



# Agenda for 45<sup>th</sup> GST Council Meeting

17 September 2021

Volume – 2







**GST Council Secretariat  
New Delhi**

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

5 September 2021

**Notice for the 45<sup>th</sup> Meeting of the GST Council scheduled to convene on 17<sup>th</sup> September 2021**

The undersigned is directed to refer to the subject cited above and to convey that the 45<sup>th</sup> Meeting of the GST Council will be held on **17<sup>th</sup> September 2021** at Hotel Taj (Vivanta), Gomti Nagar in **Lucknow, Uttar Pradesh**. The schedule of the meeting is as follows:

- **Friday, 17<sup>th</sup> September 2021:** 11:00 hours onwards
2. In addition, an **Officers' Meeting** will be held on 16<sup>th</sup> September 2021 at the same venue as per following schedule:
- **Thursday, 16<sup>th</sup> September 2021:** 11:00 hours onwards
3. The agenda item and other details for the 45<sup>th</sup> Meeting of the GST Council will be communicated in due course of time.
4. Keeping in view the Covid-19 related protocols, it is requested that participation from each State may be limited to 2 officers in addition to the Hon'ble Member of GST Council.
5. Kindly convey the invitation to Hon'ble Member to attend the 45<sup>th</sup> Meeting of the GST Council.

(-Sd-)

(**Tarun Bajaj**)

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

**Tel: 011 23092653**

Copy to:

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



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# Discussion on Agenda Items

## **Agenda Item 9: Agenda Note on the basis of the Interim Report of the Group of Ministers (GoM) on capacity-based taxation and special composition scheme for certain sectors**

The GST Council, during its **42<sup>nd</sup> Meeting** held on 05<sup>th</sup> and 12<sup>th</sup> October 2020, decided that a Group of Ministers may be formed to discuss and analyse the issues pertaining to the Capacity based taxation on Pan Masala, Reverse Charge Mechanism in mentha oil, special composition scheme on brick kilns, stone crushers, etc.

1.2 Accordingly, a Group of Ministers (GoM) on Capacity-based Taxation and Special Composition Scheme in Certain Sectors in GST has been constituted on 24.05.2021, comprising of the following members:

S.No.	Name (Shri)	Designation and State
1.	Niranjan Pujari	Minister for Finance, Odisha (Convener)
2.	Manish Sisodia	Deputy Chief Minister, Delhi
3.	Dushyant Chautala	Deputy Chief Minister, Haryana
4.	K N Balagopal	Minister for Finance, Kerala
5.	Jagdish Devdea	Minister for Finance, Madhya Pradesh
6.	Suresh Kumar Khanna	Minister for Finance, Uttar Pradesh
7.	Subodh Uniyal	Minister for Agriculture, Uttarakhand

1.3 The Terms of Reference (ToR) provided to the GoM are as follows:

- i. To examine the possibility to levy of GST based on the capacity of manufacturing unit and special composition schemes in certain evasion prone sectors like pan masala and Gutkha, brick kilns, sand mining etc. with reference to the current legal provisions.
- ii. To examine whether any change is required in the legal provisions to allow such levy.
- iii. To examine the impact of such levy on the destination nature of the current GST design.
- iv. To examine any other administrative or systemic mechanism to plug leakages in these sectors.
- v. To examine the impact of levy of GST on reverse charge on Mentha oil and to examine if there could be other class of supplies that could be subjected to reverse charge to augment revenue.

## 2. **Meetings of the GoM:** -

2.1 In pursuance to the mandate provided to the GoM, the GoM has met twice till date through video conferencing mode. The first meeting of GoM was held on 06<sup>th</sup> July, 2021, which was followed by a meeting of Group of Officers deputed to assist the GoM on 17<sup>th</sup> August, 2021. Thereafter, the second meeting of the GoM was held on 31<sup>st</sup> August, 2021.

2.2 During these meetings, there was a lengthy deliberation and broad based consideration by the GoM, assisted by the Officers of DoR and the member states, on the proposals formulated on the basis of the Terms of Reference.

3. Based on the above, the GoM has submitted an Interim Report. The main proposals based on the Interim Report are as under:

**a Capacity Based levy on Pan Masala and Tobacco products:**

- The GoM has at length discussed the feasibility of Capacity based levy on pan masala and tobacco products.
- It was felt by the GoM that there exists a need for a deeper data analysis in this respect, through comparative state wise and product wise revenue figures in the pre and post GST regime in order to draw a clearer picture on revenue implications of such a move. In pursuance to this, such figures have been sought from all the states and UTs.
- Accordingly, considering the sensitivity of the matter and the quantum of revenue involved, the Group of Ministers has requested for an extension of three months for submitting its report on the issue of Capacity Based levy on Pan Masala and Tobacco products.

**b. Special Composition Scheme in the sector of Brick Kiln, Sand mining, etc.: -**

- The GoM, after long deliberation, and taking into account the various options including capacity based levy on production, decided that in order to augment the revenue realization from the sector, the most appropriate solution would be introduction of a special composition scheme in the brick kiln sector.
- Accordingly, the GoM has made the following recommendations in the brick kiln sector:
  - i. Special composition scheme may be instituted in the Brick Kiln sector prescribing a GST rate of 5%/6% (without ITC), along with a revised GST rate of 12% (with ITC);
  - ii. Threshold exemption limit in the sector may be reduced to Rs. 10 lakhs in order to increase the tax base, keeping in view the fact that majority of the firms in the sector are small and unorganized;
  - iii. This scheme may be instituted with effect from 01.04.2022;
- The feasibility of imposition of a similar special composition scheme in the sector of stone crushing/sand mining is still under examination by the GoM.

**c. Reverse Charge Mechanism in Mentha Oil: -**

- The proposal for implementation of Reverse Charge Mechanism (RCM) on Mentha oil to curb irregular refunds on exports was examined in a detailed manner by the GoM.
- Accordingly, the GoM has made the following recommendations:
  - i. Reverse Charge Mechanism on the first stage in the sector, as a measure to improve compliance;
  - ii. IGST refund route may be closed for mentha, and only refund by ITC route may be allowed with a predetermined ceiling on refund of ITC (in terms of per kg of Mentha exports, to be determined in an objective manner), as and when an amendment in the section 16 of the IGST Act comes into effect;
  - iii. The modalities for implementation of such changes may be worked out by the state of Uttar Pradesh.

**4. Accordingly, an Agenda is placed before the GST Council for approval to the following proposals:**

- i. Introduction of a Special Composition Scheme in the Brick Kiln sector with effect from 01.04.2022, prescribing a GST rate of 6%, without ITC, similar to the rate in the services sector. **The Council may deliberate on the GST rate;**
- ii. Increasing the GST rate on supply of bricks from 5% to 12% (with ITC), with effect from 01.04.2022;

- iii. Introducing the payment of GST liability under Reverse Charge Mechanism on the supply of Mentha, at the first stage of the supply;
- iv. Blocking of the IGST refund route on export of mentha, and allowing refund by ITC route only with a predetermined ceiling on refund of ITC (in terms of per kg of Mentha exports, to be determined in an objective manner), as and when amendment in the section 16 of the IGST Act comes into effect. In the interim, the exact modalities would be worked out by the state of Uttar Pradesh;
- v. Extension of the term of the GoM by **another 3 months** in order to further examine the remaining issues.

**Agenda Item 10: Transposition of GST rate notifications consequent to changes in tariff item codes in the First Schedule to the Customs Tariff Act, 1975**

The GST rates for different items are notified by specifying the HSN (Harmonised System Nomenclature) code, namely the Chapter, heading, sub-heading or tariff item level, read with the description of the goods. As per Explanation (iii) of the notification No. 1/2017-Central Tax (Rate) (which notified the CGST rates of goods), “tariff item”, “sub-heading” “heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (hereinafter also referred to as Customs Tariff). Similar provisions are contained in the counterpart IGST and UTGST rate notifications. Thus, the GST rate notifications utilize the HSN codes listed in the Customs Tariff.

2. The Customs Tariff codes are internationally aligned up to certain (6-digit) level and are periodically updated (every 5 years) in consultation with the World Customs Organization. These changes are effected through changes in the First Schedule to the Customs Tariff Act, 1975. The latest changes have been enacted through Section 104 (iii) of the Finance Act, 2021, which states that the First Schedule to the Customs Tariff Act, 1975 shall, with effect from 1<sup>st</sup> January, 2022, be amended in the manner specified in the Fourth Schedule (of the Finance Act, 2021). Thus, the proposed changes to Customs Tariff as part of the periodic update to the Harmonised System of Nomenclature (HSN) have been enacted and will take effect from 1<sup>st</sup> January, 2022.

3. For the reasons discussed above, some of the tariff codes listed in GST rate notifications may also accordingly need to be changed to align them with the changes in Customs Tariff. Few entries in GST rate notifications, largely from amongst those where HSN code is specified at 8-digit level, are likely to be affected.

4. As an illustration, the existing entry at serial number 258 of Schedule-I to the notification No. 01/2017-Central Tax (Rate) dated 28.06.2017 prescribes CGST rate of 5% for ‘Kerosene Pressure lantern’, as follows-

<b>S. No.</b>	<b>Chapter/ heading/ sub-heading/ tariff item</b>	<b>Description of goods</b>
258	9405 50 31	Kerosene Pressure lantern

With effect from 01.01.2022, tariff items 9405 50 10 to 9405 50 59 (including 9405 50 31) will be omitted in the Customs Tariff and replaced by other tariff item entries. As per these changes, the applicable tariff item for the above notification entry in new Customs Tariff will be 9405 50 00, which needs to be updated in the said CGST notification.

5. This is a technical exercise and for the present cycle of changes, needs to be completed before 1st January, 2022.

6. The GST Council may like to approve that the technical changes required in the Chapter, heading, sub-heading or tariff item codes listed in the GST rate notifications, consequent to the changes in the Customs Tariff may be carried out. The Agenda item is placed before the GST Council for approval.

**Agenda Item 11: GST rate on job works services in relation to manufacture of alcoholic liquor for human consumption**

Delhi High Court has passed an order in W.P. 5567/2021 filed by Confederation of Indian Alcoholic Beverage Companies that *since this matter involves revenue, we request the GST Council to take up the matter, at the earliest, and to reach a decision, one way or the other, qua the issue at hand. Counsel for the respondents will inform us as to the decision taken by the GST Council on the next date of hearing.* The matter came up again for hearing on 06.08.2021. Hon'ble Court has been informed that matter would be placed before the Council in its next meeting.

2. The issue involved in the writ petition is whether the job work services provided by contract manufacturers to the brand owners for manufacture of alcoholic liquor for human consumption are eligible for GST rate of 5%, prescribed for job work services in relation to food and food products or standard rate of 18%.

3. This issue was discussed in the 39th meeting of GST Council. The proposal placed before the Council was to insert an explanation in the entry related to 'job work services in relation to food and food products' clarifying food and food products exclude alcohol and alcoholic beverages for human consumption. (Agenda item 4(ii), Sl. 4, volume 3, page 15 refers)

3.1 Taking into account the contra views of Punjab, Tamil Nadu, Andhra Pradesh and Maharashtra to the proposal, the Council decided as follows:

*"let the law take its own course in the matter of applicable GST rate on the job work service in relation to manufacture of alcoholic liquor for human consumption".* (Para 12(vi) of minutes of 39th meeting of Council refers)

3.2 However, while discussing the draft minutes of the 39<sup>th</sup> GST Council meeting in the 40<sup>th</sup> meeting, the Hon'ble Chairperson, concurring with view of members from Odisha and Karnataka stated that as the matter is not *sub-judice*, GST Council may take an executive decision in the matter by taking it up as an agenda item in the next Council meeting. (Para 4.2 of minutes of the 40th meeting of Council refers)

4. Relevant facts pertaining to the issue are as follows:

4.1 Confederation of Indian Alcoholic Beverage Companies (CIABC) has stated in its representation to the department that definition of "Food" under section 3(j) of the Food Safety and Standards Act, 2006 covers alcoholic beverages.

5. However, Supreme Court has held in the case of *M/S. MSCO. Pvt. Ltd vs Union of India & Ors* on 31 October, 1984 that definition from unrelated statutes having different objects and purposes cannot be blindly adopted for the purpose of other statutes and that if a statute does not have definition of a 'word', then common parlance meaning of that word should be adopted.

6. In common parlance, food and food products do not include alcoholic liquor for human consumption.

7. According to Merriam-Webster, 'food' means material consisting essentially of protein, carbohydrate, and fat used in the body of an organism to sustain growth, repair, and vital processes and to furnish energy.

8. Leave alone alcoholic beverages, Supreme Court has not considered even non-alcoholic beverages such as Limca etc. as food. (Supreme Court judgement in the matter of Collector of Central Excise vs. Parle Exports (P) Ltd. refers)

9. Therefore, it is proposed that:

(i) An explanation may be inserted in the entry providing GST rate of 5% on food and food products as under:

*“for removal of doubts it is clarified that food and food products does not include alcoholic beverages for human consumption”*

(ii) Simultaneously, job work in relation to manufacture of alcoholic liquor for human consumption may also be excluded from the residual entry for job work service at 9988 (id) (12% rate of GST).

10. Therefore, to avoid dispute and litigation it is proposed that, -

(a) An explanation may be inserted at entry 9988 (i)(f) of the notification no 11/ 2017- CTR which prescribes GST rate of 5% for job work services in relation to food and food products to the effect that “for removal of doubts it is clarified that food and food products excludes alcoholic beverages for human consumption”.

(b) Services by way of job work in relation to manufacture of alcoholic liquor for human consumption may be excluded from the residual entry for job work service at 9988 (id) and taxed at 18%.

**Agenda Item 12: Agenda Note based on the order of the Hon’ble Kerala High Court in the W.P. (Civil) No. 12481 of 2021 for placing representation by Kerala Pradesh Gandhi Darshanavedhi, Thiruvananthapuram regarding inclusion of petrol and Diesel under GST**

Petrol and diesel are currently outside the purview of GST and attract Central excise duty by the Central Government and VAT by State Govts at varying rates.

2. A Writ Petition W.P.(Civil) No. 12481 of 2021 was filed by Kerala Pradesh Gandhi Darshanavedhi, Thiruvananthapuram, before the Hon’ble Kerala High Court, requesting the Hon’ble Court to issue a Writ of Mandamus directing the GST Council to include petrol and diesel under GST. The Hon’ble High Court passed an order on 21<sup>st</sup> June, 2021 (copy enclosed as **Annexure-I**), *“directing the GST Council represented by the Special Secretary, Office of the GST Council Secretariat, New Delhi to forward the representation of inclusion of petrol and diesel under the GST dated 07.06.2021 to the Union of India represented by the Finance Secretary, New Delhi to take an appropriate decision within a period of six weeks from the date of receipt of the copy of the representation.”*

3. The representation dated 07.06.2021 (copy enclosed as **Annexure-II**) has requested for inclusion of petrol and diesel in the GST regime on the following grounds:

- a. Low-income earners who depend on petrol and diesel prices are severely impacted by the day to day increase in the prices of petrol and diesel. In the domestic market, fuel price is partly shaped by actual supply and demand, and mostly by taxation and dealer commission. Though the oil prices are market based, the Government can reduce tax as a populist measure.
- b. The oil price rise results in a transfer of income from oil importing to oil exporting countries according to a shift in terms of trade.
- c. The rise in petrol price in turn has a rippling effect. As all the commodities are transported across India on vehicles that run on petrol or diesel, so increase in petrol and diesel price results in price rise of these commodities as well. Due to increase in the prices of petrol and diesel there has been increase in the prices of fares of vehicles causing lot of problems for the common man, who have to travel-long distances for work. In spite of the heavy price hike, the rich continue to live the life they are used to, while the burden is borne by the poor and the middle classes. This clearly violates the right to life on the citizen and brings in inequality.
- d. Admittedly, different rates are being charged for petrol and diesel in various states in India and the same is due to the different rate of tax levied by the State Governments under their fragmented taxing policies. This is an impediment in the way of achieving a harmonized national market as contemplated under Article 279A (6) of the Constitution of India.
- e. This is happening when India is trying to straighten up from the garb of the pandemic. India's oil demand has sharply fallen due to the Covid-19 pandemic, but higher fuel prices are worsening the situation. While the petroleum companies may have little choice but to hike rates in view of global market rates, higher taxes levied by the central and state governments completely changes the scheme. State and central taxes account for at least 60 per cent of petrol and diesel prices.

4. In view of the direction of the Hon’ble High Court in the aforesaid order, the representation of petitioner and the court order is placed before Hon’ble Council.

5.1 It is also to mention that a similar Writ Petition vide WP(C) No. 14471/2021 has been filed by C.V Sajeevan in the Hon’ble High Court of Kerala on the issue of inclusion of petrol and Diesel under

GST regime. The said writ petition has requested for inclusion of petrol and diesel in the GST regime in public interest, mainly on the ground that non-inclusion of petrol and diesel has led to price rise of these products causing petitioner's profession (auto-rickshaw driver) unviable. This petition is pending disposal.

6. In this regard, it is pertinent to mention that as per Article 279A(5) of the Constitution, the Goods and Service Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel (ATF). As per the section 9(2) of the CGST Act, inclusion of these products in GST will require recommendation of the GST Council.

7. Hon'ble GST Council may deliberate and make recommendations as it considers appropriate.



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 21<sup>ST</sup> DAY OF JUNE 2021 / 31ST JYAISHTA, 1943

WP(C) NO. 12481 OF 2021

PETITIONER/S:

KERALA PRADESH GANDHI DARSHANVEDHI  
(REG. NO.TVM/TC/487/2018), REPRESENTED BY ITS CHAIRMAN,  
DR.M.C.DILEEKUMAR, HAVING REGISTERED OFFICE AT  
SOWPARNIKA, TC 22/2609, KOCHAR ROAD, EASTHAMANGALAM,  
THIRUVANANTHAPURAM-695 010.

BY ADVS.  
ARUN.B.VARGHESE  
AISWARYA V.S.



RESPONDENT/S:

- 1 UNION OF INDIA  
REPRESENTED BY THE FINANCE SECRETARY, MINISTRY OF  
FINANCE, GOVERNMENT OF INDIA, NORTH BLOCK, NEW DELHI-  
110 001.
- 2 THE SECRETARY,  
MINISTRY OF PETROLEUM & NATURAL GAS, GOVERNMENT OF  
INDIA, SHASTRI BHAWAN, NEW DELHI-110 001.
- 3 THE GOODS AND SERVICES TAX COUNCIL,  
REPRESENTED BY ITS SPECIAL SECRETARY, OFFICE OF THE GST  
COUNCIL SECRETARIAT, 5TH FLOOR, TOWER II, JEEVAN BHARTI  
BUILDING, JANPATH ROAD, CONNAUGHT PLACE, NEW DELHI-110  
001.
- 4 STATE OF KERALA,  
REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT OF  
KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695  
001.
- 5 BHARAT PETROLUUM CORPORATION LIMITED,  
REPRESENTED BY ITS CHAIRMAN & MANAGING DIRECTOR, BHARAT  
BHAVAN, 4 AND 6 CURRIMBHOTY ROAD, BALLARD ESTATE,  
MUMBAI-400 001.

- 6 INDIAN OIL CORPORATION LIMITED (IOCL),  
REPRESENTED BY ITS CHAIRMAN, REFINERIES DIVISION,  
SCOPE COMPLEX, CORE 2, 7, INSTITUTIONAL AREA,  
LODHI ROAD, NEW DELHI-011.
- 7 HINDUSTAN PETROLEUM CORPORATION LIMITED,  
REPRESENTED BY ITS CHAIRMAN, PETROLEUM HOUSE, 17,  
JAMSHEDJI TATA ROAD, MUMBAI-400 020.
- BY ADV SHRI.P.R.SREEJITH, SC, GSTN

OTHER PRESENT:

SRI. P.VIJAYAKUMAR ASG FOR R1 AND R32, SRI.  
P.R.SREEJITH SC FOR R3, SRI C.E. UNNIKRISHNAN,  
SPL GP FOR R4, SRI. GOPIKRISHNAN NAMBIAR, FOR R5  
TO R7

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
21.06.2021, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**JUDGMENT**

Dated this the 21<sup>st</sup> day of June, 2021

**S.Manikumar, C.J.**

Kerala Pradesh Gandhi Darshanvedi has filed the instant Public Interest Litigation for the following reliefs:

- “1. To issue a writ of mandamus or any other writ or order directing the respondents 1 and 2 to include petrol and diesel under the GST regime.
2. To issue a writ of mandamus or any other writ or order directing the 3<sup>rd</sup> respondent to recommend the inclusion of petrol and diesel under the GST regime so as to achieve a harmonized national market as contemplated under Article 279 A (6) of the Constitution of India.
3. To declare that the non-inclusion of petrol and diesel under the GST regime are violative of Article 14 and 21 of the Constitution of India.
4. To issue a writ of mandamus or any other writ or order directing the 3<sup>rd</sup> respondent to consider and pass orders on Exhibit P2 representation.
5. To issue a writ of mandamus or any other writ or order directing the 4<sup>th</sup> respondent to consider and pass orders on Exhibit P3 representation.”

