.1 He added that Law Committee proposed the following changes by issuance of a notification:

i. **FORM GSTR-3B** may continue to be filed monthly by all tax payers for the months of July, 2019 to September, 2019 on or before the 20th of the month succeeding such month;
ii. the class of registered persons (having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year) may be allowed to furnish the details of outward supplies in **FORM GSTR-1** for the months of July, 2019 to September, 2019, till the eleventh day of the month succeeding such month;
iii. the class of registered person (having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year) may be allowed to furnish the details of outward supplies in **FORM GSTR-1** for the quarter July, 2019 to September, 2019, till the 31st October, 2019; and
iv. the time limit for furnishing the details or return, under subsection (2) of section 38 (**FORM GSTR-2**) and sub-section (1) of section 39 (**FORM GSTR-3**) for the months of July, 2017 to September, 2019 shall be subsequently notified in the Official Gazette.

12.2. GIC approved the proposal as above and the draft Notifications for specifying the dates in respect of furnishing of details of outward supplies in **FORM GSTR-1** and return in **FORM**

GSTR-3B for the period July, 2019 to September, 2019. It was decided that States were also required to issue the corresponding Notifications. Accordingly, the implementing notification No. 27/2019 – Central Taxm notification No. 28/2019 – Central Tax and, notification No. 29/2019 – Central Tax all dated 28th June 2019 were issued.

Agenda item 2: Exemption from submission of Annual Return / Reconciliation Statement by suppliers of OIDAR services

13. Pr. Commissioner, GST Policy Wing, CBIC informed that the proposal before the GIC for approval was based on the recommendation of the Law Committee regarding grant of exemption to suppliers of OIDAR services from submission of annual return (**FORM GSTR-9**) and reconciliation statement (**FROM GSTR-9C**). The Law Committee recommended grant of exemption from submission of annual return and reconciliation statement for suppliers of OIDAR services based on the following reasons:

i. Many suppliers of OIDAR services may have appointed agents / representatives only for the purpose of IGST Payment. They may not be maintaining any accounts / records in India. In cases, where an Indian entity (or an Indian partner to the foreign suppliers of OIDAR services) is providing OIDAR services in his own name, then such Indian partner will be registered normally and will be liable for filing of **FORM GSTR-3B, FORM GSTR-1** and also **FORM GSTR-9** and **FORM GSTR-9C**.
ii. Such service providers do not get their accounts audited in India (especially State wise accounts).
iii. All IGST is paid in cash by such suppliers of OIDAR services and they are not entitled to take any Input tax credit.
iv. Most of the data which has been sought in annual return (**FORM GSTR-9**) and reconciliation statement (**FORM GSTR-9C**) pertains to verification of outward supplies, inward supplies, distribution of credit etc. The primary source of all this data is **FORM GSTR-3B** and **FORM GSTR-1** which were not being filed by suppliers of OIDAR services. These service providers were required to file monthly return in **FORM GSTR-5A** by 20th of succeeding month in terms of Rule 64 of the CGST Rules.

13.1. The GIC approved the proposal including the draft Notification under Section 148 of the CGST Act. It was decided that States were also required to issue the corresponding Notification. Accordingly, the implementing notification No. 30/2019 – Central Tax dated 28th June 2019 was issued.

Agenda item 3: Geo-tagging of registered persons under GST

14. Pr. Commissioner, GST Policy Wing, CBIC informed that the proposal before the GIC for approval was based on the recommendation of the Law Committee to require the taxpayers to compulsorily fill the longitude/latitude fields (geographical coordinates) of their principal/ additional places of business in the **FORM GST REG-01** (normal taxpayer), **FORM GST REG-07** (tax deductor at source or tax collector at source), **FORM GST REG-09** (non-resident taxable person), **FORM GST REG-13** (UIN), FO**RM GST REG-16** (cancellation of registration), **FORM GST ENR-01 01** (records to be maintained by owner or operator of godown or warehouse and transporters). The rationale behind the proposal was two-fold:

i. to augment the accuracy/precision of information provided under the address fields; and

ii. to assist in preparation of geographical MIS reports which can be used to check GST frauds.

14.1 The Law Committee also recommended the proposal of requiring the existing taxpayers to provide this information on the common portal within a period of three months. Shri Ajay Kumar, Special Commissioner, State Tax, Gujarat agreed with the proposal for normal tax payers and sought to exempt the categories of TDS, UIN, OIDAR, and Non-Resident Taxable Persons.

14.2. Shri Prakash Kumar, CEO, GSTN stated that in the current system, it was not possible to verify the authenticity of the address information. He stated that with this information, it would be possible to check how many tax payers functioned from the same address which would be helpful to detect fraudulent practices.