2. Material on record discloses that the petitioner has submitted Exhibit P2 representation to the Special Secretary, Office of the GST Council Secretariat, New Delhi (respondent No.3) to recommend inclusion of petrol and diesel under the GST regime.

3. Material on record further discloses that the petitioner has also submitted Exhibit P3 representation to the Chief Secretary, Government of Kerala, Thiruvananthapuram (respondent No.4) to request the GST Council to include the petrol and diesel in the GST regime and till a decision is taken by the GST Council, Government of Kerala may refrain from levying the state tax on petrol and diesel.

4. Mr.Arun B.Varghese, learned counsel for the writ petitioner submitted that appellant would be satisfied, if a direction is issued to respondent Nos.3 and 4 to dispose of the above said representations within a time frame.

5. Mr.C.E.Unnikrishnan, learned Senior Government Pleader appearing for the Chief Secretary, Government of Kerala, Thiruvananthapuram (respondent No.4) submitted that he has no objection for issuing a direction to consider the representations stated supra.

6. Mr.P.Vijayakumar, learned Assistant Solicitor General, who takes notice for the Union of India and the Secretary, Ministry of Petroleum and Natural Gas (respondent Nos.1 and 2 respectively), submitted that inclusion or deletion of GST is a policy decision.

7. Mr.P.R.Sreejith, learned standing counsel for the GST Council (respondent No.3) submitted that a Hon'ble Division Bench of this court in W.A.No.2061 of 2017 has held that no mandamus can be issued to the GST Council to take any decision. He further submitted that Union of India (respondent No.1) is the competent authority to take a decision on the abovesaid issue.

8. Placing on record the abovesaid submissions and taking note of the decision of the Hon'ble Division Bench of this court in W.A.No.2061 of 2017, we only direct the Goods and Services Tax Council represented by the Special Secretary, Office of the GST Council Secretariat, New Delhi (respondent No.3) to forward Exhibit P2 representation dated 7.6.2021 to the Union of India, represented by the Finance Secretary, New Delhi, to take an appropriate decision within a period of six weeks from the date of receipt of a copy of Exhibit P2 representation. Similarly, Chief Secretary, Government of Kerala, Thiruvananthapuram (respondent

W.P.(C)No.12481 of 2021

6

No.4), to dispose of Exhibit P3 representation.

Writ petition is disposed of accordingly.

Pending interlocutory applications, if any, shall stand closed.

Sd/-

**S.Manikumar  
Chief Justice**

Sd/-

**Shaji P.Chaly  
Judge**

vpv

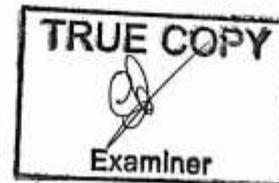
APPENDIX OF WP (C) 12481/2021

PETITIONER ANNEXURES

- Exhibit P1 TRUE COPY OF THE STUDY REPORT DATED  
04.03.2021 CONDUCTED BY THE RESEARCH TEAM  
OF THE STATE BANK OF INDIA, AVAILABLE IN  
THE URL [HTTPS://SBI.CO.IN./WEB/SBI-IN-THE-  
NEWS/RESEARCH-DESK](https://sbi.co.in/web/sbi-in-the-news/research-desk).
- Exhibit P2 TRUE COPY OF THE REPRESENTATION DATED  
07.06.2021 SUBMITTED BY THE WRIT PETITIONER  
BEFORE THE 3RD RESPONDENT.
- Exhibit P3 TRUE COPY OF THE REPRESENTATION DATED  
07.06.2021 SUBMITTED BY THE WRIT PETITIONER  
BEFORE THE 4TH RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE





## HIGH COURT OF KERALA AT ERNAKULAM

Year and Number  
of Suit or other  
Proceedings : WP(C) 12481 / 2021

Name of  
Applicant/Advocate : P.R. SREEJITH

Application  
Number : A 17625/2021

Application Date : 21-06-2021

Date of Calling for  
Stamp : 23-06-2021

Date of Production  
of Stamp : 23-06-2021

Date When copy  
was Ready : 23-06-2021

Date Notified for  
appearance to  
receive the copy : 30-06-2021

Date when copy  
was delivered : 23.6.2021

Examiner 

Exbt-P2

From  
Kerala Pradesh Gandhi Darshanvedhi  
(Reg. No. TVM/TC/487/2018)  
Represented by its Chairman, Dr. M C Dileepkumar  
Having registered office at 'Sowparnika', TC 22/609  
Kochar Road, Sasthamangalam,  
Thiruvananthapuram 695010

To,  
The Special Secretary  
Office of the GST Council Secretariat  
5th Floor, Tower II, Jeevan Bharti Building,  
Janpath Road, Connaught Place,  
New Delhi-110 001.

Sub: Inclusion of petrol and diesel under the GST regime - reg.

Sir,

I am the Chairman of Kerala Pradesh Gandhi Darshanvedhi, an Organisation operating primarily in the State of Kerala aiming towards the spread of the ideas that describes the inspiration, vision and life work of Gandhiji, the father of our nation. The organization is having the motto 'equity - social progress - sustainable development'. The organization also purposes the concept of a welfare state and works towards it by following Gandhian ideologies. The organization is headed by the former Vice Chancellor of the Sree Sankaracharya University of Sanskrit, Kerala. The organization consists of members from various walks of life including academicians, social workers, lawyers, doctors, I.T. professionals etc.

The prices of petrol and diesel are being sharply hiked on a day to day basis. Low income earners who depend on petrol and diesel prices are severely impacted. In the domestic market, fuel price is partly shaped by actual supply and demand, and mostly by taxation and dealer commission.

Though the oil prices are market based, the Government can reduce tax as a populist measure. The oil price rise results in a transfer of income from oil

importing to oil exporting countries according to a shift in terms of trade. The rise in petrol price in turn has a rippling effect. As all the commodities are transported across India on vehicles that run on petrol or diesel, so increase in petrol and diesel price results in price rise of these commodities as well. Due to increase in the prices of petrol and diesel there has been increase in the prices of fares of vehicles causing lot of problems for the common man who have to travel long distances for work. Fuel prices need to be rationalized. In spite of the heavy price hike, the rich continues to live the life they are used to, while the burden is borne by the poor and the middle classes. This clearly violates the right to life on the citizen and brings in inequality.

Admittedly, different rates are being charged for petrol and diesel in various states in India and the same is due to the different rate of tax levied by the State Governments under their fragmented taxing policies. This is an impediment in the way of achieving a harmonized national market as contemplated under Article 279A (6) of the Constitution of India.

This happens when India is trying to straighten up from the grab of the pandemic. India's oil demand has sharply fallen due to the Covid-19 pandemic, but higher fuel prices are worsening the situation. While the petroleum companies may have little choice but to hike rates in view of global market rates, higher taxes levied by the central and state governments completely changes the scheme. State and central taxes account for at least 60 per cent of petrol and diesel prices.

By virtue of Section 9(2), of the GST Act, the council has to recommend the inclusion of Petrol under the GST regime and the Government has to notify the same. By virtue of Art. 279 A (5) of the Constitution of India, the Council has to recommend the date on which GST has to be levied on petrol and diesel.

Therefore it is humbly requested that the petrol and diesel may be included in the GST regime in the interest of greater justice.

Ernakulam  
07.06.2021

  
Dr. M. C. Dileep Kumar

19

P2/3

Copy To:

1. The Secretary  
Ministry Of Petroleum & Natural Gas  
Government Of India  
Shastri Bhawan, New Delhi - 110001
2. The Finance Secretary  
Ministry of Finance, Government Of India  
North Block, New Delhi, 110001
3. The Chief Secretary  
Government of Kerala, Secretariat  
Thiruvananthapuram-695001

This is the true copy of the document marked as 'Exc.P' referred to in the above case.

Advocate

**Agenda Item 13: Concessions to specified drugs used in Covid-19 treatment till 31<sup>st</sup> December, 2021**

On the recommendations of the GOM on Covid relief, the GST Council in its 44<sup>th</sup> Meeting held on 12<sup>th</sup> June, 2021, recommended GST rate reduction, till 30<sup>th</sup> September, 2021, on certain items used in COVID treatment along with the following 4 medicines:

S.No.	Description	From	To
1.	Amphotericin B	5%	Nil
2.	Tocilizumab	5%	Nil
3.	Remdesivir	12%	5%
4.	anti-coagulants like Heparin	12%	5%

2. The Council had also recommended reduction of GST rate to 5% on any other covid relief drug recommended by the Ministry of Health and Family Welfare and the Department of Pharmaceuticals for the period upto 30.9.2021.

3. Accordingly, notification No. 05/2021-Central Tax (Rate) dated 14<sup>th</sup> June, 2021 was issued.

4. In the extensive consultations held in this regard with Department of Health and Family Welfare and the Department of Pharmaceuticals, the following recommendations have been made by these Departments:

- a. Extend the existing concessional rates on the 4 medicines namely, Amphotericin B, Tocilizumab, Remdesivir and anti-coagulants like Heparin, till 31<sup>st</sup> December, 2021, as detailed in para 1 above.
- b. Reduce the GST rates from 12% to 5%, till 31<sup>st</sup> December, 2021, on following drugs:
  - i. Itolizumab,
  - ii. Posaconazole,
  - iii. Infliximab,
  - iv. Bamlanivimab & Etesevimab,
  - v. Casirivimab & Imdevimab,
  - vi. 2-Deoxy-D-Glucose
  - vii. Favipiravir.

5. Accordingly, the following proposals are being placed before the GST Council for recommendations:

- a) the existing concessional rate structure on Amphotericin B, Tocilizumab, Remdesivir and anti-coagulants like Heparin, valid till 30<sup>th</sup> September, 2021, be extended till 31<sup>st</sup> December, 2021
- b) GST rate may be reduced from 12% to 5% to the seven new (as mentioned above) drugs till 31<sup>st</sup> December, 2021.

## **Agenda Item 14: Issues recommended by the Fitment Committee for the consideration of the GST Council**

This agenda note deals with changes in GST rate for supply of goods and services. The proposed changes in GST rates emanate from the recommendations made by the Fitment Committee as detailed below.

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

3. The Fitment Committee met on 24<sup>th</sup> June, 26<sup>th</sup> August, 2<sup>nd</sup> and 7<sup>th</sup> September, 2021 and had detailed discussions on recommendations received from various stakes holders seeking changes in GST/IGST rates or seeking clarification on supply of goods/services. After examination, the Fitment Committee has recommended changes in GST rates or issue of clarification, in relation to certain goods and services. Further, the Fitment Committee has recommended no change in respect of certain goods and services. On certain issues, Fitment Committee was of the view that further examination would be required before making any recommendation to the GST Council (points deferred).

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

a) Recommendations made by the Fitment Committee for making changes in GST rates or for issuance of clarification in relations to goods – **Annexure-I**

b) Issues where no change has been proposed by the Fitment Committee in relation to goods – **Annexure-II**

c) Issues deferred by the Fitment Committee for further examination in relation to goods – **Annexure-III**

d) Recommendations made by the Fitment Committee for making changes in GST rates or for issuance of clarification in relations to services – **Annexure-IV**

e) Issues where no change has been proposed by the Fitment Committee in relation to services – **Annexure-V**

f) Issues deferred by the Fitment Committee for further examination in relation to services – **Annexure-VI**