14.3. The GIC approved the proposal to make the relevant fields compulsory in the 'instructions to fill forms' on the common portal in relation to the **FORM GST REG-01** only but in respect of all the taxpayers. It also suggested that GSTN should display a pop-up on the dashboard of the existing taxpayers requesting them to provide this information within a period of three months. GSTN has been accordingly requested, vide mail dated 08th July, 2019, to take necessary action.

Agenda Item 4: Processing of refund applications in FORM GST RFD-01A submitted by taxpayers wrongly mapped on the common portal

15. Pr. Commissioner, GST Policy Wing, CBIC informed that there were cases where a taxpayer had been administratively assigned to a particular tax authority, but had been incorrectly mapped on the common portal. In such cases, the refund applications submitted on the common portal by these taxpayers were being forwarded to the incorrect jurisdictional tax authority.

15.1. Accordingly, it was recommended by the Law Committee to issue a Circular to clarify that, in the absence of a facility to electronically reassign such refund applications, the tax authority to which the refund application had been forwarded may continue to process the said refund application. It was also proposed to clarify that such cases must also be brought to the notice of the common portal so that the mapping might be updated suitably and all refund applications submitted subsequently are sent to the current jurisdictional tax authority.

15.2. Commissioner of State Tax, Tamil Nadu in his written comments stated that the proposal to process refund by the authority to which GSTN portal assigned it wrongly, was agreed. Similarly, the cases un-allotted to any jurisdiction might be processed by the authority to which it was allotted by the GSTN through common portal and in respect of previous cases, the authority to which application filed might be allowed to process. Pr. Commissioner, GST Policy Wing, CBIC replied that with respect to unallocated tax payers who were not mapped, as per the Circular dated 31.12.18, they had to continue to file physical returns before either State or Central Authority and this issue could be discussed in the next Law Committee meeting.

15.3. CEO, GSTN stated that there were 39,000 cases of tax payers who were still not allocated to a jurisdiction in the system. These cases included situations where a tax payer had requested a core field amendment or of a forcefully migrated tax payer in June-July 2018. Thus, till the time they were allocated to correct jurisdiction, refund application would not be processed by the system. He further stated that there were another 3700 odd cases where no

jurisdiction at all was indicated against their GSTINs.

15.4. Shri Sandeep M. Bhatnagar, Member (GST), CBIC stated that the list of unallocated taxpayers might be shared by the GST Council Secretariat with the States with a request to expeditiously allocate the jurisdiction as per the guideline. Similarly, CBIC might share the details with respective Zones to do the same.

15.5. GIC approved the proposal to issue the Circular dealing with processing of refund applications in **FORM GST RFD-01A** submitted by taxpayers wrongly mapped on the common portal. It was decided that the States were also required to issue similar circulars. Accordingly, the implementing Circular No. 104/23/2019-GST dated 28th June 2019 was issued.

Agenda Item 5: Clarification on various doubts related to treatment of secondary or post-sales discounts under GST

16. Pr. Commissioner, GST Policy Wing, CBIC informed that the representations had been received from the trade, seeking clarifications in respect of tax treatment in cases of secondary discounts or post sales discount. The issues were examined and analyzed as below.

16.1. For the purpose of value of supply, post sales discounts are governed by the provisions of clause (b) of sub-section (3) of section 15 of the CGST Act. The true nature of discount given by the manufacturer or wholesaler, etc. (hereinafter referred to as "the supplier") to the dealer was crucial. It would be important to examine whether the additional discount was given by the supplier in lieu of consideration for any additional activity / promotional campaign to be undertaken by the dealer. If the post-sale discount was given by the supplier to the dealer without any further obligation or action required at the dealer's end, then the post sales discount given by the supplier would be related to the original supply of goods and it would not be included in the value of supply subject to the fulfilment of provisions of sub-section (3) of section 15 of the CGST Act. However, if the additional discount given by the supplier of goods to the dealer is the post-sale incentive requiring the dealer to do some act like undertaking special sales drive, advertisement campaign, exhibition etc., then such transaction would be a separate transaction and the additional discount would be the consideration for undertaking such activity and therefore would be in relation to supply of service by dealer to the supplier of goods. The dealer, being supplier of services, would be required to charge applicable GST on the value of such additional discount and the supplier of goods, being recipient of services, would be eligible to claim input tax credit of the GST so charged by the dealer.

16.2. He further stated that if the additional discount was given by the supplier to the dealer to offer a special reduced price by the dealer to the customer to augment the sales volume, then such additional discount would represent the consideration flowing from the supplier of goods to the dealer for the supply of goods made by dealer to the customer. This additional discount as consideration, payable by any person (supplier in this case) would be liable to be added to the consideration payable by the customer, for the purpose of arriving at value of supply, in the hands of the dealer, under section 15 of the CGST Act. The customer, if registered, would be eligible to claim ITC of the tax charged by the dealer only to the extent of the tax paid by him to the dealer in view of the second proviso to sub-section (2) to section 16 of the CGST Act.