5. The proposals, as contained in para 4 above are placed before the GST Council for consideration.

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

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
1.	Zolgensma and Viltepso medicines for personal use	12%	Nil	<ol style="list-style-type: none"> <li>1. A number of ad hoc exemptions from IGST on import duty for personal use of medicine Zolgensma have been requested recently.</li> <li>2. It is most effective drug against Spinal Muscular Atrophy, a life-threatening disease affecting especially children. It has been recently developed. It costs approx. Rs. 16-18 crores per dose and is manufactured by Novartis Gene Therapies. The stated reason for its exorbitant cost is its miniscule market size in the drug manufacturing industry.</li> <li>3. BCD on medicines for personal use is Nil under conditions (requirement of certificate) vide S. No. 607 of Customs notification No. 50/2017-Cus. However, it attracts 12% IGST.</li> <li>4. At present, there is only one manufacturer globally. Due to exorbitant cost per dose and scarce affordability, general import is not anticipated and imports may happen for personal use only.</li> <li>5. Similarly, request has been received to waive IGST on import of Viltepso injection, a costly medicine used for treating Duchenne Muscular Dystrophy, another rare genetic disorder affecting children.</li> <li>6. In view of the above, the Fitment Committee recommends exemption from GST on medicine Zolgensma and Viltepso, when imported for personal use.</li> </ol>
2.	Henna Powder and Henna Leaf.	5%	Clarification	<ol style="list-style-type: none"> <li>1. As per the explanatory memorandum to HS 2017, [HS</li> </ol>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
	[Chapter 14]			<p>1404] is vegetable products not elsewhere specified or included.</p> <p>2. Further, as per the explanatory notes to the HSN, HS 1404 90 includes <i>Raw vegetable materials of a kind used for primarily in dyeing or tanning. Such products are used primarily in dyeing or tanning either directly or in preparation of dyeing or tanning extracts. The material may be untreated, cleaned, dried, ground or powdered (whether or not compressed).</i></p> <p>3. Based on the above, the classification of henna powder and henna leaves, is 1404 90 90.</p> <p>4. Accordingly, GST leviable is 5% as per entry 78 of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017.</p> <p>5. GST rate on mehndi paste on cones falling under 1404 and 3305 attract 5%.</p> <p>6. The Fitment Committee recommends that a clarification may be issued that henna powder and henna leaves would be classified under HS 1404 90 90 and shall attract GST rate of 5%.</p>
3.	<b>Copper Concentrate [2603 00 00] and other ores/ concentrates</b>	5%	18%	<p>1. India is a significant importer of Copper Concentrate.</p> <p>2. Copper Concentrate like all ores attract GST rate of 5%.</p> <p>3. These ores are used in the production of metals which attract GST rate of 18%. However while ore/concentrate attract GST at the rate of 5%, their input services like royalty attract GST at the rate of 18%. Thus ore/ concentrate suffers a significant inverted duty structure. Due to this the manufacture of copper concentrates are unable to utilize input tax credit incurred on account of input services. This</p>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>accumulated ITC is in turn transferred to the customers resulting in increase in prices of the metal.</p> <p>4. The Fitment Committee discussed that ores such as those of iron, copper, manganese, tungsten, nickel, cobalt etc. where metals attract 18% GST may be taxed at 18% so that there will be a smooth flow of ITC.</p> <p>5. Accordingly, Fitment Committee recommends increasing GST rate from 5% to 18% on goods falling under heading 26.01 to 26.10 (i.e., iron, manganese, copper, nickel, cobalt, aluminium, lead, zinc, tin, chromium – ores and concentrates)</p>
4.	Solar PV Module [8541] and other Renewable Energy equipment	5%	12%	<p>1. Solar Modules currently attract GST rate of 5%. While Solar EPC contracts attract effective GST rate of 8.9% (70:30 ratio for goods and services).</p> <p>2. The above rate ratio of 70:30 was prescribed on recommendation of the GST Council in the 31st GST council meeting and 37th GST council meeting.</p> <p>3. It has been represented that 12% rate may be prescribed on Solar Modules as well as EPC contracts.</p> <p>4. Fitment Committee upon detailed examination felt that 5% rate on renewable equipment under S. No. 234 of notification No 1/2017-CT (Rate) has created an inverted rate structure for these items as most of their inputs attract 18% rate. And there is need for correcting inversion in GST rate for these equipments. While a nil rate on solar energy causes an inversion for solar power as well, the Committee felt that correction of inversion of renewable equipment would at least help</p>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>domestic manufacturing of these items.</p> <p>5. SI No 234 of Notification No 1/2017-CT(Rate) includes the following renewable energy devices &amp; parts for their manufacture:</p> <p>(a) Bio-gas plant  (b) Solar power based devices  (c) Solar power generating system  (d) Wind mills, Wind Operated Electricity Generator (WOEG)  (e) Waste to energy plants / devices  (f) Solar lantern / solar lamp  (g) Ocean waves/tidal waves energy devices/plants  (h) Photo voltaic cells, whether or not assembled in modules or made up into panels</p> <p>6. At this stage, Fitment Committee recommends a 12% GST rate on renewable equipment as covered under entry No. 234 of notification 1/2017-CT (Rate)</p>
5.	Solar PV Power Project		Clarification on applicability of GST Rate on Solar PV Power Projects on or before 1st January 2019 – Notification No. 24/2018, dated 31st December 2018.	<p>1. A new GST rate scheme for Renewable energy project prescribing 70:30 ratio for goods and services was prescribed with effect from 1st January, 2019.</p> <p>2. The said method was prospective and is applicable with effect from 1st January, 2019.</p> <p>3. The issue prior to 1st January, 2019 shall be assessed based on the practice of the particular state.</p> <p>4. The Fitment Committee recommends to issue a clarification that a tax payer can pay in terms of 70:30 ratio as described in the Notification No. 24/2018 dated 31-Dec-2018 even for solar power projects completed before January 1, 2019. However, no refunds will be provided in case tax has been paid on the entire contract value at</p>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				18%.
6.	Fresh fruits and nuts / dried fruits and nuts [0801,0802]	Nil for fresh fruits and nuts, 5/12% for dried fruits and nuts	Clarification as to distinction between fresh and dried fruits and nuts	<ol style="list-style-type: none"> <li>1. The GST rates on fresh nuts such as almonds etc. falling under HS 0802 is nil whereas the GST rate on dried nuts is 12%.</li> <li>2. Fresh fruits and nuts refer to such products which are not frozen, dried or processed.</li> <li>3. Most dry fruits are dried and packed before they are sold and hence are liable to duty as applicable.</li> <li>4. The Fitment Committee recommends that a clarification may be issued in respect to the fresh and dried nuts.</li> </ol>
7.	Dried Coconut [0801] and Copra [1203]	Nil for Dried Coconut and 5% for Copra	Uniform rate of Nil/5% on both dried coconut and copra	<ol style="list-style-type: none"> <li>1. As per explanatory notes to HS (2017 edition) heading 1203 - Copra is the dried flesh of coconut used for the expression of coconut oil and unsuitable for human consumption. This dried flesh of Coconut, used for the extraction of coconut oil, is classified under HS 1203.</li> <li>2. As per explanatory memorandum to the HSN, heading 0801 excludes copra.</li> <li>3. The pre-GST tax incidence of Copra was more than 5%. In some states such as Gujarat 4% VAT rate was applicable along with other embedded taxes. Accordingly, 5% GST Rate on Copra has been recommended by the GST Council.</li> <li>4. The Committee recommends that a clarification may be issued regarding the definition of Copra.</li> </ol>
8.	Coconut Oil [151311/3305]	5% (edible) /18% (hair oil)	18%	<ol style="list-style-type: none"> <li>1. Coconut oil is used as an edible oil (Chapter 15), attracting 5% GST and Hair oil (Chapter 33) attracting 18% GST.</li> <li>2. When the Coconut oil is sold in small containers, following indications have been found on</li> </ol>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>containers or labels.</p> <p>a. 'hair oil'</p> <p>b. 'edible oil'</p> <p>c. 'pure coconut oil' or 'coconut oil'.</p> <p>3. Even major brands which advertise the oil as a hair oil, do not mention hair oil in their packs and label them as coconut oil and also print the FSSAI registration number and classify the goods under Chapter 15. This has led to loss of revenue.</p> <p>4. The Fitment Committee felt that this issue needs resolution and the most appropriate way would be to prescribe GST based on the quantity of container.</p> <p>5. Accordingly, the Fitment Committee recommends, keeping in mind the general consumer usage pattern of such products, that</p> <p>i. coconut oil, when packed and sold in a unit container of less than 1000 millilitre may be classified as Hair oil (under Chapter 33), attracting a GST rate of 18%, irrespective of its actual end-usage.</p> <p>ii. the edible coconut oil, when packed and sold in a unit container of 1000 millilitre or above be subject to GST at the rate of 5%</p>
9.	Goods supplied at India-Bangladesh Border haats [Any chapter]	Applicable rate	Exemption	<p>1. Border haat is a makeshift bazaar/ market at a certain point on zero line of the India-Bangladesh border allowing villagers of both the countries to market and shop each other's products once a week.</p> <p>2. These are remote inaccessible area. Border Haats cater to the</p>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>personal consumption in remote border areas of locally produced (specified) commodities. Number of vendors is limited to 50.</p> <p>3. Border haats do not have much revenue implication. These are mostly exempt items of daily consumption. Bangladesh also does not impose any duty on haat on their side. In any case collecting IGST is an impossibility. Central Government provides BCD exemption and earlier had provided additional duty exemption.</p> <p>4. The Fitment Committee recommends grant of exemption from IGST on the lines of BCD exemption to supplies made in Border haats.</p>
10.	Goods brought back to India from Antarctica [Any Chapter]	As applicable	Nil	<p>1. Notification No. 90/2009-Customs dated 07.09.2009 exempts all goods which have been used for or are related to the Indian Antarctic Expedition or the Indian Polar Science Programme, imported from Antarctica into India, from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duties leviable thereon under section 3 of the said Customs Tariff Act.</p> <p>2. At time of GST rollout, Customs notification No. 43/2017-Cus dated 30.06.2017, in a number of exemption notifications, for the words and figures “additional duty leviable thereon under section 3,” the words, brackets and figures, “integrated tax leviable thereon under sub-section (7) of section 3,” was substituted. However, the same was not done</p>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>under notification No. 90/2009-Customs.</p> <p>3. Similar change may be incorporated in notification No. 90/2009-Customs.</p> <p>4. The Fitment Committee recommends exemption from IGST on all goods which have been used for or are related to the Indian Antarctic Expedition or the Indian Polar Science Programme, imported from Antarctica into India, subject to same conditions as applicable for Customs duty exemption.</p>
11.	Raw Tamarind Seeds [1209]		Clarification with respect to classification	<p>1. As per general explanatory notes to HS 2017, heading 1209 covers tamarind seeds.</p> <p>2. As per Chapter note 3 to Chapter 12, for the purposes of heading 1209, beet seeds, grass and other herbage seeds, seeds of ornamental flowers, vegetable seeds, seeds of forest trees, seeds of fruit trees, seeds of vetches (other than those of the species <i>Vicia faba</i>) or of lupines are to be regarded as “seeds of a kind used for sowing”.</p> <p>3. Thus, tamarind seeds even if used for any purpose other than sowing shall be classified under heading 1209.</p> <p>4. The Fitment Committee recommends that a clarification may be issued that the tamarind seeds are to be classified under HS 1209 attracting nil rate of GST.</p> <p>5. Fitment committee also recommends that henceforth nil rate be prescribed only on sowing seeds and therefore exemption be rationalised accordingly to subject seeds meant for any other use than sowing to be taxed at 5% [ like oil seeds].</p>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
12.	Carbonated beverage with fruit juice and Carbonated Fruit Beverages of Fruit Drink [2202]	28% + 12% cess	To be classified under [2202 90 20] fruit juice and to be taxed at 12% GST accordingly	<ol style="list-style-type: none"> <li>1. Average pre-GST tax incidence on such goods was about 40%. This is keeping in view the pre-GST tax rates.</li> <li>2. Currently, there is wide variation in GST rates on beverages goods under this heading: <ol style="list-style-type: none"> <li>i. Aerated waters, Lemonade, and other waters including aerated waters containing artificial sweeteners or sugar, attract 28% GST and 12% compensation cess.</li> <li>ii. Fruit pulp or fruit juice-based drinks, classified under 2202 99 20 are paying 12% GST.</li> <li>iii. Non-alcoholic beer and other such beverages are paying 18% GST under 2202 9990.</li> </ol> </li> <li>3. There is a lack of clarity in GST rates on Carbonated beverage with fruit juice resulting in different classifications and disputes.</li> <li>4. Carbonated beverage with fruit juice and Carbonated Fruit Beverages of Fruit Drink fall under sub heading 2202 10 and accordingly attract GST rate of 28% and 12% compensation cess.</li> <li>5. The Fitment Committee examined the matter and recommends that (i) rate on carbonated drinks be clarified and (ii) a separate description may be incorporated in the notification to specifically provide a description as "Carbonated Fruit Beverages of Fruit Drink" and "Carbonated Beverages with Fruit Juice" prescribing a rate of GST rate of 28% plus a compensation cess of 12%.</li> </ol>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
13.	Brewers' spent grain (BSG), Dried distillers' grains with soluble [DDGS] and other such residues of starch manufacture and similar residues, beet-pulp, bagasse and other waste of sugar manufacture, brewing or distilling dregs and waste such as etc. [2303 30]	5%	Clarification on GST Rate	<ol style="list-style-type: none"> <li>1. As per the explanatory notes to the HSN[ sub-heading 2303 30], Brewing or distilling dregs and waste comprise of obtained in the manufacture of beer, distillation of spirits from grain, seeds, potatoes, etc, residues of starch manufacture and similar residues (from maize (corn), rice, potatoes, etc.) consist largely of fibrous and protein substances usually presented in the form of pellets or meal but occasionally as cake.</li> <li>2. Brewers' spent grain (BSG), Dried distillers' grains with soluble [DDGS] etc. are classified under Heading 2303.</li> <li>3. Entry at S.No. 102 of notification No. 2/2017-Central Tax (Rate) dated 28.6.2017, exempts aquatic, poultry, cattle feed etc. falling under HS codes 2301,2302, 2308 and 2309.</li> <li>4. Fitment Committee recommends that a clarification may be issued that Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues of starch manufacture and similar residues, beet-pulp, bagasse and other waste of sugar manufacture, brewing or distilling dregs and waste such as etc. fall under HS code 2303 and attract GST rate of 5%.</li> </ol>
14.	Unintended waste on production of Fish Meal except for Fish Oil [2301]	5%	Nil	<ol style="list-style-type: none"> <li>1. The manufacturing process of fishmeal produces stick water which is evaporated to produce fish soluble paste which is commercially sold.</li> <li>2. The GST Council in its 37th meeting granted exemption to supply of "Fish meal" for the period 1.7.2017 to 30.09.2019 and clarified that 5% GST to be imposed thereafter.</li> <li>3. As fish soluble paste, stick water</li> </ol>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>is a by-product of manufacture of Fishmeal, the same may be extended for exemption from GST till 30.09.2020 and may be taxed at 5% thereafter to maintain parity with Fishmeal.</p> <p>4. The Fitment Committee recommends that the unintended waste generated during the production of fish meal except for Fish Oil proposal may be exempted from GST for the period 1.7.2017 to 30.9.2019, on the same lines as fish meal, so as to have a simplified duty structure for such products and to avoid any possible litigation.</p>
15.	Fibre Drum [4819]	18%	<p>Clarify that, "Fibre drums being made up of corrugated paper and paperboard would be classified at Entry No. 122 of Schedule II under HSN 4819" and hence attract @12% GST.</p> <p>Or</p> <p>Prescribe a concessional rate of 12% GST on other packing material, including Fibre Drums of corrugated paper on retrospective basis since 01.07.2017.</p>	<p>1. Fibre Drums are used for various packaging applications in Food, Pharmaceutical and Chemical Industries that enhance the integrity of the products.</p> <p>2. As per the representations received, these Fibre Drums have a certain portion made from corrugated paper. However, certain field formations have considered these Fibre Drums to be made of non-corrugated papers.</p> <p>3. In this regard, as per entry 122 of Schedule II, 'cartons, boxes and cases of corrugated paper or paper board' under heading 4819 attract a concessional GST rate of 12%. On the other hand, as per entry of not153A of Schedule III, 'cartons, boxes and cases of corrugated paper or paper board' under sub-heading 4819 20 would attract 18% GST.</p> <p>4. The Fitment Committee recommends that a uniform rate of 18% GST may be prescribed on all goods falling under heading 4819. Further, for the past supplies, it may be clarified in</p>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				view of the ambiguity and keeping in view that a part of fibre drum is corrugated, the supplies made at 12% GST rate may be regularized.
16.	Bitumen supplied by Kerala Public Works Department [CTH 2714]	18%	Exemption under Sec 7(2) of CGST Act 2017 for the supply of Bitumen made by BPCL to Kerala PWD for 1-7-2017 to 31-03-2018 from levy of GST.	<ol style="list-style-type: none"> <li>1. For the period 2017-18, PWD offices of Kerala had not taken GST registration and therefore BPCL could not issue a B2B invoice for the supply of bitumen to PWD.</li> <li>2. Due to this and further mis-interpretation of the consequential supplies to contractors as supplies without consideration by the authorities, PWD could neither avail the ITC on this supply nor issue GST invoices for the said supplies.</li> <li>3. The Fitment Committee has taken a view that the issue pertains only to the past period for which a clarification will be provided to Kerala Public Works Department.</li> </ol>
17.	Scope of entry Serial Number 65 of Notification no. 1/2017 Integrated Tax (Rate), regarding pharmaceutical goods (3006)	12%	Clarification	<ol style="list-style-type: none"> <li>1. All items under heading 3006 attracted Central Excise duty at 6% (except contraceptives which were at Nil rate) and 5% VAT pre-GST. Accordingly, the GST rate was fixed at 12%.</li> <li>2. The rate was prescribed vide entry at S.No. 65 of Second schedule of notification 1/2017-Central Tax (Rate) dated 28.6.2017. The description of the entry was "<i>Pharmaceutical goods specified in Note 4 to this Chapter [i.e. Sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics; sterile surgical or dental adhesion barriers, whether</i></li> </ol>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p><i>or not absorbable; Waste pharmaceuticals] [other than contraceptives]</i></p> <p>3. However, Chapter note 4 to Chapter 30 of the First schedule to the Customs Tariff Act, 1975 contains large number of items, many of which have not been covered in the illustrative list of the entry.</p> <p>4. The Fitment Committee recommends that a clarification may be issued that all goods covered under Heading 3006 attract GST rate of 12% and the description should be read along with the whole note 4 to Chapter 30 of the First schedule of the Customs Tariff Act, 1975.</p>
18.	Laboratory Products [3822]		12% via clarification for the past periods	<p>1. Currently 12% GST rates are applicable to “<i>All diagnostic kits and reagents</i>” classified under 3822 vide S.No. 80 of Schedule II of notification No.1/2017-IGST dated 28.6.2017.</p> <p>2. The representation is that Customs formations are interpreting the said entry as applicable to ‘diagnostic’ reagents only, and are not allowing the benefit of concessional rate of 12% to laboratory agents, seeking to levy IGST @18% in the residual category. As noted above, the concessional rate is available to all diagnostic kits and reagents under CTH 3822.</p> <p>3. The Fitment committee recommends that clarification may be given in the matter clarifying that “<i>concessional GST rate of 12% is applicable on Diagnostic reagents and Laboratory reagents falling under HSN 3822.</i>”.</p>
19.	Retro Fitment Kit [9021]	5%/28%	Clarification	<p>1. The retrofit wheel attachments are specifically designed to be used</p>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>by persons with physical disability, by converting any two-wheeler scooter into a 4-wheeler.</p> <ol style="list-style-type: none"> <li>2. Evidently, there is no other use of such goods other than in modifying and converting a two-wheeler into a 4-wheeler capable of being used by persons with lower limb disability.</li> <li>3. Devices of such nature which are used to assist or rehabilitate the disabled persons fall under heading 9021 and attract 5% GST.</li> <li>4. Further, these retrofit wheel attachments fulfil all the criteria laid down in the Motor Vehicles Act (vide RT-11012/12/01-MVL dated 23.06.2008) and have been approved by the Ministry of Shipping, Road transport and Highways as worthy of modifying the specified two-wheeler to provide balancing and stability to the vehicle.</li> <li>5. The Fitment Committee recommends that such retrofit kits may be prescribed a concessional rate of 5% GST by including the same in the list of assistive devices, rehabilitation aids and other goods (List 3) of Schedule I.</li> </ol>
20.	Paper Sacks		Request to classify paper sacks under HS (481930/481940) and may be notified with CGST @ 6%.	<ol style="list-style-type: none"> <li>1. Paper sacks are specifically covered under HS code 4819 30/4819 40.</li> <li>2. Currently, there are two specific entries in GST Tariff for CTH 4819.</li> <li>3. Sr. No. 122 of Schedule - II of notification No. 1/2017-Central Tax (Rate) provides for 12% GST rate for CTH 4819. However, this entry is restricted to "Cartons, boxes and cases of corrugated paper or paper board".</li> <li>4. Sr. No. 153A of Schedule - III of notification No. 1/2017-Central Tax (Rate) provides for 18% GST</li> </ol>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>rate for HS Code 4819 20, which covers "Cartons, boxes and cases of non-corrugated paper or paper board".</p> <p>5. Hence, as paper sacks are not covered under any specific entry in GST Tariff, they are covered under residual entry i.e., Sr. No. 453 of Schedule - III of notification No. 1/2017-Central Tax (Rate) and accordingly attract 18% GST.</p> <p>6. The Fitment Committee recommends providing uniform rate of 18% GST on all goods under heading 4819 (refer Sl. No. 16 above) in order to resolve this issue.</p>
21.	Fortified Rice Kernel (Premix) [1904]	18%	Rate reduction	<p>1. Fortified rice kernel (premix) is produced at substantive value addition over normal rice. Fortified Rice Kernel (FRK) is a reconstituted rice grain made from rice flour, vitamins, and minerals using hot extrusion technology. Thus, FRK is a value-add product. So exempting it would not be appropriate.</p> <p>2. Fitment Committee is of the view that Fortified Rice Kernel when supplied for any scheme like ICDS, it may be given same treatment as given to ICDS supplies, i.e. 5% rate.</p> <p>3. The Fitment committee recommends the reduction in GST of Fortified Rice Kernel [1904] from 18% to 5% for ICDS or similar scheme subject to same conditions as apply to ICDS supply for ensuring end use.</p>
22.	Scented sweet supari [21069030]	18%	5%	<p>1. Pre-GST supari attracted Central Excise duty at the rate of 12.5%. The weighted average VAT rate was around 5%. Therefore, based on the pre-GST tax incidence the rate for supari was kept at 18%.</p>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<ol style="list-style-type: none"> <li>2. Reducing the GST rates on betel nuts (supari) would reduce protection to the domestic suppliers vis-à-vis the imports.</li> <li>3. The request to reduce GST on scented sweet supari has already been put before the GST Council (31st and 37th meeting) and has not been recommended.</li> <li>4. The Fitment Committee recommends that appropriate clarification may be issued that scented supari, etc would attract GST at the rate of 18%.</li> </ol>
23.	Oncology medicine [30]	12%	Nil	<ol style="list-style-type: none"> <li>1. As per serial number 180 of Schedule-I of notification No. 1/2017-Central Tax (Rate), certain drugs, including few used in cancer treatment, attract reduced GST rate of 5%.</li> <li>2. Most APIs for medicines under Chapter-29 attract GST at rate of 18% and blanket exemption to oncology medicines will further aggravate duty inversion.</li> <li>3. Request for one specific cancer medicine, Keytruda (Pembrolizumab) is separately under consideration for reducing GST rate to 5% and inputs from Health Ministry have also been received.</li> <li>4. Most drugs attract 12% GST, which is in line with pre-GST incidence.</li> <li>5. The request for reducing GST rate to Nil on oncology medicines is too generic. The issue of reducing GST rate on cancer drugs was earlier discussed in 14<sup>th</sup> GST Council meeting and was not approved.</li> <li>6. The Fitment Committee recommends that GST rate be reduced to 5% on Keytruda, as recommended by Health. Further, requests to reduce GST to 5% (and not Nil) for specific</li> </ol>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				medicines, if they are of comparable use/ nature to those already present in List 1, may be considered after obtaining the recommendations of the Ministry of Health and Family Welfare or Department of Pharmaceuticals.
24.	Waste, paring and scrap of polyurethanes [39159063]	5%	18%	<ol style="list-style-type: none"> <li>1. The issue of mis-classification of virgin/fresh goods as waste/scrap to avail lower GST rate is an enforcement issue.</li> <li>2. The matter was discussed and Fitment Committee is of the view that multiple rates for similar goods, leading to evasion by mis-classification may be discouraged as a policy measure.</li> <li>3. Fitment Committee recommends that GST rate on waste parings and scrap of polyurethane and other plastics may be increased to 18%.</li> <li>4. Further, the Fitment Committee was also of the view that other kinds of scrap which are at 5%/ lower rate, and are industrial inputs for goods attracting higher rates, may also be examined in due course.</li> </ol>
25.	<p>(a) Parts and components of writing instruments [9608 60 and 9608 91]</p> <p>(b) Fountain Pens, Stylograph Pens [9608]</p> <p>(c) Other Pens other than (b) above</p>	<p>18%</p> <p>18%</p> <p>12%</p>	18%	<ol style="list-style-type: none"> <li>1. References have been received requesting reduction in GST rate on 'Fountain Pens and Stylograph Pens' from 18% to 12%. Further references have been received requesting reduction in GST rate on and 'Parts and components of writing instruments' from 18% to 12% in order to avoid inversion.</li> <li>2. Fountain pens and stylograph pens attract GST @18 % based on pre-GST tax incidence [12.5% GST + 4%-5% VAT]. Whereas all other Pens falling under Heading 9608 are subject to a concessional GST @12%. Parts and components of writing instruments attract 18% GST.</li> </ol>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>3. The request on reducing GST rate on fountain pens &amp; stylograph pens had been considered in the 31<sup>st</sup> GST Council Meeting and had not been recommended.</p> <p>4. Instead of reducing GST rate on parts and components of writing instruments from 18% to 12%, GST rate on pens (other than Fountain Pens, Stylograph Pens) should be increased from 12% (HSN 9608) to 18% due to the following reasons:</p> <ol style="list-style-type: none"> <li>a. It will eliminate the issue of “Inverted Tax Structure”.</li> <li>b. It will make local manufacturing competitive vis-à-vis import.</li> <li>c. There will be uniform rate on all kinds of pen (including Fountain Pens, Stylograph Pens). This will reduce tax compliance issues.</li> </ol> <p>5. The Fitment Committee recommends to increase GST rate on pens (other than Fountain Pens, Stylograph Pens-which are already at 18%) from 12% (HSN 9608) to 18%, thereby levying 18% GST rate on all kinds of pens.</p>
26.	UPS Systems/ Inverter sold along with batteries as integral part [8507 or 8504]	28% or 18%	Clarification needed whether to classify the subject goods under 8507 or 8504	<p>1. References have been received seeking clarification about whether ‘UPS Systems sold along with batteries as integral part’ are classified under HSN 8507 (@ 28% GST) or HSN 8504 (@ 18% GST).</p> <p>2. The Fitment Committee examined the issue and is of the view that even if UPS and external battery are sold on the same invoice, their price are separately known and</p>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>they are two separately identified items. Hence in such supplies UPS would attract GST at the rate of 18% under HSN 8504 while battery would attract 28% under HSN 8507 (except Lithium Ion batteries).</p> <p>3. The Fitment Committee recommends issuance of a clarification on the above lines.</p>
27.	Diesel-Electric Locomotives [86021000]	12%	18%	<p>1. Diesel-Electric Locomotive falls under HSN 86021000 of GST Tariff and attracts GST rate of 12%. GST rate on raw material/ inputs/ services is mostly 18% or 28%.</p> <p>2. The above leads to situation of inverted duty structure and consequent unutilized GST credit. The refund of unutilized credit of GST in Locomotive sector has been strictly restricted vide Notification No. 5/2017- Central Tax (Rate) dated June 28, 2017.</p> <p>3. 37th GST Council Meeting had recommended increase in GST rate on railway parts, locomotive etc. from 5% to 12% in order to resolve the huge accumulation of ITC on account of duty inversion.</p> <p>4. However, accumulation of ITC on account of duty inversion still continues. Therefore, while raising the GST rate to 12% of Railway goods (chapter 86) helped, the issue of inverted rate structure has not been fully resolved. Further rate differential between Chapter 86 goods (items specific to Railways) and other items of use for railways like engine etc. is giving rise to litigations</p> <p>5. The Fitment Committee recommends to increase GST rates on all goods falling in Chapter 86 [railway parts,</p>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				locomotives etc] from 12% to 18%.
28.	Flavoured and coated Illaichi [2106 90 99]	18%	Clarification regarding classification of Flavoured and Coated Illaichi	<ol style="list-style-type: none"> <li>1. The flavoured and coated illaichi generally consists of Cardamom Seeds, Aromatic Spices, Silver Leaf, Saffron, Artificial Sweeteners. It is commonly sold as a breath freshening mint.</li> <li>2. The said product was commonly being classified under HS code 2106 during the Central excise regime, and there is neither any change in ingredients nor any change in manufacturing process.</li> <li>3. So, the end product made by adding illaichi and other materials, consists of commercially different ingredients that are used in preparation, and due to such mixing of several ingredients, the ingredients lose their individual distinct identity and character, and a new product separately known to the commercial world comes into existence.</li> <li>4. The Fitment Committee recommends that appropriate clarification may be issued that Flavoured and Coated Illaichi would fall under HS code 2106 and attract GST at the rate of 18%.</li> </ol>
29.	Biodiesel supplied to Oil Marketing Companies [OMCs] for blending with Diesel [3826]	12%	5%	<ol style="list-style-type: none"> <li>1. Currently supply of biodiesel attracts 12% GST.</li> <li>2. Further, by virtue of S. No. 6 of notification No. 11/2017-Central Excise dated 30<sup>th</sup> June, 2017, a blend consisting of 80% or more of high-speed diesel oil and biodiesel upto 20% by volume is exempted from Central Excise duty provided that the appropriate Central Excise duty is paid on Diesel and GST is paid on biodiesel.</li> <li>3. The same has been done as the</li> </ol>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>inputs are subjected to different types of taxes and cross credit of the same is not permissible, hence to avoid double taxation, the output has been exempted from tax.</p> <p>4. The average price of diesel is fixed state wise by the OMCs, the biodiesel which is cheaper than diesel gets priced higher. The entire tax burden of GST on biodiesel gets passed on to the customer.</p> <p>5. Therefore, reducing the GST rates on biodiesel would benefit blending of biodiesel with diesel and the benefit of reduced cost which would in turn be passed on to the consumer.</p> <p>6. Presently ethyl alcohol (ethanol) attracts GST at the rate of 18%. However, ethyl alcohol supplied to Oil Marketing Companies for blending with Motor Spirit (Petrol) attracts GST rate of 5%.</p> <p>7. The Fitment Committee recommends reduction in GST rates on Biodiesel, falling under HS Code 3826, supplied to Oil Marketing Companies [OMCs] for blending with Diesel, from 12% to 5%, on the same lines as is available to ethyl alcohol supplied to OMCs for blending.</p>
30.	Specified goods, imported for specified petroleum operations	5%	Clarification whether the original/ import Essentiality certificate can be used for inter-state stock transfers or a fresh Essentiality certificate would be required for each inter-state stock transfer	<p>1. The issue involved is whether certificate from Directorate General of Hydrocarbons (called "Essentiality certificate") is required for each inter-state transfer of goods within the same company.</p> <p>2. As per condition No. 1 (d) in notification No. 03/2017-Central Tax dated 28.06.2017, whenever goods so supplied are transferred to other licensee or sub-contractor a certificate from Directorate General of Hydrocarbons (DGH)</p>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>is to be produced that the goods may be transferred to the transferee and the same are required for petroleum operations.</p> <p>3. The issue is whether original/import Essentiality certificate can be used for inter-state stock transfers or a fresh Essentiality certificate would be required for each inter-state stock transfer.</p> <p>4. The Upstream Oil and Gas companies are facing difficulties when goods move on stock transfer from one state to other and have requested for clarification as to whether certificate from DGH is required for each such transfer.</p> <p>5. The Fitment Committee recommends issuing a clarification that the original/import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) would suffice and there is no need for taking a certificate every time on transfer (interstate movements) of goods within the same company so long the as goods are same as imported by the company at concessional rate on submission of certificate from Directorate General of Hydrocarbons (DGH)</p>
31.	Goods falling under chapter 49 [ as covered in S. No. 127, 128, 129, 130, 131, 132 of 12% rate schedule for goods]	12%	18%	<p>1. Fitment Committee took cognizance of GST on articles falling in the said S. No. while examining in details the GST rate on the services provided by way of publishing, printing of these goods. To resolve any dispute Fitment Committee has recommended prescribing uniform rate of 18% on all categories covering such printing of photographs. Simultaneously, the Fitment Committee also</p>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				reviewed the GST rate for Chapter 49 and felt that items falling under said S. Nos, such as plan and designs, cheque forms, certificates, printed cards, printed material, catalogue, printed photograph etc. should attract GST at rate of 18%.
32.	Spice Water [2202 10]	28%+12% Cess	12%	<ol style="list-style-type: none"> <li>1. At present Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured under [HS 2202 10] are at 28% GST + 12% Compensation Cess as per the recommendations of the GST Council.</li> <li>2. Very little details about the product composition have been provided.</li> <li>3. The fitment may take a view to reduce GST on spice water classified under HSN 2202 10 90.</li> <li>4. The Fitment Committee recommends that a view may be taken by the Council.</li> </ol>