16.3. He added that there might be cases where post-sales discount granted by the supplier are not permitted to be excluded from the value of supply by the supplier not being in accordance with the provisions contained in sub-section (3) of section 15 of CGST Act. It had

already been clarified vide Circular No. 92/11/2019-GST dated 7th March, 2019 that the supplier of goods could issue financial / commercial credit notes in such cases but he would not be eligible to reduce his original tax liability. Doubts had been raised as to whether the dealer will be eligible to take ITC of the original tax paid by the supplier or only to the extent of tax payable on value of supply net of amount for which such financial / commercial credit notes have been issued. In such cases, the dealer would not be required to reverse ITC attributable to the tax paid on such post-sale discount received by him through issuance of financial / commercial credit notes by the supplier of goods in terms of second proviso to sub-section (2) to section 16 as this proviso did not require payment of monetary value of supply. This proviso required the payment of the amount towards the value of supply along with tax. The amount liable to be paid towards the value of the supply would be the reduced amount, after adjusting the post-sale discount, plus original tax charged by the supplier. This view was also supported by the rationale contained in second proviso to sub-rule (1) of rule 37 of CGST Rules. Accordingly it was proposed to clarify that the dealer would not be required to reverse ITC attributable to the tax paid on such post-sale discount received by him through issuance of financial / commercial credit notes by the supplier of goods as long as the dealer paid the value of the supply as reduced after adjusting the amount of post-sale discount in terms of financial / commercial credit notes received by him from the supplier of goods plus the amount of original tax charged by the supplier. He stated that the Law Committee recommended issuance of circular clarifying the points raised above.

16.4. GIC approved the proposal and the draft Circular dealing with clarification on various doubts related to treatment of secondary or post-sales discounts under GST. It was decided that States were also required to issue similar Circulars. Accordingly, the implementing Circular No. 105/24/2019-GST dated 28th June 2019 was issued.

Agenda item 6: Refund of taxes paid on inward supply of indigenous goods by Duty Free Shop (DFS) and Duty Paid Shop (DPS) established at departure area of international airport beyond immigration counters making supply of such goods to outgoing international tourist against foreign exchange

17. Pr. Commissioner, GST Policy Wing, CBIC informed that the Law Committee examined the issue pertaining to supplies being made by Duty Free Shop (DFS) and by Duty Paid Shop (DPS) established at departure area of international airport beyond immigration counters making supply of tax paid goods to outgoing international tourists. He further stated that Section 15 of the IGST Act provided for refund to international tourists of the taxes paid by them on procurement of goods from the Indian market. Since this would require development of huge infrastructure at all international airports, for ensuring the viability and competitiveness of indigenous goods vis-a-vis the imported goods as well as for promoting "Ease of Doing Business" and for administrative convenience, it was proposed that the refund of the taxes paid on procurement of indigenous goods by DFS or DPS which are further supplied to the outgoing international tourist may be provided to DFS or DPS on behalf of exporter (the outgoing international tourist).

17.1. Accordingly, it was proposed that the DFS or DPS established at the departure area of the international airports beyond the immigration counters might be notified as a class of registered persons who could claim refund of tax paid by them on the procurement of indigenous goods under section 55 of the CGST Act, provided such goods were sold to the outgoing international tourist against foreign exchange. It was specified that DFS or DPS will not be eligible to claim refund of tax paid on any input services in relation to such goods for the reason

that the said refund was not refund of Input Tax Credit (ITC) but that of taxes paid at the time of procurement of such goods.

17.2. He further stated that it would be crucial to exempt the supply of indigenous goods by DFS or DPS, to outgoing international tourist under the IGST Act (as has been done in case of supplies by CSD Canteens). Further, since the facility of tax refund was envisaged only for the international tourists, it was proposed that the benefit of the refund facility being envisaged under Section 55 would only be available where the DFS or DPS established at departure area of international airport beyond immigration counters were supplying indigenous goods to the outgoing international tourist against foreign exchange.

17.3. He added that the Law Committee recommended the following:

i. Issuance of a circular for refund of taxes paid on inward supply of indigenous goods;
ii. Insertion of rule 95A in the CGST Rules, 2017, to carve out a procedure for refund of the tax paid by DFS or DPS on procurement of such goods; and
iii. Exempting the supply of goods by DFS or DPS established at departure area of the international airport beyond immigration counters to eligible passengers.