## Issues where no change has been proposed by the Fitment Committee in relation to goods

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
1.	Fertilizer Manufacturing Plants being built by Hindustan Urvarak & Rasayan Limited (HURL)	18%	1. Exemption to supplies received during the construction phase. IGST exemption on import of goods to prevent further accumulation of input tax credit for HURL.	<ol style="list-style-type: none"> <li>In general, end use based exemption for goods are difficult to monitor and would create avenues for diversion. Therefore, providing such exemption for a particular plant may not be feasible.</li> <li>Further, as for refund for input tax credit in the phase, when output supplies are not being made, is again an innovation that should not be allowed for one particular entity.</li> <li>Fitment Committee does not recommend any change.</li> </ol>
2.	Scrap HSN 7204, 7404, 7503, 7802, 7902, 8548	18%	Reduce GST rate on Metal Scrap to 5%  Or  Include Metal Scrap in reverse charge basis  Or  Levy tax on supply of Metal Scrap partially under forward charge (which shall be negligible, say 0.1% of the applicable tax)	<ol style="list-style-type: none"> <li>This issue has pros and cons.</li> <li>Imports are by traders in large quantity.</li> <li>Reverse Charge Mechanism (RCM) on subsequent stages (after the first stage) is not advisable as it breaks the ITC chain.</li> <li>The Fitment Committee recommends to maintain status quo regarding this issue.</li> </ol>
3.	Active Pharmaceutical Ingredients [Chapter 29]	18%	12%	<ol style="list-style-type: none"> <li>APIs fall under Chapter-29 under Organic Chemicals and attract 18% GST. The finished goods, i.e., medicines attract GST of 12% or 5% for certain specified medicines. Input services also attract GST at 18%.</li> <li>Refund of unutilised input credit is available.</li> <li>The Fitment committee</li> </ol>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				recommends to maintain status quo since the refund of accumulated ITC is available.
4.	Glycoside Natural (Stevia) (29389090)	18%	5%	<ol style="list-style-type: none"> <li>1. Glycoside Natural (Stevia), a natural sweetener, is sourced from plant Stevia Rebaudiana, and is classified under heading 2938 90 90 having GST rate of 18%.</li> <li>2. Pre-GST tax incidence included 12.5% Central Excise and 6% VAT, which is close to current GST rate.</li> <li>3. Fitment Committee recommends to maintain status quo as it may not be advisable to promote one sweetener over others by way of GST reduction.</li> </ol>
5.	Jute/bamboo/other natural fibre and face mask/sanitizers and all Covid related test kits manufactured by small farmers/ women's co-operatives/ Indian scientists/ entrepreneurs – [ Any chapter]	As applicable	Nil	<ol style="list-style-type: none"> <li>1. Masks attract 5% GST. This rate helps in maintaining ITC chain and avoiding blockage of capital.</li> <li>2. In respect of sanitizers, clarification has been issued by the Government vide Press Note dated 15<sup>th</sup> July, 2020.</li> <li>3. The Fitment Committee recommends status quo as clarification has already been issued.</li> </ol>
6.	Proprietary/branded AYUSH products [Chapter 30]	12%	5%	<ol style="list-style-type: none"> <li>1. In its 22nd Meeting, the GST Council approved the reduced rate of 5% for 'Medicaments (including those used in Ayurvedic, Unani, Siddha, Homeopathic or Bio-chemic systems), manufactured exclusively in accordance with the formulae described in the authoritative books specified in the First Schedule to the Drugs and Cosmetics Act, 1940 (23 of 1940) or Homeopathic Pharmacopoeia of India or the United States of America or the United Kingdom or the German Homeopathic Pharmacopoeia, as the case may be, and sold under the name as specified in such books or pharmacopoeia.</li> </ol>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>2. The generic medicines as specified, have been deliberately kept at a lower rate for the benefit of common man. Other medicines which are non-generic are kept at a higher rate of 12%, which is the rate for a large number of allopathic medicines.</p> <p>3. The Fitment Committee recommends to maintain status quo on the particular matter.</p>
7.	Farm Inputs –such as botanical, biological, pheromone traps and lures, micronutrients, fertilizers, pesticides, tractors, drip/sprinkler irrigation systems and other agricultural equipment.	5%, 12%, 18%	Nil	<p>1. The issue of GST on various types of farm inputs such as fertilizers (5%), irrigation systems (12%- 25th Meeting), tractor parts (20th Meeting), etc. have been separately discussed in the past Council Meetings and GST rates have been set accordingly.</p> <p>2. However, a blanket exemption on all agriculture sector inputs will be difficult to implement and prone to evasion.</p> <p>3. Granting of such exemption to all types of farm inputs will lead to inverted duty structure and blockage of funds for the suppliers of these goods.</p> <p>4. The Fitment Committee recommends maintaining status quo on the particular matter to avoid inversion.</p>
8.	Rubber products (4004)	18%	5%	<p>1. GST on rubber scrap was kept at 18% as per pre-GST tax incidence.</p> <p>2. The GST rates on scraps of various articles were reviewed in 22nd GST Council meeting and a uniform rate of 5% was prescribed on scrap of Plastic, Paper, Rubber, Glass, Wood and Precious metals.</p> <p>3. Powders and granules obtained from waste, parings and scrap of rubber are produced from rubber scrap and attract standard rate of 18%.</p> <p>4. Small manufactures can avail threshold exemption and composition scheme.</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>5. Reduction on GST rate on such goods would lead to distortion in GST rate structure and may cause misdeclaration.</p> <p>6. The Fitment Committee recommends to maintain status quo on the particular matter to avoid inversion.</p>
9.	Subabul, Casuarina & Eucalyptus (Pulp wood) [4403]	18%	Nil	<p>1. Subabul, Casuarina &amp; Eucalyptus wood in rough falls under heading 4403 and attracts 18% GST, which is based on pre-GST tax incidence.</p> <p>2. The matter was examined in the 28th GST Council meeting and according a clarification was issued on applicable GST rate on such goods.</p> <p>3. Further, matter of appropriate classification and the applicable GST rate is also <i>sub-judice</i> under Allahabad High Court.</p> <p>4. Lowering of GST on goods falling under heading 4403 has significant revenue implications.</p> <p>5. The Fitment Committee recommends to maintain status quo on the particular matter to avoid inversion.</p>
10.	Cotton [5201]	5% [RCM]	Abolish Reverse Charge Mechanism (RCM) under the GST on cotton.	<p>1. The GST Council after detailed examination in its 23<sup>rd</sup> meeting held on 10th November, 2017 recommended inclusion of raw cotton in the specified category of goods the supply of which will be taxed based on reverse charge by way of notification under section 9(3) of the GST act to reduce the differential tax burden between composite units and standalone units.</p> <p>2. The Fitment Committee recommends maintaining status quo.</p>
11.	Recycled polyester staple fibre [5503 2000]	18%	5%	<p>1. The pre-GST tax incidence on polyester staple fibres was more than 18%. Accordingly, the GST Council recommended a GST rate of</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>18% on polyester staple fibres.</p> <p>2. Recycled PSF cannot be distinguished from the chemical origin PSF at the point of supply in GST and therefore, providing a lower rate of GST on recycled PSF may be prone to misuse by the suppliers.</p> <p>3. Central excise duty was paid at manufacturing stage and therefore, a lower duty rate on recycled PSF could be effectively monitored for misuse.</p> <p>4. Textile structure is being examined by Council for correction of inverted date structure.</p> <p>5. The Fitment Committee recommends status quo to prevent inversion as the matter of correcting inversion in textile value chain is already before the GST Council.</p>
12.	Engines meant for Gensets [8408]	12%/28%	18%	<p>1. The Fixed Speed Diesel engines with less than 15BHP power are largely used in agriculture and have been kept at concessional GST rate of 12%</p> <p>2. The review of goods at the highest GST slab of 28% was undertaken by 23rd GST Council meeting and only around 50 group of items were retained.</p> <p>3. May be considered along with overall review of 28% GST slab when the same is undertaken.</p> <p>4. The Fitment Committee recommends to maintain status quo on this issue.</p>
13.	Recycle Construction and demolition (C &D) waste [Any Chapter]	5%/18%	5%	<p>1. GST on building material is in line with pre-GST tax incidences.</p> <p>2. GST rates on building material such as natural sands and building bricks have been kept at 5%, marble, granite, ceramic have been kept at GST rate of</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>18%.</p> <p>3. Further, fly ash, fly ash bricks and fly ash blocks have been kept at lower rate of 5%.</p> <p>4. Reducing rate from 18% to 5% for such goods involves huge revenue implication and such reduction will lead to similar requests from other sector.</p> <p>5. The Fitment Committee recommends maintaining status quo on the particular matter to avoid inversion.</p>
14.	Air Cooler	18%	12%	<p>1. GST rate on all these items is fixed based on the Pre-GST rate on these items (12.5%+ 5-14%). Therefore, 18% is Revenue Neutral Rate.</p> <p>2. Increase in domestic prices of the products cannot be the basis of tax cuts as proposed in the request.</p> <p>3. The Fitment Committee recommends status quo on the particular matter to avoid inversion.</p>
	Ceiling Fan	18%	12%	
	Electric Iron	18%	12%	
	Household Filter (Water Purifier)	18%	12%	
	Pedestal Fan	18%	12%	
15.	Solar boats [ 8901]	5%	Nil	<p>1. While there is a distinction between the two kinds of boats, exemption from GST may lead to an inverted duty structure where solar boat manufacturers may be burdened with unutilized input tax credit.</p> <p>2. This would become a dead weight cost to them and lead to cascading of taxes.</p> <p>3. The Fitment Committee recommends to maintain status quo on the particular matter to avoid inversion.</p>
16.	Energy Storage Systems including Batteries, Pumped Hydro, Compressed Air, Molten Salt, Fly Wheels, Hydrogen set-up for integration with or balancing of Renewable Energy	As Applicable		<p>1. Renewable energy devices and parts for their manufacture attract concessional rate of 5%. In case of EPC contracts of such renewable energy systems, a ratio of 70:30 has been prescribed which gives the effective rate of 8.9% GST.</p> <p>2. This rate although provided to promote the RE sector, creates</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>an inverted duty structure (IDS). IDS is a distortion in the GST regime and needs to be corrected.</p> <p>3. The Fitment Committee recommends maintaining status quo on the particular matter.</p>
17.	Auto LPG conversion kits [87]	28%	5%	<p>1. As a measure to promote environment friendly cleaner fuels, kits required for conversion of petrol or diesel driven vehicles into Compressed Natural Gas (CNG) driven or Propane driven or Liquefied Petroleum Gas (LPG) driven vehicles can be imported at a concessional rate of 5% BCD, subject to the certification of end-user condition from Deputy Secretary in Ministry of Environment and Forests (S.No. 410 of notification No. 50/2017-Cus dated 30.06.2017)</p> <p>2. The parts of the above-mentioned Kits also attract concessional rate of 5% BCD.</p> <p>3. Such conversion kits are classified under heading 8409 and attract 28% GST with Nil compensation cess.</p> <p>4. Generally, auto-parts and components for use in the manufacture of automobiles also attract 28%/18% GST. The Auto LPG Conversion Kits are parts suitable for use solely or principally with the engines of heading 8407 or 8408 and also attract 28% GST.</p> <p>5. The issue of GST reduction on auto-parts has been deliberated during the 23rd GST Council dated 10.11.2017, and thereafter on many occasions. It has been decided that the rationalization of 28% GST rate slab will be taken up once the GST revenues stabilize, and there is no pressure from</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>the revenue front.</p> <p>6. Further, any reduction in the GST rates on the auto-parts and components will involve substantial revenue implications.</p> <p>7. The Fitment Committee recommends maintaining status quo on the particular matter.</p>
18.	NPCIL Projects	Applicable rate	Nil	<p>1. Exemption is sought for both the future as well as for the past GST paid also.</p> <p>2. End use-based exemption are generally given under GST as they break the credit chain credit chain.</p> <p>3. NPCIL projects have been granted exemption from BCD. Uranium Ore concentrate has been exempted from GST.</p> <p>4. As such the major input for generation of nuclear power has been exempted.</p> <p>5. The Fitment Committee recommends to maintain status quo on the particular matter.</p>
19.	Ropeway Projects [9801]	18%	5%	<p>1. Manufactured goods in general attract GST at the rate of 18%.</p> <p>2. Reduction of rate below 18% will cause inversion in rates as most input and input services attract GST at the rate of 18%.</p> <p>3. Therefore, while imports would gain from GST reduction, it would be detrimental to domestic capacity building.</p> <p>4. The Fitment Committee recommends status quo in this matter.</p>
20.	Seek exemption from payment of GST on transfer of dead stock items related to employees, from one Regional Office (RO) to another Regional Office (RO).	Applicable rate	Nil	<p>1. The Fitment Committee recommends to maintain status quo regarding this issue.</p>
21.	Skimmed milk powder (SMP),	5%	0%	<p>1. Skimmed milk is a value-added product and is sold at</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
	whole milk powder (WMP) (0402)			<p>much higher rates compared to normal milk. Skimmed milk is used in ice cream industry which is at 18% GST.</p> <p>2. Exempting such products breaks ITC chain and leads to inversion.</p> <p>3. The Fitment Committee recommends to maintain status quo.</p>
22.	Scientific research supplies to research institutions [Any Chapter]	5%	Correction of inversion	<p>1. The issue raised is blockage of input tax credit of trader-suppliers of such supplies, procured at higher GST rate - 12/18/28% and supplied to research institutions at 5%. These trader-suppliers are unable to get refund of accumulated credit as per para 3.2 of the Circular No 135/05/2020- GST dated 31st March, 2020.</p> <p>2. GST rate of 5% with end use condition is difficult to implement and on the other creates distortion by way of inverted duty structure. Compliance verification of such exemption is also difficult. Therefore, providing benefit by way of refund of GST in excess of 5% to end-user may be a way out.</p> <p>3. However, introducing this mechanism may invite objection from the research institutes as this will place compliance burden of obtaining refunds whereas till now, they are getting upfront concessional GST rate of 5% (like in case of BCD for imported goods.)</p> <p>4. The Fitment Committee recommends maintaining status quo in this matter.</p>
23.	Biodegradable garbage bags (3923 or 6305)	18%	Reduce GST Substantially	<p>1. Environment-friendly biodegradable plastic bags merit incentives. Reduction of GST rate on such goods is one way of promoting its use.</p> <p>2. On the other hand, it is</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>desirable that any possible duty rate inversion arising out of proposed reduction in GST rate may be avoided. Further, since non-biodegradable (normal) plastic bags will attract higher GST (18%), there is possibility of misuse of benefit.</p> <p>3. Further reducing GST rates will bring inversion as raw materials would be at 18%.</p> <p>4. The GST Council deliberately brought the GST rates on all bags to 18% so as to avoid disputes.</p> <p>5. The Fitment Committee recommends status quo to prevent inversion and distortion in rate. These bags may be encouraged through other ways than GST rate reduction</p>
24.	AC Sheet / Fibre Cement Sheet	18%	5%	<p>1. The construction material in general attracts 18% GST.</p> <p>2. The major inputs cement attracts 28% GST rate.</p> <p>3. Reduction in GST rates will lead to inverted duty structure and will lead to refunds</p> <p>4. The Fitment Committee recommends to maintain status quo to prevent inversion.</p>
25.	Rubberized Coir / Mattresses (9404)	12 & 18%	5%	<p>1. Coir Products are classified under various headings and attract different GST rate [5%/12%/18%].</p> <p>2. Coir mats, matting, floor covering etc. attract 5% GST whereas coir furniture and products falling under heading 9404 attract 12% GST. Coir Mattress attract 18% GST.</p> <p>3. Concessional GST rate of 5%/12% has been prescribed for the basic items which does not have substantial value addition. This was done to prevent the inverted duty structure.</p> <p>4. GST rate of 18% has been prescribed for Coir mattress as it is a manufactured item</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				having high value addition. Rate of 5% will create the inverted rate structure. 5. The Fitment Committee recommends to maintain status quo to prevent inversion.
26.	Fertilizers, chemicals and Nutrients for farmers [31, 38]	5%/18%	Nil	1. Blanket exemption from items such as fertilizers, chemicals and nutrients will cause duty inversion and blocking of capital/ duty inversion. 2. The Fitment Committee recommends maintaining status quo.
27.	Yarn Produced by National Textile Corporation Ltd (NTC) mills (Any Chapter)	12%/5%	Nil	1. The incidence of GST is not borne by the producers and is passed down the supply chain. It is not apparent how exemption from GST in the instant case will benefit NTC 2. Moreover, origin based differential taxation of same products (i.e., produced by established industry or village/cooperative) is difficult to implement and prone to evasion. 3. The Fitment Committee does not recommend any reduction in GST rates on yarn produced by NTC mills.
28.	PVC Tufted Coir Mats (5703)	12%	5%	1. PVC tufted coir mats are low pile coir brush mats which can be used in interiors and also out door. 2/3rd of the mats constitutes coir yarn and the rest chemicals. 2. These are classified under CTH 5703 90 20. As per notification No. 01/2017-Integrated Tax (Rate) dated 28th June, 2017 and notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017, GST rate of 12% is applicable for this CTH. 3. The major raw material used in its manufacture is Coir yarns which is a vegetable yarn classifiable under Heading 5305 which attract GST at the rate of 5%