17.4. He added that a notification under section 55 of the CGST Act, would also be required to be issued specifying class of persons who should be granted refund of applicable taxes paid on inward supply of such goods. Accordingly, the proposal, draft circular and notification were placed before GIC for approval. He also mentioned that the said scheme may be brought into force w.e.f. 01.07.2019.

17.5. GIC approved the proposal and the draft Circular, Notification under section 55 as well as the exemption Notification. It was decided that States would also be required to issue similar Circular and Notifications and carry out *pari materia* changes in respective SGST Rules. Accordingly, the implementing notification No. 11 /2019 – Central Tax (Rate), notification No. 10 /2019-Integrated Tax (Rate), notification No. 11 /2019-Integrated Tax (Rate) and notification No. 01/2019 – Compensation Cess (Rate) all dated 29th June 2019 and Circular No. 106/25/2019-GST dated 29th June 2019 were issued.

Agenda item 7: Proposal for amendment in CGST Rules, 2017

18. The proposal before the GIC for approval was based on the recommendation of the Law Committee regarding various amendments to CGST Rules, 2017 as summarized below.

i. Insertion of rule 32A
ii. Amendment to rule 46 and rule 49
iii. Deletion of second proviso to sub-rule (2) and insertion of sub-rule (13) in rule 87
iv. Insertion of rule 92(4A)
v. Insertion of rule 95A
vi. Amendment to chapter XV regarding "Anti-Profiteering" of the CGST Rules including amendment to rule 128, 129, 132(1), 133 and insertion of sub-rule (2A) and sub-rule (5) in rule 133
vii. Amendment to FORM GSTR-4
viii. Amendment to FORM GST RFD-05
ix. Insertion of FORM GST PMT-09
x. Insertion of FORM GST RFD-10B

18.1. The GIC approved the proposal to amend the CGST Rules, 2017. It was also decided that *pari materia* changes would also be required to be carried out in the respective SGST Rules. Accordingly, the implementing notification No. 31/2019 – Central Tax dated 28th June 2019 was issued.

Agenda item 8: Amendment to notification No.50/2017-Customs dated 30.06.2017 with respect to requirement of 'end-use certificates' to be issued by and Bond to be submitted to GST Officers

19. Pr. Commissioner, GST Policy Wing, CBIC reintroduced this agenda which was deferred in the 28th GIC meeting as ACS, Haryana wanted wider consultation first. It was initially sent by the State of Karnataka which stated that a proposal for having uniform practise of monitoring of end use based notifications was required to be followed regarding the format and the manner of issuance of end use certificates and the monitoring thereof was discussed in the Law Committee. The Committee had recommended that the notification No. 50/2017-Customs might be amended and the duty of issuing end use certificate along with other related responsibilities might be entrusted to the Customs officers instead of GST officers because the imports were done at the customs station and it would ensure uniformity in practice while verifying the requirement laid in the said notification.

19.1. CST, West Bengal stated that since wider debate on this issue was required, it could be discussed in the Officers' meeting before the GST Council meeting. ACS, Haryana also supported the above suggestion of the CST, West Bengal.

19.2. The GIC decided that this issue may be discussed in Officer's meeting to be held before the Council's Meeting

30th GIC Meeting- 9th July 2019

20. The 30th Meeting of the GIC was held on 9th July 2019. The following agenda items were discussed and decided:

Agenda item 1: Amendment to FAQ on e-way bill available on website

21. Pr. Commissioner, GST Policy Wing, CBIC informed that the in case of sales returns/ reverse logistics/rejection of goods/ non-acceptance of goods by customers, where a new e-Way bill (EWB) was required to be generated to move the consignment back to the place of origin, the transporter should be eligible to transport back the returned goods by extending the validity of the original EWB for effecting returns. This would help in removing any dependency on the consignor/ consignee for data / generation of new EWB for the return transportation of the returned / rejected goods. It was proposed by the State of Maharashtra that a "RTO flag" should be placed on the EWB portal for quick selection by the transporter that will automatically make the original EWB applicable for the reverse mode with return route distance-based validity.

21.1. He stated that the Law Committee recommended that FAQs on e-Way bill available on CBIC's and NIC's website may be amended so as to resolve the issue. In view of the above recommendation of the Law Committee, the FAQs on e-way bill under GST was proposed to be amended accordingly. Therefore, Question no. XXVIII available on page number 11 of the said FAQs was proposed to be amended.