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>4. Pre-GST incidence of tax on Vegetable Yarns was 6.50% and therefore GST Rate of 5% was levied on coir yarn.</p> <p>5. Coir yarns are the major raw materials used in manufacture of PVC Tufted Coir Mats along with utilization of services which are chargeable to 18% GST. On inputs side, Job work and road/rail transport services in general attract 5%. But other input services like manpower supply, security, financial services, insurances, maintenance and repair air transport service attract GST at the rate of 18%. As the manufacturing process is extensive, higher GST rate may enable utilization of inputs and input services.</p> <p>6. The Fitment Committee recommends status quo, with no change in GST rates.</p>
29.	<p>Micro irrigation system material and agriculture machinery &amp; equipment</p> <p>HSN 8201, 8424, 8432</p>	Nil/5%/18%	Exempt	<p>1. Exempting these goods would create hardship to manufacturers of these goods as ITC will be stuck.</p> <p>2. This would be to the disadvantage of domestic manufacturers vis-a-vis imports. Hence not desirable.</p> <p>3. The Fitment Committee recommends to maintain status quo regarding this matter.</p>
30.	Newsprint [4801]	5%	Nil	<p>1. Pre-GST incidence on newsprint was 7.63%. Currently, it attracts 5% GST.</p> <p>2. Also, with other type of papers attracting 12% GST. By reducing GST on Newsprint to Nil a rate gap of 12% will appear within the paper commodity.</p> <p>3. The Fitment Committee recommends status quo on the particular matter.</p>
31.	Tyres meant for the agriculture / rural sectors and used in: Power Tillers	28%	5%/12%/18%	<p>1. The Fitment Committee recommends to maintain status quo regarding this particular issue.</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
	Combine Harvesters Animal Driven Vehicles (ADVs) HSN 4011 2 and 3 wheeled tyre  3 Wheeled E- Rickshaw Tyres HSN 4011  3 Wheeled E- Rickshaw Tubes HSN 4013			
32.	Roller Safety Crash Barrier [7308]	18%	Nil	<ol style="list-style-type: none"> <li>1. It will lead to inverted duty structure as its input, for instance, iron rods, steel, attract 18% GST.</li> <li>2. The Fitment Committee recommends status quo to prevent inversion.</li> </ol>
33.	Board Files, Diaries, Envelopes, Account Books & registers made of paper [4820, 4817]	18%	12%	<ol style="list-style-type: none"> <li>1. GST rate on products of paper ranges from 12% to 18%.</li> <li>2. Even during pre-GST regime, tax incidence on the said products was 16% as per the representation.</li> <li>3. Exercise books &amp; note books are mostly used by students, while account books, diaries, envelopes are mostly used by industry.</li> <li>4. Therefore, the current GST rate on the said products may merit continuation.</li> <li>5. The Fitment Committee recommends status quo on the particular matter to avoid inversion.</li> </ol>
34.	Lock [8301]	18%	5%	<ol style="list-style-type: none"> <li>1. Even during pre-GST regime, excise tariff rate on locks was 12.5%.</li> <li>2. It will lead to inverted duty structure as its input, for instance, iron rods, steel, attract 18% GST.</li> <li>3. The Fitment Committee recommends to maintain status quo to prevent inversion.</li> </ol>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
35.	Sanitary Napkins, pads, tampons [ 9619 00 10 or 961900 20]	12%	Redressal of immense difficulty faced by Saurashtra Napkin Manufacturers Association after GST and hurdles in getting GST refund	<ol style="list-style-type: none"> <li>1. Sanitary Napkins are currently exempted from GST and hence no ITC is available to the manufacturers of the sanitary napkins.</li> <li>2. Prior to July, 2018, Sanitary Napkins were attracting concessional GST rate of 5% and ITC was available. However, in July, 2018, Sanitary Napkins were exempted from GST.</li> <li>3. Now, the issue of non-availability of the ITC was raised in the reference. However, at the time of exemption on the sanitary napkins it was made clear that the suppliers of sanitary napkins will not be eligible for ITC. Further, the said items were exempted after many deliberations.</li> <li>4. The Fitment Committee recommends to maintain status quo to avoid inversion.</li> </ol>
36.	SOFC based energy devices and its parts	5%	While there is a concessional rate of 5% provided for solar or wind based energy devices and no concession provided for supplies /on Import with respect to SOFC based energy devices and its parts. Lower GST rate of 5% for supplies and on imports with respect to SOFC based energy devices and its parts.	<ol style="list-style-type: none"> <li>1. Fuel Cell based system attract 18% GST rate.</li> <li>2. Fuel Cell based system is not eligible for concessional rate of 5% available on renewable energy-based power generation system.</li> <li>3. In another proposal, the Fitment Committee has recommended increasing GST rate on renewable equipment from 5% to correct inverted rate structure.</li> <li>4. The Fitment Committee recommends status quo on the particular matter.</li> </ol>
37.	Inputs for manufacture of HAL Do-228 Aircraft	Applicable rate	GST rate may be rationalised to remove Inverted Duty Structure	<ol style="list-style-type: none"> <li>1. Aircraft (other than those for personal use) falls under heading 8802 and attract 5% GST.</li> </ol>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<ol style="list-style-type: none"> <li>2. Parts of aircraft, falling under heading 8803 also attracts concessional GST rate of 5%.</li> <li>3. Other major parts of aircraft like aircraft engines and aircraft seats also attract concessional rate of 5%.</li> <li>4. Therefore, all parts which are primarily used for aircraft attract concessional rate of 5% which is equal to the GST rate on aircrafts.</li> <li>5. This was done to remove inverted duty structure.</li> <li>6. However, general use items which go into manufacturing of aircraft attract their respective rates.</li> <li>7. There is no provision of end use based exemption in GST and in case of rate reduction on general use items, tax evasion may happen.</li> <li>8. Further, supplier is eligible to claim refund of the accumulated ITC on account of refund.</li> <li>9. The Fitment Committee recommends status quo on the particular matter.</li> </ol>
38.	Raw Rubber		Request to consider the inclusion of the items raw rubber & its scrap, latex, Indian Standard Natural Rubber (ISNR) and residual products of raw rubber under the purview of RCM	<ol style="list-style-type: none"> <li>1. Natural rubber is covered under CTH 4001 and it attracts 5% GST under forward charge mechanism where supplier of natural rubber pays GST.</li> <li>2. According to the request made, GST cannot be charged at the time of purchase of the raw rubber from the agriculturists by the registered person in absence of RCM and hence substantial due amount of tax is deferred from payment of tax, especially for a state like Tripura which supplies natural rubber in large quantities.</li> <li>3. The Fitment Committee recommends to maintain status quo on the particular matter.</li> </ol>
39.	Umbrellas (6401)	12%	5%	<ol style="list-style-type: none"> <li>1. Currently, GST rate on umbrellas (CTH 6601) is 12%. During pre-GST regime,</li> </ol>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>central excise duty on umbrellas was 6%.</p> <p>2. In this context, 21st GST Council Meeting, dated 9thSeptember, 2017 reduced GST rates on plastic raincoats (CTH 3926) from 28% to 18%.</p> <p>3. Further, GST rate on raincoats (under Chapter 62) is 5% if sold below Rs.1000/piece or 12%, otherwise.</p> <p>4. The Fitment Committee recommends status quo on the particular matter.</p>
40.	Curd, Paneer and Ultra High Temperature (UHT) Milk		Provide 6-digit HSN Code for all these 3 items so that accurate GST Returns can be filled	<p>1. The notification No. 1/2017-Central Tax (Rate) dated 28.06.17 and 2/2017-Central Tax (Rate) dated 28.06.17 issued under section 11 of CGST Act 2017 specifies rate on /exempts intra-State supplies of goods, specified in column 3 of the schedule and falling under the tariff item, subheading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedule.</p> <p>2. Further, as per explanation (iii) and (iv) to the said notifications, "Tariff item", "sub-heading" "heading" and "Chapter" means a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).</p> <p>3. Further, India is a contracting party to the HS Convention and under the Article III of the HS Convention (Obligations of Contracting Parties) it has to apply the General Rules for the interpretation of the Harmonized System and all the Section, Chapter and Subheading Notes and not modify the scope of the Sections, Chapters, headings or subheadings of the Harmonized System.</p> <p>4. Thus, the current Customs</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>Tariff Act, 1975 (51 of 1975) at six-digit level is in sync with the International Classification as published by World Customs Organization.</p> <p>5. As in the current WTO tariff structure 2017, there is no specific entry at six digits for Curd, Paneer and UHT Milk. Hence, the same cannot be created as a six-digit entry.</p> <p>6. The Fitment Committee recommends to maintain status quo in this particular matter.</p>
41.	Oil used for lighting divine lamps generally called as Deepam Oil [1515/3307]		5%	<p>1. Normally, lamp (Pooja) oil is classified under HS 15180040 and accordingly attracts 12% GST.</p> <p>2. In case of edible oils, 5% GST is leviable on those vegetable oils which are not chemically modified attract 5% GST.</p> <p>3. Therefore, this issue requires more information regarding deepam oil that is said to be classified under heading 3307 and attract higher GST rate.</p> <p>4. The Fitment Committee does not recommend the change in GST rate.</p>
42.	Baker's Yeast [21021020]	12%	5%	<p>1. Baker's yeast is a commercial preparation consisting of dried cells of one or more strains of the fungus <i>Saccharomyces cerevisiae</i>, used as a leavening in baking. It is produced on industrial scale. It is already at concessional GST rate of 12%.</p> <p>2. The GST rate has been fixed on the pre-GST tax incidence on these goods.</p> <p>3. Further, all goods in [HS 2102] attract 12% GST.</p> <p>4. The request to reduce GST on baker's yeast has already been put before the GST Council (28<sup>th</sup>, 31<sup>st</sup> and 37<sup>th</sup> meeting) and has not been recommended.</p> <p>5. The Fitment Committee does not recommend the reduction in GST rate.</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
43.	Smokeless tobacco products [240399]	28% + compensation cess at varying rates	Requested to study the impact of GST rates which leads to evasion of tax on tobacco products	<ol style="list-style-type: none"> <li>1. The GST Compensation cess rates on smokeless tobacco products were fixed based on the pre-GST tax incidence of tobacco products as recommended by the GST Council.</li> <li>2. The request was to conduct a study of the impact of GST rates on the extent of evasion of GST.</li> <li>3. The Fitment Committee recommends that since matter has been referred to GoM on Capacity based Levy and Special Composition Scheme; the same may not be taken up by Fitment.</li> </ol>
44.	Polished Napa Stone[25152090]	18%	5%	<ol style="list-style-type: none"> <li>1. Napa stone is a variety of dimensional limestone.</li> <li>2. At the time of initiation of GST, polished Napa stone tiles attracted 28% GST based on pre-GST tax incidence. Subsequently during the 22nd GST Council meeting held on 6th October, 2017, the GST Council recommended reduction in GST rates on polished Napa stone from 28% to 18%. Subsequently the issue was discussed in the 25th GST Council meeting held on 18th January, 2018, wherein the Council did not agree to the request on the grounds that 18% GST is applicable on types of flooring materials and an ad valorem rate will ensure lower tax in absolute terms on low priced items.</li> <li>3. In the 28th GST Council meeting held on 21st July, 2018 it was decided to reduce GST rates on Kota stone and similar stones (except marble and granite) other than ready to use mirror polished stones. The entry in the notification was drafted in consultation with the State of Rajasthan and Andhra Pradesh.</li> <li>4. Currently all polished stone</li> </ol>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>tiles; including other similarly place stones like Kota stone as well as ceramic tiles attract 18% GST rates.</p> <p>5. Fitment Committee in its meeting dated 20<sup>th</sup> May, 2021, desired that GST Council has taken a conscious view and this issue has been deliberated at length. It desired that additional information may be collected from states about production volumes, revenue implication, other stones similarly placed etc.</p> <p>6. The Fitment Committee does not recommend any reduction in GST rates, since Napa stone is similar to other polished stone tiles, which are also at 18%, and exemption to polished tiles made from one particular type of stone should not be considered.</p>
45.	Agricultural machinery / implements [8432 / 8433 / 8436]	12%	5%	<p>1. Raw materials for these machineries such as iron steel, plastic, and other metals, in general, attract 18% GST. Reduction in GST from existing 12% to 5% will deepen the duty inversion.</p> <p>2. Lowering rate from GST rate will lead to cascading of input taxes and lower GST rate will result in refund of accumulated ITC with associated carrying cost.</p> <p>3. Lowering rate from GST on manufactured goods will result in negative protection to domestic manufacturers vis-a-vis imports.</p> <p>4. Therefore, tax policy in general and indirect tax concessions in particular, does not appear to be the right instrument to provide relief in the instant case.</p> <p>5. Instead of tax policy, support through public expenditure, especially in the form of direct subsidy to the beneficiaries could be the most effective</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>policy option to provide assistance and relief in the instant case.</p> <p>6. The request had been considered in the 37<sup>th</sup> GST Council Meeting and had not been recommended.</p> <p>7. The Fitment Committee does not recommend any reduction in present GST rate.</p>
46.	Lithium ion batteries used in electric vehicles and on battery charging service	18%	Reduce	<p>1. 28<sup>th</sup> GST Council Meeting had recommended reduction of GST rate on lithium-ion batteries from 28% to 18%.</p> <p>2. Other batteries still attract GST at the rate of 28%.</p> <p>3. Lithium-ion batteries for EV are an input and the manufacturer of the EV is eligible for complete ITC and refund of accumulated credit.</p> <p>4. Further, schemes are being designed in order to promote the domestic manufacturing of Lithium-ion batteries in India and reducing rate to 5% will act against the concept of localisation as lower GST will incentivise the imports.</p> <p>5. The Fitment Committee does not recommend any reduction in currently applicable GST rates.</p>
47.	Linz Dinowitz (LD) Slag [2618]	18%	5%	<p>1. Linz Dinowitz slag is a well-mixed aggregate of FeO, lime, silica and MgO generated at the Linz Dinowitz converter. Linz Dinowitz slag is used for cement clinker production, in Sintering as a substitute to lime stone/dolomite rail track ballast.</p> <p>2. In the pre-GST regime, there was Excise Duty of 12.36% + 5% VAT on Slag so overall tax was approx. 18% in pre-GST regime. Accordingly, the present GST rate of 18% is in line with the pre-GST tax incidence.</p> <p>3. The Fitment committee recommends maintaining</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				status quo.
48.	Medicines & Pharmaceutical Preparations [29/30]	12%	5%	<ol style="list-style-type: none"> <li>1. As per serial number 180 of Schedule –I of notification No. 1/2017-Central Tax (Rate), certain specified drugs attract reduced GST rate of 5%.</li> <li>2. Most drugs attract 12% GST, which is in line with pre-GST incidence.</li> <li>3. The request for reducing GST rate to 5% on Medicines &amp; Pharmaceutical Preparations is too generic.</li> <li>4. The Fitment Committee recommends that requests to reduce GST to 5% (and not Nil) for specific medicines, if they are of comparable use/nature to those already present in List 1, may be considered after obtaining the recommendations of the Ministry of Health and Family Welfare or Department of Pharmaceuticals.</li> </ol>
49.	Bunker Fuel [2710]	5%	Nil/1%	<ol style="list-style-type: none"> <li>1. Pre-GST, the product had general Central Excise duty rate of 14%. However, conditional exemption from Central Excise duty was given to the product when supplied to Indian flagged. The product attracted VAT at the weighted average rate of about 5%.</li> <li>2. The supply of Bunker Fuel to foreign vessels initially attracted GST rate of 18% from 01.07.2017 to 12.10.2017.</li> <li>3. The GST rate was reduced to 5% w.e.f. 13.10.2017 on the recommendation of GST Council during its 22<sup>nd</sup> GST Council meeting held on 6<sup>th</sup> October 2017, as it was felt that the high rate of GST was making India less competitive vis-a-vis neighboring countries like Sri Lanka.</li> <li>4. The request to further reduce the rate to ‘nil’ was examined in the 31<sup>st</sup> GST Council, held</li> </ol>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>on 22<sup>nd</sup> December, 2018. As the commodity already attracts a low rate of 5%, no further reduction was recommended by the Council.</p> <p>5. The Fitment Committee recommends maintaining status quo regarding this matter as goods already attract concessional GST rate of 5%.</p>