21.2. Dr. P.D. Vaghela, Chief Commissioner, State Tax (CCST), Gujarat stated that CGST Rules did not contain the words 'Return Invoice' which were proposed to be inserted. He suggested to use the expression 'Invoice for Return of Goods' or 'Invoice for Return Supply' as

an alternative. Ms. Smaraki Mahapatra, Commissioner, State Tax (CST), West Bengal stated that the relevant document was not a sales return since the final customer who rejects the goods does not issue a document for rejecting these goods and therefore it did not appear proper to use the term 'Sales Return' as the phrase might have some legal context. She proposed the expression 'Rejected Sale' or any other alternative. CCST, Gujarat said that there were 3 scenarios of return of goods: - a) Goods were rejected by customer on the grounds that he did not order them in the first place; b) The customer might return the goods since there might be some problem/issue with the goods without taking the delivery; c) The customer might take the delivery and return these at a later date for any reason whatsoever. He stated that it was not clear if the return invoice was generated in the third scenario. Sh. T. V. Somanathan, CST, Tamil Nadu concurred with the views of CCST, Gujarat. Sh. Sandeep M. Bhatnagar, Member (GST), CBIC stated that the issue could be broken into two parts :- a) Goods did not enter the premises and therefore no document was generated, b) The goods were rejected due to some problem/issue and delivery challan was generated. CST, Tamil Nadu stated that the State of Maharashtra's proposal of placing a 'RTO flag' on the EWB portal was more preferable. Pr. Commissioner, GST Policy Wing, CBIC stated that it was discussed by the Law Committee and the current proposal of 'Return Invoice' was finalized. Member (GST), CBIC stated that 'invoice' or 'delivery challan' could be generated depending on the case and suggested that this issue could be referred back to the Law Committee for further examination. CST, West Bengal added that in the attached FAQs, the question XX on e-Way Bill missed out mentioning that unregistered person need not generate e-Way Bill. Pr. Commissioner, GST Policy Wing, CBIC responded that this could also be discussed in the Law Committee.

21.3. The GIC agreed to refer the issue back to the Law Committee for further examination.

Agenda item 2: Issues pertaining to interpretation of Section 10 of the IGST Act, 2017

22. Pr. Commissioner, GST Policy Wing, CBIC informed that the Law Committee had recommended to issue a Circular clarifying the place of supply in a case where goods are purchased over the counter (on OTC basis) in one State and thereafter transported to another State by the recipient.

22.1. One view expressed was that the circular was only reiterating the existing provision of law. Another view was that it was a sensitive policy issue and should not be taken up by the GIC. ACS, Haryana stated that this issue was also connected to other issues like special laws in the National Capital Region (NCR) like not registering vehicles older than 10 years in NCR. As there was no consensus among the members on this agenda item, it was treated as withdrawn.

Agenda item 3: Corrigendum to Circular No. 45/19/2018-GST dated 30th May, 2018 issued vide F. No. CBEC/20/16/4/2018-GST

23. Pr. Commissioner, GST Policy Wing, CBIC informed that Para 4 of Circular No. 45/19/2018-GST dated 30th May, 2018 gave a clarification in relation to cases where taxpayers had inadvertently entered the details of export of services or zero-rated supplies to a Special Economic Zone Unit/Developer in table 3.1(a) instead of table 3.1(b) of **FORM GSTR-3B** of the relevant period and were unable to claim refund of the integrated tax paid on the same through **FORM GST RFD-01A**. This was because of a validation check placed on the common portal which prevented the value of refund of integrated tax/cess in **FORM GST RFD-01A** from being more than the amount of integrated tax/cess declared in table 3.1(b) of **FORM GSTR-3B**. The said Circular clarified that for the tax periods from 01.07.2017 to 31.03.2018, such registered persons shall be allowed to file the refund application in **FORM GST RFD-01A** on the common

portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in tables 3.1(a), 3.1(b) and 3.1(c) of **FORM GSTR-3B** filed for the corresponding tax period. Since the clarification issued vide the above Circular was valid only from 01.07.2017 to 31.03.2018, taxpayers who committed these errors in subsequent periods were not able to file the refund applications in **FORM GST RFD-01A**.

23.1. He further stated that the Law Committee recommended that the said facility may be extended in respect of periods till 30.06.2019. Accordingly, a draft corrigendum to Circular No. 45/19/2018-GST dated 30th May, 2018 was put up for the consideration and approval of the GIC.

23.2. CCST, Gujarat stated that this issue of extension of dates would keep recurring. He stated that there were 6000 odd applications still pending in his State without refunds and suggested that the issue should be examined by the Customs department as well. There had been representations from the trade that in case there were clerical mistakes by the accountants, general penalty under Section 125 of the CGST Act could be levied but refunds should be granted as otherwise it badly affected the working capital of the industry. CST, Tamil Nadu supported the concern of the State of Gujarat and pointed out that clerical mistakes happened with TRAN-1 as well which should also be examined. Dr. Rajeev Ranjan, Special Secretary, GST Council stated that ITGRC meeting would be held soon and TRAN-1 issues would be discussed in that meeting. Member (GST), CBIC agreed that taxpayer should not be affected on the Customs side where an issue had been addressed on the GST side and that Customs should carry out similar amendment.

23.3. GIC approved the corrigendum to Circular No. 45/19/2018-GST dated 30th May, 2018. It was further decided that the States are also required to issue similar corrigendum. Accordingly, implementing corrigendum to Circular No. 45/19/2018-GST dated 18th July 2019 was issued.

Agenda item 4: Clarification on doubts related to supply of Information Technology enabled Services (ITeS services)

24. Pr. Commissioner, GST Policy Wing, CBIC informed that various representations were received from trade and industry seeking clarification with respect to the supply of Information Technology enabled Services (ITeS services) such as call centre, BPO, etc. as intermediary and whether the supply of said services qualify as "export of services" or otherwise. The need for clarification also arose in view of the Advance Ruling by one State which had led to interpretation that supplier of IT enabled services will be treated as 'intermediary' under certain circumstances.

24.1. He further stated that GST laws did not define ITeS services which had led to interpretation by some in trade and industry, that a supplier of ITeS services falls within the ambit of intermediary, hence, it cannot avail benefits available in case of "export of services" provided under sub-section (6) of section 2 of IGST Act, 2017 in view of the fact that the place of supply, in such cases, would be the location of supplier of services, i.e. India, in terms of sub-section (8) of section 13 of the IGST Act. This was leading to anxiety and apprehensions in trade and industry that ITeS services supplied from India would become uncompetitive.

24.2. The issue was deliberated by the Law Committee in its meeting held on 27-28 June, 2019 and it was proposed to issue a circular clarifying that supplier of ITeS services does not fall under the ambit of intermediary if these services are provided by supplier of services on his own account and hence would be eligible to avail the benefits of export of services as long as he satisfies the criteria mentioned in sub-section (6) of section 2 of the IGST Act.

24.3. GIC approved the circular clarifying doubts on ITeS services. It was further decided that the States are also required to issue similar circular. Accordingly, the implementing Circular No. 107/26/2019-GST dated 18th July 2019 was issued.

Agenda item 5: Clarification in respect of goods sent abroad for exhibition or on consignment basis for export promotion

25. Pr. Commissioner, GST Policy Wing, CBIC informed that various representations were received from the trade and industry regarding procedure to be followed in respect of goods sent / taken abroad for exhibition or on consignment basis for export promotion. Such goods sent / taken abroad crystallise into exports, wholly or partly, only after a gap of certain period from the date they were physically sent / taken out of India. Therefore, in order to have uniform implementation of law across the field formations, it was proposed to clarify various issues regarding procedure to be followed in respect of goods sent / taken abroad for exhibition or on consignment basis for export promotion through issuance of a circular. Therefore, draft circular in this regard, was placed before the Law Committee in its meeting held on 27-28 June, 2019. The Law Committee has recommended issuing the said Circular.

25.1. GIC approved the circular clarifying issues regarding procedure to be followed in respect of goods sent / taken abroad for exhibition or on consignment basis for export promotion, It was also decided that the States are also required to issue similar circular. Accordingly, the implementing Circular No. 108/27/2019-GST dated 18th July 2019 was issued.

Agenda item 6: Proposal for amendment in CGST Rules, 2017

26. Pr. Commissioner, GST Policy Wing, CBIC informed that the proposal before the GIC for approval was based on the recommendation of the Law Committee regarding various amendments to CGST Rules, 2017 as summarized below:

i. Amendment to rule 12(1A)
ii. Insertion of rule 83B
iii. Amendment to rule 138E
iv. Insertion of FORM GST PCT-06 and FORM GST PCT-07
v. Amendment to Statement-5B in FORM GST RFD-01A and FORM GST RFD-01
vi. Insertion of FORM GST EWB-05 and FORM GST EWB-06

26.1. GIC approved the proposal and the draft notification dealing with detailed amendments in CGST Rules, 2017. It was decided that *pari materia* changes would also be required to be carried out in the respective SGST Rules by the States. It was also decided that the Rule relating to e-ticketing by multiplexes, as approved by the GST Council in its 35th meeting held on 21st June, 2019, will be operationalized with effect from 1st September 2019. Accordingly, the implementing notification No. 33/2019 – Central Tax dated 18th July 2019 was issued.