**Annexure-III**

**Issues deferred by the Fitment Committee for further examination in relation to goods**

<b>S. No</b>	<b>Description/HSN</b>	<b>Present GST rate</b>	<b>Requested GST rate</b>	<b>Comments</b>
1.	Items which originally attracted 28% GST	Varied	Compensation cess on the differential rate from 28% so that the rate of 28% is applied.	<ol style="list-style-type: none"> <li>1. The GST rates on many items were reduced from 28% to 18%/12%/5% by the GST Council so as to increase compliance and give a boost to the sector.</li> <li>2. The Fitment Committee recommends that the proposal may be reviewed at a later stage, preferably at the meeting for the general review of rates.</li> </ol>
2.	Raw Tobacco Leaves [2401]		Clarification is needed on the tax rate on the sale of "Raw Tobacco Leaves"	<ol style="list-style-type: none"> <li>1. The issue requires further elaboration as to what is the exact issue for clarification.</li> <li>2. The Fitment Committee discussed that the earlier clarification issued in 2017 has led to resolution of the issue in some states. However, as the issue still remains in a few states, Fitment Committee recommends that a fresh clarification may be drafted by states so that Fitment Committee could examine the issue in detail.</li> </ol>
3.	Compensation cess on Coal [2701] and [2702]	Rs. 400/MT	Compensation Cess may be imposed on ad-valorem basis	<ol style="list-style-type: none"> <li>1. Pre-GST, coal, including lignite, attracted Clean Environment Cess at the rate of Rs. 400 per MT.</li> <li>2. With the rollout of GST, since 1st July, 2017, Clean Environment Cess on coal was abolished and a Compensation Cess of Rs. 400 per Metric Ton has been levied on coal (including lignite).</li> <li>3. GST rates including compensation cess have been prescribed to retain the incidence of the tax as it was in pre-GST regime.</li> <li>4. In the 12th meeting of the GST Council dated 16th March, 2017, the issue of rate of GST Compensation Cess on coal was discussed and it was decided to keep it same as to the Clean Energy Cess, which was being</li> </ol>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>imposed in Pre-GST.</p> <p>5. The issue was further discussed in the 37th meeting of the GST Council dated 20th September 2019. No reduction in present rate of Compensation Cess on coal was recommended by it</p> <p>6. The Fitment Committee decides to defer this matter for a detailed comprehensive examination.</p>
4.	Branded Pulses and Food Grains	5%	Nil	<p>1. The GST Council discussed rate on food grains put up in unit container and bearing a brand name in great detail and recommended 5% GST rate on the same.</p> <p>2. Subsequently, to check tax avoidance certain changes were made in the provision, including that if a dealer foregoes an actionable claim against his brand name, no GST will apply.</p> <p>3. There is adequate protection in GST for small suppliers. Such small suppliers are covered under turnover threshold exemption from GST. Further, small suppliers can opt for the composition scheme and pay tax at the rate of 1% of the turnover. This limit for the composition scheme has been increased by GST Council to Rs 1.5 Crore.</p> <p>4. Presently, due to the rate differential between branded and unbranded food items, the small and medium enterprises get some advantage and thus are benefitted.</p> <p>5. Branded food is sold at a premium over the unbranded food items.</p> <p>6. The issue of rate reduction on branded pulses and food grains was placed before the GST Council in its 31<sup>st</sup> and 37<sup>th</sup> meetings, but was not recommended by the Council.</p> <p>7. The Fitment Committee recommends that the issue may be kept at high priority for the future meeting on rate</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				rationalisation. Further, states may present their views on the issue.
5.	Unmanufactured Tobacco [2401]	28% + compensation cess 65%/71%	5%	<ol style="list-style-type: none"> <li>1. GST Council has recommended highest tax rate of 28% on unmanufactured tobacco (except tobacco leaves on which tax rate is 5%)</li> <li>2. This is in consonance with the policy to tax tobacco and tobacco products at the highest rate as they are sin goods.</li> <li>3. Further, burden of tax is not on farmers as tax on tobacco leave is 5% under RCM.</li> <li>4. The Fitment Committee defers the issue for further examination.</li> </ol>
6.	Raw silk & other silk weaving materials [50]	5%/Nil	Nil	<ol style="list-style-type: none"> <li>1. Raw Silk is already at nil rate.</li> <li>2. Reduction in GST Rate on other silk value added product may not help.</li> <li>3. It increases the cost for manufacturer as ITC gets blocked.</li> <li>4. Fitment Committee in meeting dated 20<sup>th</sup> May, 2021 deferred the matter for further examination.</li> <li>5. The Fitment Committee recommends that any decision regarding GST Rates on textile items shall be taken post decision of GST Council related to correction of inverted duty structure in textiles, since the matter related to correction of inverted duty structure in textiles is pending for decision with GST Council.</li> </ol>
7.	Products of Handloom weavers Association [Any Chapter]	5%	Nil	<ol style="list-style-type: none"> <li>1. Reducing GST to Nil will result in blockage of input tax credits and increased cost for such domestic manufacturers and will not benefit consumer.</li> <li>2. Fitment Committee in its meeting dated 20<sup>th</sup> May, 2021, deferred the matter for further examination and desired that further information for examination of this issue is to be collected.</li> </ol>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>3. The Fitment Committee recommends that any decision regarding GST Rates on textile items shall be taken post decision of GST Council related to correction of inverted duty structure in textiles, since the matter related to correction of inverted duty structure in textiles is pending for decision with GST Council.</p>
8.	<p>GST on reverse charge basis on tobacco supplied for manufacture of Smokeless Tobacco [HS 2403]</p>	<p>28% under forward charge</p>	<p>28% under Reverse charge</p>	<ol style="list-style-type: none"> <li>1. As per the recommendation of the GST Council in its 14th Meeting dated 18th and 19th May 2017, dried tobacco leaves are already under reverse charge. Unmanufactured tobacco is produced from such tobacco leaves which are further used to produce smokeless and smoking tobacco.</li> <li>2. In case of Tendu leaves, Odisha Forest Development Corporation is the single agency for collection and sale of tendu leaves via open tenders. Thus, it was administratively convenient to have reverse charge mechanism.</li> <li>3. Enduring reverse charge only for smokeless tobacco may not be possible and if a policy decision is taken, unmanufactured tobacco may be kept at reverse charge.</li> <li>4. Further, not only GST but compensation cess will need to be kept under reverse charge. However, this will create a complicated tax structure as applicable excise duty and NCCD on tobacco still needs to be paid by the manufacturer and cannot be under reverse charge.</li> <li>5. The Fitment Committee recommends that the proposal may be discussed in the already existing Group of Ministers (GoM) on capacity levy and composition scheme in certain sectors of GST.</li> </ol>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
9.	Stock transfer of intermediary product from one refinery [27]	18%	Nil	<ol style="list-style-type: none"> <li>1. This issue has arisen because the final product is not covered under the GST regime and therefore the ITC of input would become part of the cost of the final product. The total annual ITC stranded due to the final products not being under GST for the PSU OMCs is around Rs. 1,218 crore.</li> <li>2. As the issue could be resolved only if concession for this particular item is given when supplied to distinct person and end-user-based exemption will be very difficult to administer.</li> <li>3. The revenue implication as far as OMCs are concerned is not significant. This distortion will be resolved when petroleum products would be brought under GST.</li> <li>4. The Fitment Committee examined the issue and, given the significant revenue ramifications, recommends a comprehensive data driven decision after collection of all relevant data.</li> </ol>
10.	De-oiled Rice Bran (DORB) [2306]	Nil	5%	<ol style="list-style-type: none"> <li>1. Rice Bran was initially at Nil rate. The GST Council in its 25<sup>th</sup> Meeting held on 18.01.2018 decided to levy 5% GST on Rice Bran and Nil GST on De-Oiled Rice Bran.</li> <li>2. However, as mentioned by the Department of Food, Rice Bran is now being sold as de-oiled rice bran. This is causing revenue loss on one hand and reduced availability of rice bran for oil extraction.</li> <li>3. Levy of 5% duty on De-Oiled-Rice Bran will put it at par with other inputs to cattle feed such as oil meal cakes (other than cotton oil cake) and will also simplify the input chain.</li> <li>4. Fitment Committee felt that this issue would have ramifications for the agriculture sector and recommended that the matter</li> </ol>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>may be deferred for assessing the implication in detail with further inputs.</p> <p>5. Post meeting of Fitment Committee, comments have been received from Department of Food and Public Distribution which states that:</p> <p>(i) At present, India imports huge quantities of edible oil each year which is about 60% of the total consumption.</p> <p>(ii) Government is encouraging and facilitating increase in the production of Rice Bran ' in the country. On demand side, it is being promoted among the consumers as a healthy medium of cooking. In order to carry forward the "Atmanirbhar" initiative of the Hon'ble Prime Minister, this Department is striving to reduce the dependence on imports of edible oil. Taking this forward, Committee of Secretaries (CoS) in its meeting held on 28" January 2021 recommended that the production of Rice Bran Oil may be increased in the country for domestic use and it may be promoted extensively as a healthy medium of cooking. These initiatives were taken based on the directions of Hon'ble Finance Minister in a meeting of COM held on 16"Feb 2021.</p> <p>(iii) Pursuant to the above decision, series of consultations have been held with major stakeholders including edible oil industry associations, rice millers' associations and Food Corporation of India. Series or meetings were also held the fourteen (14) major rice producing States and ways and means for increasing the production of rice bran oil to its optimum potential and its promotion for cooking were</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>discussed.</p> <p>(iv) The States were requested to assess the potential of rice bran oil production in the ice clusters located in their States and also enhance the capacity of rice mills so as to ensure that rice bran oil is extracted to the maximum.</p> <p>(v) The following actions have been taken to by DFPD for the promotion of Rice Bran Oil</p> <p>(a) Department of Revenue was requested to consider imposing 5% GST on Rice Bran being disposed as cattle feed to solve the problem of credit input. This is to be taken up in the meeting of GST Council.</p> <p>(b) FCI was directed to organize State Level interactive workshops with the Rice Millers and Field Offices to assess their technological requirements for availing benefit under MSE-Cluster Development Program (MSE-CDP) of MSME</p> <p>(c) Consultations were done with the States having Major Paddy/Rice clusters for details like number of Rice Mills, Total Milling Capacity, Total Rice Bran production, Rice Bran sent for Cattle Feed, Rice Bran sent for Solvent Extraction Plant, Number of Mills required up gradation and the issue is being followed up.</p> <p>(d) NAFED has informed that they are going to start sale of RBO through their outlets shortly.</p> <p>(e) In order to include Rice Bran Oil in “Eat Right India” campaign, FSSAI has provided material containing health benefit of Rice bran oil, the content of which is</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>being used for social media.</p> <p>(f) Social Media Campaign is being carried out through Tweets on Health Benefits of Rice Bran Oil based on the report received from the National institute of Nutrition, Hyderabad and FSSAI.</p> <p>(g) Department of industries and Department of Food of all States/UTs have been requested to ensure millers may avail of all benefits under various programs of the Central and State Governments.</p> <p>(h) Further, in order to take forward the above initiative of Rice Bran Oil further in a time bound manner, it was felt that a dedicated team would be required and therefore a small team for capacity building for increasing the production of Rice Bran Oil is being envisaged and is under examination in Departments IFD.</p> <p>(i) As a result of these initiatives, total rice bran production has now become 10.68 LMT against estimated potential of 18 LMT.</p> <p>(vi) However, diversion of rice bran for cattle feed without processing is a major impediment in this regard.</p> <p>6. The Fitment committee recommends that the issue may be examined in further detail prior to placing before Council for taking a view.</p>

**Recommendations made by the Fitment Committee for making changes in GST rates or for issuance of clarification in relation to services**

Sl. No.	Proposal	Justification	Comments
1.	<p>1. Request for GST exemption for FIFA Under-17 Women's World Cup 2021</p> <p>2. Request for GST exemption for AFC Women's Asia Cup 2022.</p>	<p>India is going to host 7th edition of FIFA under-17 Women's World Cup in 2021.</p> <p>Govt of India has given guarantees to FIFA including Guarantee No 8 relating to Tax exemptions.</p>	<p><b>Recommendation: FIFA U-17 World Cup, 2020 has been exempted vide entry No. 9AA and 82A of notification No. 12/17-CT[R]. Explanation may be inserted in the exemption notification that the exemption would be applicable irrespective of the year in which FIFA U-17 World Cup is held in India.</b></p> <p><b>Exemption on the same lines as given to FIFA U-17 World Cup may also be given to AFC Women's Asia Cup 2022.</b></p> <p>The 37th GST Council had recommended GST exemptions on goods and services related to FIFA U-17 World Cup 2020 [page no 8 and 130 of Agenda, Volume 3 refers]. Exemptions granted vide entry No. 9AA and 82A of Notification No. 12/17-CT[R]. However, these games were postponed in view of Covid.</p> <p>Since the FIFA U-17 Women's World Cup is postponed from 2020 to 2021 the number 2020 is to be replaced by 2021 or the year in which it is held, in the existing GST exemptions.</p> <p>Exemption may also be given on AFC Women Asia Cup, 2022.</p>
2.	Amendment in Sl No.1, 9D, 13, 74A and 80 of notification No. 12/2017-CT(R) and Sl. No. 3(iv)(g) of notification No. 11/2017-CT(R), both dated 27.06.2017.	Specified Services by an entity registered under <i>section 12AA of the Income-tax Act, 1961</i> (43 of 1961) by way of charitable activities is exempted from GST vide entry 1,9D, 13, 74A and 80 of notification No.	<p><b>Recommendation: Reference to section 12AB of Income Tax Act in the entries of notification No. 11/2017-CT(R) and notification No. 12/2017-CT(R), both dated 27.06.2017 may be included along with reference to section 12AA.</b></p> <p>Since, in order to claim income tax exemption under section 10 and 11 of</p>

Sl. No.	Proposal	Justification	Comments
		<p>12/2017-CT(R) and Sl. No. 3(iv)(g) of notification No. 11/2017-CT(R)</p> <p>Now in order to claim Income Tax exemption under section 10 and 11 of the Income Tax act, 1961, trust/institution has to register under 12AB of the Income Tax Act, 1961.</p>	<p>the Income Tax Act, 1961, trust/institution has to register under 12AB of the Income Tax Act, 1961, the reference to section 12AA of the Income Tax Act in GST notification may be replaced with “section 12AA or section 12 AB”.</p>
3.	<p>To extend the validity of GST exemption on transport of goods by vessels from India to Outside. This is currently valid till 30.9.2021.</p>		<p><b>Recommendation: Validity of GST exemption on transport of goods by vessel and air from a place in India to outside India, which is expiring on 30.9.2021 may be extended by one year.</b></p> <p>These services are presently exempt from GST [till 30.9.2021] vide entry No. 19A and 19B of notification No. 12/2017.</p> <p>This exemption was given as refund mechanism was not fully established. Initially up to 30.9.2018 and then extended every year. Now, refund regime is fully established. So there is a case for withdrawing this exemption.</p> <p>However, in the present position withdrawal of exemption may cause some disruptions for exports. Therefore, Fitment Committee is of the view that this exemption may not be tinkered with at this stage. Accordingly, exemption may be extended by another year.</p> <p>Fitment Committee was also of the view that all such exemptions which are being extended from time to time be comprehensively reviewed before the next meeting of the Council for seeking recommendation of the Council on merit.</p>

Sl. No.	Proposal	Justification	Comments
4.	<p>To amend S. No. 547 A (Condition No. 102) of the notification No. 50/2017-Customs dated 30.06.2017 to</p> <p>(i) obviate the need to re-export aircrafts, aircraft engines and other aircraft parts imported into India under lease within 3 months from the expiry of the lease period.</p> <p>(ii) same dispensation as apply to imports of aircraft on lease apply to lease of aircraft from SEZ. For this, either reverse charge on such is to be applied or exemption from IGST on goods part is to be granted even if IGST on lease service is paid by SEZ services provider.</p>	<p>a. Notification No. 50/2017- Customs dated 30.6.17, Sl. No. 547A exempts aircrafts, aircraft engines and other aircraft parts imported into India under a transaction covered by item 1(b) or 5(f) of Schedule II of the CGST Act, subject to the conditions that the goods shall be re-exported within three months of expiry of lease period.</p> <p>b. Similar condition is prescribed vide notification No. 50/2017- Customs Sl. No. 557A and 557B for</p> <p>(a) Rigs and ancillary items imported for oil or gas exploration and production</p> <p>(b) All goods, vessels, ships (other than motor vehicles)</p> <p>Another condition in these notification is that IGST on imports of these goods is exempted provided importer pays IGST on lease rentals. However, in case of SEZ units, IGST is presently paid by SEZ units and not the importer. Therefore, SEZ supplies are being subject to double taxation.</p>	<p><b>Recommendation: Suitable changes may be made in notification No. 50/2017-Customs dated 30.06.2017 so as to</b></p> <p><b>(i) allow transfer of goods imported under lease without payment of IGST at the time of import to a new lessee in India upon expiry or termination of lease;</b></p> <p><b>(ii) allow this exemption even where the lessor located in SEZ pays GST under forward charge.</b></p> <p>It would be appropriate if the condition in exemption notification No. 50/2017-Cus, Sl. No. 547A, 557A &amp; 557B that goods should be re-exported within 3 months of the expiry of the lease period for which they were supplied may be modified to allow, upon expiry or termination of lease, transfer of such goods to a new lessee in India, subject to suitable conditions.</p> <p>Also it may be prescribed that IGST exemption shall be available if IGST on lease rental is paid either by lessor or lessee.</p>
5.	To either zero-rate the lease rentals on lease of rolling	Services of leasing of assets (rolling stock	<b>Recommendation: Exemption on leasing of rolling stock by IRFC to</b>

Sl. No.	Proposal	Justification	Comments
	<p>stock assets by the Indian Railways Finance Corporation to Indian Railways,</p> <p>Or</p> <p>If this is not feasible, levy 5% GST with full ITC on lease rental payable by MoR to IRFC</p>	<p>assets including wagons, coaches, locos) by IRFC to IR is exempt from GST [entry 43 of notification No.12/2017 - Central Tax (Rate)]. Since the output of IRFC is an "exempt turnover", it is not entitled to claim ITC of taxes paid on acquisition of rolling stock [Section 17(2) of the CGST Act]. Zero rating or 5% GST will enable IRFC to take the benefit of ITC of GST payable on acquisition of rolling stock.</p>	<p><b>IR may be withdrawn by omitting Sl. No. 43 of notification No.12/2017 – CT (R).</b></p> <p>Zero rating is done only in case of exports and supplies to SEZ. There is no rationale now for exempting such supplies made to railways.</p> <p>It is proposed that the exemption on leasing of rolling stock by IRFC to IR may be withdrawn by omitting Sl. No. 43 of notification No.12/2017 – CT (R). The leasing of rolling stock shall then attract the same rate of GST as applicable on the underlying goods (rolling stock) under Sl. No. 17 of notification No.11/2017 – CT (R) and input taxes will not stick as cost.</p>
6.	<p>(1) Clarification regarding taxability of passenger transportation services supplied using motor cycle through Electronic Commercial Operators (ECOs) to ensure uniformity in taxation of the said services across the country.</p> <p>(2) Tax on AC buses providing inter-state services on All India Tourist Permit may be collected from online vendors</p>	<p>Transport of passengers by non-air-conditioned contract carriage is exempt from GST under Sr No 15(b) of Notification 12/2017 Central Tax (Rate).</p> <p>There is no uniform practice in the States regarding issuance of contract carriage permits in respect of motor cycles. Only 7 states in the country issue contract carriage permits for transport of passengers by motor cycles. As a result, Uber has to pay GST on passenger transportation service by motor cycles supplied through them. But, their competitors such as Ola and Rapido do not pay GST on such services.</p>	<p><b>Recommendation:</b></p> <p><b>1) Transport of passengers by any motor vehicles supplied through ECOs may be excluded from the exemption entry at Sr. No. 15(b), 15 (c) and Sr. No. 17(e) of notification no. 12/2017-Central Tax (Rate)</b></p> <p><b>2) Notification No. 17/2017-Central Tax (Rate), dated 28.6.2017 may be amended so as to make the ECO liable to pay tax on service of transportation of passengers by any motor vehicle through it.</b></p> <p><b>3) The above changes may be implemented w.e.f. 01.01.2022 so as to allow ECOs to make changes to their software etc.</b></p> <p>Notification No. 12/2017-Central Tax (Rate), Sl. No. 15 (b) exempts transport of passengers by non-air-conditioned contract carriage other than radio taxi for transportation of</p>

Sl. No.	Proposal	Justification	Comments
			<p>passengers, excluding tourism, conducted tour, charter or hire”.</p> <p>Similar exemptions have been given vide Sl. No. 15 (c) and Sr. No. 17 of Notification No. 12/2017 – Central Tax (Rate) on passenger transport services by way of:</p> <ul style="list-style-type: none"> <li>• stage carriage other than air-conditioned stage carriage.</li> <li>• metered cabs or auto rickshaws (including e-rickshaws).</li> </ul> <p>The primary justification for exempting transport of passengers by metered taxi cabs, auto rickshaw and other contract carriages has been that these services are supplied by small or individual operators for whom it would be difficult to meet the requirements of tax compliance; nor can the burden of tax compliance be placed on the individual recipients of service. However, this justification does not hold true in case of services supplied through organised players such as radio taxi networks or ECOs such as Uber India and Ola. This is the reason that radio taxis were excluded from the exemption on transport of passengers through non air-conditioned contract carriage in GST as well as service tax regime.</p> <p>In this context it is also relevant to note that ECOs have been made liable to pay GST on services of passenger transportation by radio taxi, motor cab, maxi cab, and motor cycle supplied through them.</p>
7.	(a) With reference to entries 3 and 3A in notification No. 12/2017-CT (Rate), it may be clarified as whether the phrase “work entrusted to it by Government” means	A State PSU has been mandated by Government of Odisha to create power transmission infrastructure in the	<b>Recommendation: It was felt that the scope of exemption/concessions is being interpreted vastly leading to misuse and disputes of interpretation. Fitment Committee is of the view that these entries</b>

Sl. No.	Proposal	Justification	Comments
	<p>general work mandate of the government entity or a specific work entrusted to the entity with funding for that work, and if later is the meaning of the phrase then what will be the treatment when funding by the Government is partial.</p> <p>A similar question has arisen in case of works contract service procured by BSF from private construction companies.</p>	<p>state. The PSU claims that it is their mandate to create infrastructure and they are eligible for 12% GST on all inward supplies/ procurements, irrespective of whether funding is by Government or not.</p>	<p><b>should be cleaned by removing Governmental authority and governmental entity from entries related to Works contract in Notification No. 11/2017- CTR dated 28.06.2017 and from entries 3 and 3A of Notification No. 12/2017- CTR dated 28.06.2017.</b></p> <p>Works contract services procured by a Government Entity attract concessional rate of 12% provided they are procured by the Government Entity in relation to a work entrusted to it by the Central Government, State Government, Union Territory or a local authority. [Notification No. 11/2017-CTR, Sl. No. 3 (iii), 3(vi) etc].</p>
	<p>(b) Request to clarify whether AIIMS, New Delhi is a Government Entity and thus entitled to procure WCS at concessional rate of 12% under notification No. 11/2017-CTR, Sl. No. 3 (vi)?</p>		<p>The intention of the proposals was to reduce the financial outlays for projects funded by the Central and State Governments but implemented through governmental entities set up by them. Intention was not to make the reduced rate of 12% applicable on works contract services supplied to PSUs or similar institutions like IIM/AIIMS/Ports.</p> <p>The intention of usage of terms “work entrusted to it by Government” appearing in the condition against Sl. Nos. 3 (iii),(vi),(vii),(ix) and (x) of Notification No. 11/2017-CTR, is evidently to cover specific work or supply made by a Government Entity to the Central Government or any State Government, Union Territory or a local authority under an agreement entered into for that purpose and for which the entire consideration is to be paid by the concerned Government or Local Authority, and not the general work mandate of that Government Entity or the general function it carries out in accordance with the objectives for which it was set up by an act of parliament or legislature or by any Government.</p>

Sl. No.	Proposal	Justification	Comments
8.	<p>Request to clarify whether IIM Ahmedabad is (a) a Governmental Authority or (b) a Government Entity or (c) both and whether as a GA/ GE, it is entitled to procure pure services and composite supply of goods and services (where goods constitute not more than 25%) without payment of GST under notification No. 12/2017-CTR, Sl. No. 3 and 3A?</p> <p>VNIT Nagpur and Kandla Port Trust have also filed applications for advance ruling on the same issue. All these organizations are of view that they are Government Authority/ Government entity. The basis of this contention is that they have been <i>set up to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.</i></p>	<p>Government Entity has been defined to mean an authority or a board or any other body including a society, trust, corporation, -</p> <p>(i) set up by an Act of Parliament or State Legislature; or</p> <p>(ii) established by any Government, with 90 per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.</p> <p>Indian Institute of Management, Ahmedabad is established under IIM Act, 2017 which empowers it to attain standards of global excellence in management, management research and allied areas of knowledge. Amongst other the objective of IIM is to provide management education of high quality and to promote allied areas of knowledge as well as interdisciplinary studies. Powers and functions of the institute are vested under section 7 of the Act.</p> <p>Board of Governors of each IIM is the</p>	<p><b>Recommendation: As at Sl. No. 7 above</b></p>