Agenda item 7: Extension of last date for furnishing FORM CMP-08

27. Pr. Commissioner, GST Policy Wing, CBIC referred to the email dated 08.07.2019 received from GSTN requesting that the due date of filing of **FORM GST CMP-08** for the first quarter may be extended to 31st July, 2019 as the application software for filing of **FORM GST CMP-08** was still under development and may take some time for testing and final deployment. A special procedure under section 148 of the CGST Act, for furnishing of return and payment of tax in respect of registered persons paying tax under the provisions of section 10 of the CGST Act or by availing the benefit of notification No. 02/2019–Central Tax (Rate) dated the 7th March,

2019 was made *vide* notification No. 21/2019–Central Tax dated 23.04.2019. In the said notification, it was specified that the above-mentioned registered persons shall furnish the details of payment of self-assessed tax in **FORM GST CMP-08** of the CGST Rules quarterly and the date for furnishing the same shall be the 18th day of the month succeeding such quarter.

27.1. Consequential to the issuance of the above-mentioned notification:

- the above-mentioned registered persons would be required to file **FORM GST CMP-08** for payment of tax on quarterly basis for the April-June 2019 quarter;
- the last date for filing of **FORM GST CMP-08** would be 18th July, 2019 for first quarter of the current financial year.

27.2. Further, it was submitted that the due date for taxpayers to avail the benefit of notification No. 02/2019–Central Tax (Rate) dated the 7th March, 2019 by filing **FORM GST CMP-02** had been extended up to 31st July, 2019. In light of the above, it was proposed that the due date for furnishing the details of payment of self-assessed tax in **FORM GST CMP-08** of the CGST Rules for the quarter April-June, 2019 may be extended up to 31st July, 2019 as proposed by GSTN. In order to implement the same, it was proposed to insert a proviso to para 2 of the notification No. 21/2019–Central Tax dated 23.04.2019 as below:

"*Provided that the due date for furnishing the details of payment of self-assessed tax in **FORM GST CMP-08**, for the quarter April, 2019 to June, 2019 shall be the 31st day of July, 2019.*"

27.3. The GIC approved the proposal to insert a proviso at paragraph 2 of notification No. 21/2019–Central Tax dated 23.04.2019 to extend the due date to 31st July, 2019 from 18th July, 2019. It was decided that similar notification was required to be issued by the States also. Accordingly, the implementing notification No. 34/2019 – Central Tax dated 18th July 2019 was issued.

Decisions by Circulation-10th July 2019

28. A proposal for approval of the GIC was received from Pr. Commissioner, GST Policy Wing, CBIC, relating to settlement of an additional amount of Rs. 15,000 crore on *ad hoc* basis.

28.1. It was stated that depending on the amount of IGST remaining unapportioned, provisional settlement is being done from time to time on an ad-hoc basis. Accordingly, Rs. 35,000 crore was apportioned in February, 2018, Rs. 50,000 crore was apportioned in June, 2018, Rs.12000 crore in August, 2018, Rs. 30,000 crore was apportioned in October,2018, Rs. 18,000 crore was apportioned in December,2018, Rs. 20,000 crore was apportioned in March, 2019 and Rs.12,000 crore was apportioned in April,2019. These amounts were settled in the ratio of 50:50 to Centre and States and the amount apportioned to States was divided in the ratio of subsumed/ protected revenue.

28.2. Further, based on the collection of IGST during the year (2019-20), net of refunds and the settlement of IGST during the period, both regular and provisional, it is proposed to do provisional settlement of another Rs. 15,000 crore, 50% to Centre and 50% to States. This will reduce the revenue gap of States and therefore, the compensation required.

28.3. The GIC approved the proposal to settle an additional IGST amount of Rs. 15,000 crore, 50% to the Centre and 50% to the States, on ad hoc basis. Accordingly, the implementing Order No. F.No. S – 34011/21/2018-ST-I DoR dated 18th July 2019 was issued.

29. A proposal for approval of the GIC was received from Tax Research Unit-II, CBIC regarding issuance of a circular clarifying various issues faced by Resident Welfare Associations (RWAs).

29.1. It was stated that a number of issues have been raised regarding the GST payable on the amount charged by a Resident Welfare Associations (RWA) for providing goods and services for the common use of its members in a housing society or a residential complex. This draft circular was approved by the Fitment Committee and was put before the GIC for approval.

29.2. The GIC approved the draft circular clarifying various issues faced by Resident Welfare Associations. The Circular is yet to be issued.