Sl. No.	Proposal	Justification	Comments
		<p>principal executive body and the Board shall in the exercise of its power and discharge of its functions under IIM Act, 2017 is accountable to the Central Government.</p> <p>Therefore, IIM Ahmedabad is of the view that they are Governmental authority as well as Government entity and all the concessional benefits prescribed for a government entity are available to them.</p>	
9.	Request to clarify GST rate of services provided by way of Indoor Amusement Parks/Family Entertainment Centers as 18% instead of 28% and define the word 'amusement park' in GST.	<p>Family Entertainment Centre (FEC) also known as Indoor Amusement Centre are attractions under Amusement sector.</p> <p>This segment of Amusement was also under the same bracket of taxation in the erstwhile regime of entertainment tax (which varied from state to state and at time was charged as per individual machine, revenue), Service tax, GST 28% and now at 18%. All our industry members were of the notion of 28% to 18% GST. State had also recognized them under Amusement Park segment.</p>	<p><b>Recommendation: (i) It may be clarified that admission to amusement parks attracts GST rate of 18% under entry 34(iii) of notification No. 11/2017-CTR irrespective of whether such parks are outdoor or indoor.</b></p> <p><b>(ii) The exemption entry should also be amended suitably to remove any ambiguity therein.</b></p> <p>1. Entry 34(iii) notification No. 11/2017-CTR prescribes 18% GST on the <i>services by way of admission to amusement parks including theme parks, water parks, joy rides, merry-go rounds, go carting and ballet</i>. The GST was reduced from 28% to 18% vide notification No. 1/2018 – Central Tax (Rate) dt 25.01.2018.</p> <p>2. Entry No. 34(iia) in Notification No 11/2017- CT(R) dated 28.06.2017 levies 28% on the <i>services by way of admission to entertainment events or access to amusement facilities including casinos, race club, any sporting event such as Indian Premier League and the like</i>.</p>

Sl. No.	Proposal	Justification	Comments
			<p>The intention is thus clear that if amusement park does not have activity like casino, race club or IPL, the tax leviable is 18%.</p> <p>3. We may issue a clarification since there are separate entries at Sl. No. 34(iii) and 34(iiiia) of notification No. 11/2017-CTR for different set of services.</p> <p>4. Fitment also recommended that the wording of notification be suitably amended to remove any ambiguity.</p>
10.	To clarify the classification and rate of GST on services rendered by Cloud kitchen or Central Kitchen.	<p>A cloud kitchen is a single kitchen premise through which multiple brands and restaurants operate. A cloud kitchen typically offers food under 'takeaway model' and 'home delivery model'. Cloud kitchen or central kitchen are established to deliver to food to customers belonging to multiple brands using food aggregators such as Swiggy etc or allow customers to take away the food for consumption.</p> <p>In a cloud kitchen food prepared and delivered to a restaurant where customers of the restaurant consume the food, food may be delivered to an eating premise owned by multiple restaurants, food may be delivered to door step of a customer who places order for food using the</p>	<p><b>Recommendation:</b></p> <p><b>It may be clarified by way of a circular that services by way of serving of food, door delivery and take away by cloud kitchens/central kitchens are covered under 'restaurant service', as defined in notification No. 11/2017- Central Tax (Rate) and attract 5% GST [ without ITC].</b></p> <p>1. It is relevant to mention that there is no criterion or yardsticks specified in law to identify as to what would qualify as restaurant or eating joint. The word 'restaurant service' is defined vide Notification No. 11/2017 – CTR as amended by Notification No. 20/2019-CTR dated 30.09.2019 as below: -</p> <p><i>'Restaurant service' means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.</i></p>

Sl. No.	Proposal	Justification	Comments
		<p>mobile apps of food aggregators such as Swiggy, Zomato etc. The food from central kitchen may be delivered to multiple restaurant outlets of a restaurant. Typically, a cloud kitchen offers food under 'takeaway' model and 'home delivery' model.</p> <p>A clarification is requested on whether the supply of food prepared by restaurants located in cloud kitchen is classifiable as 'restaurant service' attracting GST@5% or not. Other possible classification of supplies made by a central kitchen include 'other food and beverage' services attracting GST@18% with full ITC and also goods with HSN 2106 having description 'Food preparations not elsewhere specified or included' attract GST@18% with full ITC.</p>	<p>2. As per the above definition of restaurant service, service providers are restaurant, eating joint including mess and canteen. Cloud kitchen are typically delivery only models without eating joint. However, some of the cloud kitchen models may provide for eating facility to a customer.</p> <p>3. The explanatory notes in the classification of service states that '<i>restaurant service</i>' includes <i>services provided by Restaurants, Cafes and similar eating facilities including takeaway services, Room services and door delivery of food.</i></p> <p>4. Food serving, preparation and food delivery should all be covered under restaurant service and attract 5% GST [without ITC]. Therefore, it is clear that takeaway services and door delivery services for consumption of food are also considered as restaurant service.</p>

Sl. No.	Proposal	Justification	Comments
11.	Request for clarification on supplies made in an ice cream outlet.	<p>Ice creams manufactured are sold through franchise outlets across India. Ice-creams are sold through:</p> <ul style="list-style-type: none"> <li>• 500 Gms. Retail Packs (bearing MRP)</li> <li>• Scoop of ice creams in Paper cups or cones</li> <li>• Melted Ice creams – in disposable glasses</li> </ul> <p>The entire activity of sale at the store does not involve any element of service like table service, cutlery, cooking, preparation, etc.</p> <p>The retail outlets selling ice creams have always treated this activity as sale of goods and paid VAT/ Sales tax at full rate in all States across India since there is no element of service involved in the activity.</p>	<p><b>Recommendation:</b></p> <p><b>It may be clarified by way of a circular that Ice cream parlor sells already manufactured ice- cream. The activity of ice cream parlor, unlike restaurant, does not involve any cooking. Their activity is supply of ice cream as goods and not as a service, even if certain ingredients of service are present.</b></p> <p>Ice cream parlor sells already manufactured ice- cream and do not prepare ice-cream for consumption like a restaurant. It is supply of ice cream as goods and not as a service, even if certain ingredients of service are present. Restaurant service involves the aspect of cooking during the course of provisioning of service. Ice cream is a manufactured item and Ice-cream parlors do not engage in any form of cooking at any stage.</p>
12.	To notify 6-digit HSN Code for Multimodal transportation services	<p>By virtue of Notification No. 78/2020-Central Tax dated 15.10.2020 every registered person having turnover of more than Rs 5 crores is required to report HSN at 6 digit level w.e.f 1.04.2021 on tax invoices issued by them.</p>	<p><b>Recommendation: 6-digit HSN Code for Multimodal transportation services may be specified in the scheme of classification of services annexed to notification no. 11/2017- CT (Rate).</b></p> <p>Domestic multimodal transport has been recognized as a special category under transport segment in GST. Therefore, specifying a separate Service Code (upto 6 digits) under Head 9965 for Multimodal transport</p>

Sl. No.	Proposal	Justification	Comments
		<p>However, there is no specific mention of multimodal transportation services under the SAC 9965 which covers Goods Transport Services.</p> <p>Further, there is no reference for multimodal transportation service under the Central Product Classification Code (CPC)</p>	<p>is only logical. The same would also remove any ambiguity/confusion in the industry over classification of this service.</p> <p>Consequent changes may also be made to explanatory notes (interpretative notes and explanatory notes to 9965).</p>
13.	Request to clarify GST applicability on free coaching services provided by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities' where funding is provided by Government to coaching institutions through grant in aid.	<p>Department of Empowerment of Persons with Disabilities (Divyangjan) has merged the six scholarship schemes into an umbrella scholarship scheme titled "Scholarships for Students with Disabilities" w.e.f. 15 April, 2018:</p> <ul style="list-style-type: none"> <li>• Pre-matric Scholarship for Students with Disabilities</li> <li>• Post-matric Scholarship for Students with Disabilities</li> <li>• Top Class Education for Students with Disabilities</li> <li>• National Overseas Scholarship for Students with Disabilities</li> <li>• National Fellowship for Persons with</li> </ul>	<p><b>Recommendation: It may be clarified by way of a circular that free coaching services provided by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities' is covered by exemption from GST under the Sl. No 72 of the notification no 12/2017- CTR.</b></p> <p>Presently, <i>services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration are exempt [sl. No. 72 of notification No. 12/2017- CTR dated 28.06.2017 refers].</i></p> <p>Under the scheme of "Scholarships for Students with Disabilities", Department of Empowerment of Persons with Disabilities, Ministry of Social Justice &amp; Empowerment provides the fund for the entire</p>

Sl. No.	Proposal	Justification	Comments
		<p>Disabilities</p> <ul style="list-style-type: none"> <li>• <u>Free Coaching for Students with Disabilities</u></li> </ul> <p>Free Coaching for Students with Disabilities is a scheme which aims to provide coaching for economically disadvantaged students with disabilities, having minimum 40% or more disability to enable them to appear in competitive examinations and to succeed in obtaining an appropriate job in Government/ Public/ Private sector.</p> <p>Under this scheme, Government releases funds to coaching Institutions/ NGOS which have been empanelled under the scheme. The entire expenditure of the coaching is funded by Government of India in the form of grant-in-aid.</p>	<p>expenditure incurred on coaching of selected Students with Disabilities as per the terms and conditions of the Scheme and agreement entered into with the concerned coaching institute. Fee component of the coaching is released directly to the coaching institutes/ centers concerned in the form of grant-in-aid. Grant-in-aid is released to the institutes concerned in two equal installments every year.</p> <p><u>The free coaching would be covered by the Sl. No 72 of the nf no 12/2017-CTR.</u></p>
14.	Request to grant GST exemption to training and assessment supplied by the Skill Training Providers and Assessment & Certification agencies respectively under Deendayal Antyodaya Yojana- National Urban livelihood Mission (DAY-NULM)	<p>1. For the sake of uniformity, common norms have been made applicable across all skill development schemes of different ministries of Govt. of India as per Cabinet's approval. Presently there are three major skill- trainings conforming to the common norms,</p> <ul style="list-style-type: none"> <li>• Pradhan Mantri</li> </ul>	<p><b>Recommendation: Scope of Sl. No 72 of notification no 12/2017- CTR may be expanded to exempt training services where the Government bears 75% or more of the expenditure. [Presently Sl. No 72 of notification no 12/2017- CTR, exempts services provided to the Central/State Government, Union territory under any training programme for which <u>total expenditure</u> is borne by the Government.] This would cover training under Deendayal Antyodaya Yojana- National Urban</b></p>

Sl. No.	Proposal	Justification	Comments
		<p>Kaushal Vikas Yojana (PMKVY) of Ministry of Skill Development and Entrepreneurship,</p> <ul style="list-style-type: none"> <li>• Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDU GKY) of Ministry of Rural Development, and</li> <li>• Deendayal Antyodaya Yojana-National Urban livelihood Mission (DAY-NULM) of MoHUA</li> </ul> <p>2. MoHUA has stated that presently services of training providers and assessment agencies are exempt for two programs, namely, DDU-GKY and PMKVY and GST is being charged by Assessment agencies/training providers for DAY- NULM only.</p> <p>3. This disparity in taxation is causing many operational issues and leading to several requests from the States and UTs for exempting DAY- NULM</p>	<p><b>livelihood Mission (DAY-NULM), where part of the expenditure may be borne by the trainees.</b></p> <p>Presently, following skill development trainings are exempt from levy of GST vide notification no. 12/ 2017- CTR dated 28.06.2017.</p> <p><i>(i) Sl. No. 69: Any services provided by the National Skill Development Corporation (NSDC), a Sector Skill Council approved by the NSDC, an assessment agency or training partner approved by the Sector Skill Council or NSDC, in relation to-</i></p> <p style="padding-left: 40px;"><i>(a) the National Skill Development Programme implemented by NSDC</i></p> <p style="padding-left: 40px;"><i>(b) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme</i></p> <p style="padding-left: 40px;"><i>(c) any other Scheme implemented by NSDC</i></p> <p><i>(ii) Sl. No. 71: Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana implemented by the Ministry of Rural Development, Government of India by way of offering skill or vocational training courses certified by the National Council for Vocational Training (NCVT).</i></p> <p><i>(iii) Sl. No. 72: Services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union Territory administration.</i></p> <p>DAY-NULM has several sub-components, out of which two are</p>

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			<p>related to skill development. They are <b>(i) Capacity Building and Training (CB&amp;T)</b> and <b>(ii) Employment Through Skills Training and Placement (EST&amp;P)</b>.</p> <p><b><u>(i) Capacity Building and Training (CB&amp;T)</u></b> It is seen from the <b>Capacity Building and Training DAY- NULM (Revised Operational Guidelines)</b> dated 18.07.2018 that w.e.f. 1<sup>st</sup> April, 2015 that the funding under <b>Capacity Building and Training</b> component will be shared between the Centre and the States in the ratio of 60:40. In case of special category States this ratio will be 90:10 between the Centre and States. Further, in case of UTs (with or without legislature) 100 % funding will be provided by Central Government. So <b>it would be exempt from GST vide Sl. No. 72 of the notification No. 12/2017- CTR dated, 28.06.2017.</b></p> <p><b><u>(ii) Employment Through Skills Training and Placement (EST&amp;P)</u></b> This component of DAY-NULM will focus on providing assistance for development / upgrading of the skills of the urban poor so as to enhance their capacity for setting up self-employment ventures or secure salaried employment. Skill training will be preferably undertaken on a Public-Private-Partnership (PPP) model involving reputed institutes. <b>The EST&amp;P component may not be fully covered under the exemption provided at sl. No 72 as there is possibility of beneficiary to bear certain training cost.</b></p> <p>Fitment Committee recommends exempting such service where funding by the Government is 75% or more.</p>
15.	Notification No. 25/2019- Central Tax (Rate) dated 30.09.2019 and	To implement the following recommendation of the	<b>Recommendation: Notification No. 25/2019- Central Tax (Rate) dated 30.09.2019 and corresponding</b>

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	<p>corresponding IGST and UTGST notifications may be given retrospective effect from 1.7.2017 through Finance Bills, 2022 of the Union and the States but refund of GST paid during the period from <b>01.07.2017 to 30.09.2019 may be disallowed.</b></p>	<p>GST Council, made in its 37<sup>th</sup> meeting:</p> <p><i>“The Council approved to notify grant of Liquor License by State Governments against payment of license fee as a "no supply" under Clause (b) to Subsection 2 of Section 7 of the CGST Act, 2017 to remove ambiguity in implementation on the subject. The effect of exemption shall apply from 01.07.2017.”</i></p>	<p><b>IGST and UTGST notifications may be given retrospective effect from 1.7.2017 through Finance Bills, 2022 of the Union and the States but refund of GST paid during the period from 01.07.2017 to 30.09.2019 may be disallowed.</b></p> <p>Request of the States such as Haryana, Punjab, Odisha, and Andhra Pradesh for exempting GST on license fee charged by the State Governments for grant of liquor license w.e.f. 01.07.2017 or declaring the same as a no supply was discussed in several meetings of the GST Council.</p> <p>2. The GST Council in its 37<sup>th</sup> meeting recommended as under:</p> <p><i>“The Council approved to notify grant of Liquor License by State Governments against payment of license fee as a "no supply" under Clause (b) to Subsection 2 of Section 7 of the CGST Act, 2017 to remove ambiguity in implementation on the subject. The effect of exemption shall apply from 01.07.2017.”</i></p> <p>3. Notification No. 25/2019-Central Tax (Rate) dated 30.09.2019 was issued, to the effect</p> <p><i>“Service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called”</i></p> <p>4. Since the activity could not be retrospectively declared an unusual explanation was inserted: -</p> <p><i>“This notification is being issued to implement the recommendation of the 26th Goods and Services Tax council meeting held on the 10th March, 2018 that no GST shall be leviable on licence fee and application fee, by</i></p>

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			<p><i>whatever name it is called, payable for alcoholic liquor for human consumption.”</i></p> <p>5. However, this exemption did not help legally. In view of the above discussion, it is proposed that notification may be given retrospective effect from 1.7.2017 through Finance Bills, 2022 of the Union and the States but refund of GST paid during the period from 01.07.2017 to 30.09.2019 may be disallowed.</p>
16.	Rationalize the different GST rates levied on film distribution under the heading 9973 and 9996.	<p>An alert circular has been issued by the Principal Chief Commissioner of central Tax, Bangalore Zone, where it has been stated that with regard to ‘distribution of films’ wherein the agreement between the producer and the distributor, is on rental/profit sharing/commission basis etc., the service rendered by the distributor appears to be more appropriately classifiable under the SAC 999614, which attracts 18% GST rate.</p> <p>The industry on the other hand is classifying the same under SAC 9973 i.e. licencing services for the right to broadcast and show original films, sound recordings, radio and television programme etc. This entry attracts GST rate of 12%.</p> <p>The Producers Guild</p>	<p><b>Recommendation: GST rate on ‘Motion Picture, Video Tape and Television programme distribution services’ (Heading 9996) and ‘Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) rights’ [Heading 9973, entry 17(i) of Notification No. 11/2017-Central Tax (Rate) ] may be unified at 18%. At present GST rate is 18% under Heading 9996 and 12% under Heading 9973.</b></p> <p>1. Presently ‘motion picture, videotape and television programme distribution services’ covered by Services Code 999614 attract GST rate of 18% under heading 9996 (vi) of Notification No. 11/2017-Central Tax (Rate). On the other hand, services by way of licensing of rights to broadcast or show films attract GST @ 12% under heading 9973 (i) of the said notification, which covers “<i>temporary or permanent transfer or permitting the use or enjoyment of intellectual property right in respect of goods other than IT technology software</i>”.(Heading 9973)</p> <p>2. The explanatory notes to Service Code 999614 state as follows:</p>

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		<p>has stated that from Service Tax to Maharashtra VAT, there have been circulars that there is a transfer of copyright at each leg of the film distribution whether by producer to distributor or further sale by distributor. Accordingly, it has been requested by them that both the entries may be rationalized.</p>	<p><b><i>Motion picture, videotape and television programme distribution services</i></b></p> <p><i>This service code includes:</i></p> <p><i>(i) distribution of audiovisual works, including granting permission to exhibit, broadcast and rent audiovisual works that are implicitly or explicitly protected by a copyright owned or controlled by the licensor, usually intended for theatres, television, home video market etc., such as live action or animated films, videos, digital media, etc.</i></p> <p><i>(ii) management services for motion picture rights</i></p> <p><i>Note: This product is transacted between the distributor and the exhibitor, television network, television station, video rental store etc.</i></p> <p><i>This service code does not include:</i></p> <p><i>- licensing services (by the copyright holder) for the right to reproduce, distribute or incorporate audiovisual originals, cf. 997332</i></p> <p>3. The explanatory notes to Service Code 997332 state as follows:</p> <p><b><i>Licensing services for the right to broadcast and show original films, sound recordings, radio and television programme etc.</i></b></p> <p><i>This service code includes:</i></p> <p><i>- licensing services for the right to</i></p>

Sl. No.	Proposal	Justification	Comments
			<p><i>reproduce, distribute or incorporate entertainment, musical such as broadcasting and showing of original films, sound recordings, radio and television programmes, prerecorded tapes and videos</i></p> <p>4. It can be seen that there is an overlap between explanatory notes to services codes 999614 and 997332. While “<i>granting permission to exhibit, broadcast and rent audiovisual works protected by copyrights</i>” is covered by Service code 999614, “<i>licensing services for the right to broadcast and show original films</i>” is covered by service code 997332. However, there is no difference between “<i>granting permission</i>” and “<i>licensing</i>”. Both mean the same thing.</p> <p>5. The alert circular issued by Principal Commissioner, CGST, Bangalore states that film distributors are wrongly classifying their services, i.e. distribution of films, under service code 9973 and paying GST at lower rate of 12%.</p> <p>6. Producers Guild of India vide their representation dated 26<sup>th</sup> March, 2021 has countered the alert circular citing the service tax circular No. 148/17/2011 dated 13-12-2011 which clarified as under -</p> <p><i>“In cases where distributor transfers the rights to sub-distributor, area distributor, exhibitor or theater owner, the distributor is liable to collect the service tax under copyright service and deposit it with the government exchequer. Similarly, when the sub-distributor or area distributor etc. further transfers the rights to any person, he is also liable</i></p>