30. The decisions of the GIC are placed before the Council for information.

Agenda Item 4: Issues recommended by the Fitment Committee for the consideration of the GST Council

Agenda Item 4(i): Changes in GST rate on electric vehicles and related supplies

An agenda note was placed before the 35th GST Council relating to GST rates on the supply of electric vehicle. The detail of agenda note was as follows:

(I) GST rate reduction on electric vehicles and electric vehicle chargers:

a) Electric vehicles are environment friendly. Their extensive use would reduce dependence on fossil fuels. This would reduce import dependence. Domestic manufacturing and consumption of electric vehicles needs to be incentivised in larger public interest. On the recommendation of the Council, a concessional rate of 12% has been prescribed on the electric vehicle. Non-electric vehicles attract GST at the rate of 28%. In addition, non-electric cars also attract compensation cess ranging from 1% to 22%. Thus, it has been a conscious policy to encourage the usage of electric vehicles. Concessions, by way of reduced Basic Customs Duty, have been extended on imports of parts of electric vehicles, to encourage their domestic production. However, as electric vehicles production in India is at a nascent stage, their cost remains high. Production and consumption volume remain insignificant. Therefore, it is felt that to facilitate production and consumption of electric vehicles, further reduction of GST rate on such vehicles is merited.

b) Parts of motor vehicle attract duty at the rate of 18% or 28%. EV charger also attracts GST at the rate of 18%. Parts of charger are also at 18%. However, electric charger is an essential item for operation of electric vehicles. It would be necessary to incentivise the chargers of electric vehicles to encourage the usage of electric buses. Therefore, reduction of GST rate on EV charger is merited. The proposal that was placed before the Council was:

(1) to reduce GST rate on all electric vehicles from 12% to 5%.

(2) to reduce GST rate on EV charger from 18% to 12%

(II) Exemption from GST rate on hiring of electric buses by local authorities:

a) Services by way of giving on hire buses (of carrying capacity of more than 12 passengers), to State Transport Undertakings is exempt from GST. Services by way of transport of students, faculty and staff supplied to schools and pre-schools as well as giving on hire buses for transport of students, faculty and staff to a person providing transport services to a school or pre-school are also exempt. Therefore, hiring of all types of buses including electric buses in these segments is already exempt.

b) To incentivise use of electric buses, we may exempt services by way of giving on hire buses (of carrying capacity of more than 12 passengers) falling under heading 9966 or 9973 of scheme of classification of services to local authorities. [Heading 9966 covers "rental services of transport vehicles". Heading 9973 covers "leasing or rental services with or without operator".] The proposal was to exempt GST rate on hiring of electric buses by the local authorities.

2. In the said meeting, the GST Council directed the Fitment Committee to examine the issue. Accordingly, a Fitment Committee meeting was held on 20th July, 2019. All the Members of Fitment Committee attended the meeting through video conference.

3. The issue was deliberated at length in the meeting. The Fitment Committee in general was in agreement that electric vehicles merit incentivisation being environment friendly and also as their extensive usage would reduce dependence on the fossil fuels. Therefore, there was general agreement to the proposals. However, certain concerns were also raised mainly on account of revenue. While, it was discussed that present volumes of e-vehicles are miniscule and therefore at existing volumes the revenue implication may not be significant, however, in future, the volumes would grow due to the initiatives being taken for encouraging e-vehicles. Therefore, rate structure may require a review once the volumes of electric vehicle (and the revenue implication on account of concessional rate) reach a significant level. Concerns were also raised regarding deepening of inversion on account of reduction of GST rate on e-vehicles; lesser revenue collections from other kind of vehicles and fossil fuel once the e-vehicles replace the fossil fuel vehicles in significant quantity. CST Karnataka stated that while Karnataka has always been in favour of lower rates on electric vehicle, the present rate structure provides sufficient incentive; and the rate reduction on electric vehicles can be looked along with overall GST rate rationalisation. CST Telangana supported the view of Karnataka. CST Rajasthan, while being ambivalent to the proposal, raised the concern of revenue in future. Tamil Nadu representative observed that while the proposals are agreed to, the tax incentive by way of reduction of GST rate to 5% on electric vehicles may be given upto 31.3.2021 as revenue sacrifice in future might be too high. However, to this argument, an alternative view was that any such early review of rates may make the investment decision a non-starter. Generally, incentives are given for fairly long period so as to bring certainty for investor. In any case, Council could review the rates if need so arises. CST Haryana while agreeing to the proposal felt that luxury e-vehicles having value of more than Rs. 15 lakh may continue at the existing rates. However, the other members of the Fitment Committee felt that such differential rates may not be desirable.

4. Overall, there was in general an agreement to the proposals in the Fitment Committee. As regards revenue concerns in long run, it was felt that when the volumes of e-vehicles reach a significant level (and revenue implication becomes significant) the rate structure may be reviewed.

5. Accordingly, the Committee recommended the following changes in GST rates:

a) To reduce GST rate on all electric vehicles from 12% to 5%.
b) To reduce GST rate on EV charger from 18% to 12%
c) Exemption from GST on hiring of electric buses (of carrying capacity of more than 12 passengers) by local authorities