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			<p><i>to collect the service tax under copyright service and deposit it with the government exchequer.”</i></p> <p>7. The Guild has also cited the Maharashtra VAT circular No. 32T of 2007 dated 3<sup>rd</sup> April, 2007, which clarified as under:</p> <p><i>“The film is produced by producers and through distributors/sub-distributors /theatre owners, it is exhibited in theatres. Here, right to use copyright (of film exhibition i.e. broadcasting) is given by producers to distributors/sub-distributors and by them, in turn, to theater owners or directly to theater owners.”</i></p> <p>8. The Producers Guild of India has also cited a guidance note dated 26-6-2017 prepared and circulated by Sector Committee of Media and entertainment sector in which under FAQ No. 10 it has been stated as under -</p> <p><i>“Q 10. Is the share of an Exhibitor of a film also liable for GST, under temporary transfer of copyright, since most films are screened on percentage basis (revenue-sharing)?</i></p> <p><i>Ans 10. The Exhibitor of a film is liable to pay GST @ 18% if cost of ticket is Rs. 100/- or below; or @28% if cost of ticket is more than Rs 100/-, on the entire consideration for sale of movie tickets (not merely on the share of the exhibitor), whether it is on revenue sharing basis or otherwise.</i></p> <p><i>On the other hand where the Distributor or Producer supplying film to the Exhibitor, whether it is on revenue sharing basis or otherwise, he would be liable to pay GST @ 12% on the consideration received</i></p>

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			<p data-bbox="946 271 1407 367"><i>from exhibitor/distributor, as Temporary or Permanent Transfer of Intellectual Property Right.”</i></p> <p data-bbox="946 450 1407 846">9. Section 18 (2) of the Copyright Act makes it clear that the distributor is the owner of the copyright in respect of the rights assigned to him in the cinematographic film by the producer. This being so, he is entitled to act as the copyright owner in respect of those rights and assign them further to a sub distributor or exhibitor or to anyone else in accordance with the Section 18 (1) of the Copyright Act.</p> <p data-bbox="946 929 1407 1998">10. Arrangements between distributors and theater owners (exhibitors) can either be on a principal to principal basis or on partnership, joint or collaboration basis. In principal to principal arrangements, the theater owner acquires copyright from the distributor. GST on supply of copyright @ 12%. However, where the distributor takes the theater on hire from the theater owner and exhibits the film, services supplied by theater owner to the distributor are renting of immovable property services (heading 9972) liable to GST @ 18%. There can be a third arrangement of joint operation or collaboration which is commonly known as revenue sharing arrangement. In this arrangement the distributor and exhibitor are constituents of an Association of Persons and supply services to each other. The terms of the agreement in such arrangement may or may not expressly spell out assignment of copyright by distributor or sub distributor to theater owner but the same is implied where the theater owner exhibits the film and sells the tickets for the same.</p>

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			<p>11. In view of the above, the only possible solution appears to be unification of GST rates on services falling under the said two service codes at 12% or 18%.</p>
17.	<p>Clarification on recognizing Satellite Launch Services provided by M/s New Space India Limited(NSIL) to international customers as 'Export of Service'</p>	<p>It has already been clarified that PoS of satellite launch services by Antrix Corporation Ltd is outside India. The services supplied by NSIL are identical.</p>	<p><b>Recommendation: It may be clarified that Circular No. 2/1/2017-IGST dated 27.09.2017, which was issued in the context of satellite launch services by Antrix is applicable to similar satellite launch services provided by NSIL.</b></p> <p>1. Circular No. 2/1/2017-IGST dated 27.09.2017 was already issued with the approval of GST Council to clarify the PoS of satellite launch services by Antrix Corporation Ltd.</p> <p>2. PoS of satellite launch service depend on whether service recipient is located within India or outside India, not on the service provider per se. It was clarified that PoS of satellite launch services of Antrix provided to customers located outside India is outside India. If the service recipient is located in India, the satellite launch services of Antrix would be taxable. Since, satellite launch services of Antrix are similar to that of satellite launch services of NSIL, we may clarify that Circular dated 27.09.2017 applies to NSIL also.</p>
18.	<p>Request to issue clarification –GST on Overloading charges collected at Toll Plazas.</p>	<p>1. Overloading charges cannot be regarded as consideration for any supply. It is charged to recover loss to the concessionaire due to overloading of vehicles</p> <p>2. Overloading charges are additional toll charges and toll charges</p>	<p><b>Recommendation: It may be clarified that overloading charges at toll plaza would get the same treatment as given to toll as in effect they are of similar nature as overloading charges.</b></p> <p>1. The National Highways fee (Determination of Rates and Collection) Rules, 2008 provides for rate for fee for overloading of the vehicle. [ Rule 10 ]</p>

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		are exempted supply.	<p>2. Initially, the rules did not provide entry/plying of overloaded vehicle on highways even on payment of fine. Rule 10 provided as under-</p> <p><i>“10. Rate of fee for overloading. - [(1) Without prejudice to the liability of the driver or owner or a person in charge of a mechanical vehicle under any law for the time being in force, a mechanical vehicle which is loaded in excess of permissible [maximum gross vehicle weight in respect of such vehicle] shall not be permitted to use the National Highway or crossing the toll [fee plaza] until the excess load has been removed from such mechanical vehicle.”</i></p> <p>3. Only, by subsequent amendment vide Notification dated 25<sup>th</sup> Sep. 2018 overloaded vehicles were allowed to ply on the national highways after payment of fees with multiplying factor of 2/4/6/8/10 times the base rate.</p> <p>4. Thus overloading charges are effectively higher toll charges. As stated, one of the underlying objectives appear that overloading deprives collection of tolls. It may be clarified accordingly.</p>
19.	To issue a clarification that, the words ‘Hire’ & ‘Renting’ should be read synonymously in Sl. No. 22 of the Notification No. 12/2017-CT (Rate)	Vehicle Manufacturers such as Tata Motors have entered into contracts with State Transport Undertakings (STUs) such as Brihanmumbai Electric Supply and Transport Undertaking (BEST) for deploying electric buses (with drivers) to run as stage carriage along with their periodic maintenance and repairs. STUs pays	<p><b>Recommendation: It may be clarified by way of a circular that the expression ‘giving on hire’ in Sl. No. 22 of the Notification No. 12/2017-CT (Rate) includes renting of vehicles. This entry inter-alia covers giving on hire vehicles to State Transport Undertakings and Local Authorities.</b></p> <p>The decision of MAAR is based on the premise that the activity of renting a vehicle is distinct from that of hiring a vehicle. In case of renting,</p>

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		<p>these vehicle manufacturers on the basis of per kilometer running of these buses.</p> <p>Till now, the vehicle manufacturers had been claiming exemption under Entry No. 22 of Notification No. 12/2017-Central Tax (Rate) which exempts</p> <p><i>“services by way of giving on hire</i></p> <p><i>(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or</i></p> <p><i>(aa) to a local authority, an Electrically Operate vehicle meant to carry more than twelve passengers.....”</i></p> <p>However, <u>Maharashtra Authority for Advance Ruling (MAAR) vide its order dated 14.06.2021 in case of M/s M.P. Enterprises and Associates Limited</u>, ruled that the service of operating buses for BEST is not exempt under Entry No. 22 of Notification No. 12/2017-Central Tax</p>	<p>there is a transfer of possession and effective control of the vehicle to another person, whereas in case of hiring the possession and control of the vehicle lies with the owner. In the case of M.P. Enterprises and Associates Limited, the MAAR observed that, though the ownership of buses lies with applicant (M.P. Enterprises) it is BEST that has the exclusive authority to determine routes and schedule of operation of these buses. <u>Therefore, there is a transfer of right to use or in other words effective possession and effective control of these buses from applicant to BEST</u>, thereby making it a taxable service in terms of Entry No. 10(i) of Notification No. 11/2017-Central Tax (Rate). The MAAR has also relied on various case laws to support this view.</p> <p>The terms on which vehicles are given on rent or hire to BEST as seen from the Request for Proposal (RFP) issued by BEST show that the service being sought by BEST is clearly rental services falling under Heading 9966 where effective control over running of the buses/vehicles is with BEST. The entities giving vehicles on hire to BEST are paid on per kilometer basis, subject to an assured or minimum per month payment. Therefore, the services supplied by these entities are not transport of passengers but of giving vehicles on rent or hire to BEST. Since the vehicles are given on rent or hire with operator, they fall under Heading 9966.</p> <p>At the outset it is stated that all the case laws cited in the MAAR ruling were in the context of positive list</p>

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		<p>(Rate) but is rather a taxable activity subject to GST @ 12% in terms of Entry No. 10(i) of Notification No. 11/2017-Central Tax (Rate) which covers rental services of transport vehicles with operators.</p> <p>In view of the stand taken by MAAR, SIAM and Tata Motors have requested for a clarification on applicability of GST on the service of maintaining and operating electric buses, which they provide to STUs</p>	<p>regime of service tax, where “hiring of vehicles” was defined as “transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods”</p> <p>This distinction that transfer of right to use constitutes a sale and giving on hire without transferring ‘right to use’ is a service has been extinguished in GST law. Schedule II declares supply of any goods without transfer of title as supply of service even if right to use is transferred. In GST transfer of right to use has been declared as a supply of service [Schedule II, Entry 5(f) refers].</p> <p>The concepts of passing of effective control of goods to hirer etc. were used in pre-GST period to determine whether the transaction involved transfer of right to use and was thus a deemed sale under Article 366 (29A) of the Constitution or did not involve transfer of right to use and was thus a service. These concepts and distinctions have lost relevance under GST.</p> <p>The exemption at Sr. No. 22 of Notification No. 12/2017-Central Tax (Rate) indicates both Headings 9966 and 9973. Heading 9973 covers leasing of vehicles without operators/drivers. In such leasing, without driver, the effective control would naturally be with the hirer.</p> <p>The scope of GST rate entries/exemptions is determined with reference to Scheme of Classification of Services and Explanatory Notes.</p>

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			<p>The Explanatory Notes to Heading 9973 use the words hiring, renting, leasing synonymously.</p> <p>The vehicles taken on hire by State Transport Undertakings with or without operators, run on routes and timings decided and controlled by the State Transport Undertakings. If the words ‘giving on hire’ are interpreted in a sense that it will not involve giving effective control over running/plying of the vehicles to the State Transport Undertakings, then the exemption entry would become redundant. It is a settled principle of interpretation of law, that it should not be interpreted in a manner as to render it redundant.</p> <p>Fitment Committee recommends that issue be clarified appropriately.</p>
20.	<p>There are two classification entries in which printing may fall namely, service code 998386 which covers “<i>colour printing of images from film or digital media</i>” and service code 998912 which covers “<i>Printing and reproduction services of recorded media, on a fee or contract basis</i>”. It may be clarified as to what is the GST rate applicable in the services by colour lab owners by way of printing of photographs from digital media and making of photo albums and photobooks. It may also be clarified that the term “publisher” in entry at Sl. No. 27(i) under heading 9989 of notification</p>	<p>Printing of colour images using digital offset printers is being taxed at higher rate of 18% under Heading 998386. The said printing should fall under 998912 “<i>Printing and reproduction services of recorded media, on a fee or contract basis</i>”.</p> <p>The term ‘publisher’ may be interpreted in a narrow sense and lower rate of 12% may be denied to a printer who prints content belonging to a person who is not a publisher.</p>	<p><b>Recommendation: GST on services by way of printing of goods where only content is supplied by the publisher [Sl. No. 27 (i) of notification no. 11/2017- CT (R)] and on services falling under Service Code 998386 namely, “colour printing of images from film or digital media” [Sl. No. 21(ii) of notification no. 11/2017- CT (R)] may be unified at 18%.</b></p> <p><b>GST on printed goods falling under Chapter 49, which presently attract GST at the rate of 12% under entries from 127 to 132 of goods rate Schedule II may also be taxed at 18%.</b></p> <ul style="list-style-type: none"> <li>As per Explanatory notes the service code 998912 (<i>Printing and reproduction services of recorded media, on a fee or contract basis</i>) excludes “<i>colour printing of images</i></li> </ul>

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	<p>No. 11/2017-CT(R) dt. 28.06.2017 includes any other person who owns the usage rights to inputs.</p>	<p>It is also their contention that printed pictures, calendars, photographs and other such goods are taxable at 12%.</p>	<p><i>from film or digital media</i>". At the same time the service code 998386 includes the colour printing of images.</p> <ul style="list-style-type: none"> <li>• Accordingly, it has been clarified by Circular No. 84/03/2019-GST that service of "printing of pictures" falls under service code "998386: <i>Photographic and videographic processing services</i>" and not under service code "998912: <i>Printing and reproduction services of recorded media, on a fee or contract basis</i>".</li> <li>• The above position has also been upheld in the Advance Ruling in the cases of M/s Colo Color and of M/s Colortone.</li> <li>• Fitment Committee is also of the view that to eliminate disputes in GST, rate on services falling under Heading 998912, namely, printing and reproduction services of recorded media, on a fee or contract basis, should also be raised to 18%.</li> <li>• It is also argued by the photograph printers that the in the Customs tariff and goods schedule, photographs and photographic reproductions of plans, drawings etc. on sensitized paper are classified in the same heading as other printed matter on non-photosensitive paper such as plans, drawings, calendars and attract the same GST rate of 12%. Entries at Sl. No. 127 to 132 of schedule II (12% GST rate) of notification no. 01/2017- CT (Rate) cover goods such as plans, drawings for architectural engineering etc., their photographic reproduction on sensitised paper, calendars, other printed matter including printed pictures and photographs, advertising material, commercial catalogues, printed posters, pictures, designs and</li> </ul>

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			<p>photographs etc. There is a case for prescribing standard rate of 18% on these goods.</p> <ul style="list-style-type: none"> <li>A person who gets a photograph printed for himself cannot be considered as a 'publisher'.</li> </ul>
21.	To clarify the applicability of GST on inter-state services rendered by ECIL, Hyderabad to the Office of the Chief Electoral Officer, Election Commission of India (ECI), Delhi.	<p>Electronics Corporation of India Ltd. (ECIL), Hyderabad, a PSU, supplies services such as first level checking, preparation of EVMs and VVPATs to ECI for conduct of General Elections to Lok Sabha.</p>	<p><b>Recommendation: A clarification may be issued to Chief Electoral Officer, Delhi that services rendered by ECIL, Hyderabad to the Office of the Chief Electoral Officer, Election Commission of India (ECI), Delhi are taxable.</b></p> <p>ECIL is a Public Sector Undertaking under Dept. of Atomic Energy.</p> <p>Sr. no. 8 of the Notification No. 9/2017- IT (Rate) dated 28.06.2017 exempts services provided by Government to Government. However, the services provided by PSUs to Government are not exempt. Thus, the services provided by ECIL to Chief Electoral Officer, are taxable. To be clarified accordingly.</p>
22.	Request for clarity in rate of taxation under GST regarding settlement of Sand Ghats (Bandobasti) for mining of Sand.	<p>The issue is related to the rate of GST on amount received for settlement of Sand Ghats (Bandobasti) by Mines and Geology Department during settlement of Sand Ghats.</p> <p>It may be noted that Mines and Geology Department of the State Government receives Royalty/ settlement amount in lieu of settlement of Sand Ghats for mining Sand. Therefore, it is supply</p>	<p><b>Recommendation: It may be clarified by way of a circular that the services by way of grant of mineral exploration and mining rights attracted GST rate of 18% w.e.f. 01.07.2017. The AAR have given divergent ruling as regards classification of this service under headings 997337 and 999113. The service is more appropriately classifiable under heading 997337. However, irrespective of its classification, under both the headings this service attracted GST at the rate of 18% as recommended by GST Council.</b></p> <p>Divergent rulings have been issued by Authority for Advance Ruling (AAR) and Appellate Authority for Advance Ruling (AAAR) of various States on</p>

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		<p>of service and it attracts levy of tax under GST Act. In all such cases GST Payment has to be made by the business entity on RCM</p> <p>Advance Ruling Authority of a few States have classified this service under SAC 997337- "licensing services for the right to use minerals including its exploitation and evaluation".</p> <p>A classification issue has been as to whether this service is classifiable under heading 997337 or 999113, which covers public administrative services related to the more efficient operation of business as provided by the Government</p> <p>Even after it, if there exists any doubt then this service would be covered by heading 9997, Other Service Group 99979, Service Code-999799 on which again the rate of 18% tax is leviable</p> <p>In the arena of above facts, this matter can be put before GST Fitment Committee for appropriate clarity on the issue of proper classification of service regarding settlement of Sand Ghats (Bandobasti) for</p>	<p>classification of services by way of granting mineral exploration and exploitation rights and the GST rate applicable on the same. AAR, Haryana in case of M/s Pioneer Partners and AAR, Chhattisgarh in case of M/s NMDC have ruled that the service of grant of mining leases is classifiable under Service Code 997337 "<i>licensing services for the right to use minerals including its exploration and evaluation</i>", and attracted, prior to 01.01.2019, the same rate of GST as applicable to minerals, that is, 5%. AAAR, Odisha, on the other hand has ruled vide Order dated 5.11.2019 in the case of M/s Penguin Trading and Agencies Limited that though grant of mining lease is covered by service code 997337, the same was taxable @ 18% prior to 01.01.2019.</p> <p>The AAAR, Odisha has held that the rate of GST applicable on lease of goods may have been prescribed as rate of GST applicable to supply of like goods involving transfer of title over the goods, but the rate of GST prescribed for lease of goods can't be made applicable of leasing of mining area conferring the right to extract and appropriate the minerals.</p> <p>The AAAR further held that on a conjoint reading of notification no. 27/2018- Central Tax (Rate) dated 31.12.2018, minutes/ agenda/ proposal/ discussion of the GST Council, it was of the view that amendments have been carried out vide the aforesaid notification to clarify the legislative intent as well as to resolve the unintended interpretations. It is well settled that the legislative intent cannot be</p>

Sl. No.	Proposal	Justification	Comments
		mining Sand.	<p>defeated by adopting interpretations which is clearly against such interpretations.</p> <p>It is proposed to issue a circular on the basis of the Advance Ruling of AAAR, Odisha.</p>
23.	To exempt GST on National Permit Fee paid on the vehicles for granting National Permits for goods carriage.	<p>National Permit fee is not a consideration for any service provided and is actually in the nature of a tax.</p> <p>The fee deposited in the National Permit account is distributed on pro rata basis among all states and Union Territories shows that the same is not consideration for any service provided by any state Government /UT for grant of National Permit.</p>	<p><b>Recommendation: GST on National Permit Fee charged for granting permit to a goods carriage to operate through-out India/contiguous States, may be exempted.</b></p> <p>The Fitment Committee generally was of the view that national permit fee is not a tax but a fee or consideration for a service supplied by the Government in the form of grant of national permits for plying of vehicles.</p> <p>The fitment Committee, however felt that National permit fee may be specifically exempted from GST as this fee replaced a levy in the nature of tax levied by the states earlier on entry of vehicles in their states.</p>
24.	<p>To make ECOs such as Swiggy and Zomato liable to pay GST on restaurant service supplied through them.</p> <p>Or</p> <p>To declare ECOs as deemed supplier of restaurant service.</p>	A detailed note on the issue is annexed.	<p><b>Recommendation: ECOs such as Swiggy and Zomato may be made liable to pay GST on restaurant service supplied through them. Restaurant service may be specified under section 9 (5) of the CGST Act. However, services supplied by restaurants located in premises providing ‘hotel accommodation’ services having declared tariff of Rs. 7500/- and above per unit per day may be excluded.</b></p> <p>This change may be given effect to from 01.01.2022 so as to allow the ECOs time to make changes to their software etc.</p>
25.	Scope of the term ‘in	Entry 3 of Notification	<b>Recommendation: To resolve</b>

Sl. No.	Proposal	Justification	Comments
	<p>relation to' for entries at Sl. No. 3 and 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 may be clarified.</p>	<p>No. 12/2017-Central Tax (Rate) dated 28.06.2017 exempts from GST, "<i>Pure services .....provided to .....by way of any activity <u>in relation to</u> any function entrusted to a Panchayat under article 243G of the Constitution .....</i>"</p> <p>Similarly, entry 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 exempts from GST, "<i>Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. ... provided to ..... by way of any activity <u>in relation to</u> any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.</i>"</p> <p>In the previous Fitment Committee meeting, it was decided that the Scope of the term 'in relation to' would be further examined in the next meeting. West Bengal was requested to send a draft clarification on the issue.</p>	<p><b>disputes regarding interpretation of the exemption entries at Sl. No. 3 and 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, which exempt pure services and composite supplies (having 25% or less goods component) to Government, Local Authorities etc. in relation to Municipal and Panchayat functions, list of services which are exempt thereunder may be clearly specified. The following list of services were agreed to be specified as exempt under the said entries:</b></p> <ol style="list-style-type: none"> <li><b>1. Agricultural operations, including agricultural extension.</b></li> <li><b>2. Land improvement, implementation of land reforms and soil conservation.</b></li> <li><b>3. Minor irrigation, water management and watershed development.</b></li> <li><b>5. Supply of drinking water.</b></li> <li><b>6. Education, including primary and secondary school education.</b></li> <li><b>7. Adult and non-formal education.</b></li> <li><b>8. Healthcare and sanitation.</b></li> <li><b>9. Family welfare.</b></li> <li><b>10. Women and child development.</b></li> <li><b>12. Water supply for domestic, industrial and commercial purposes.</b></li> <li><b>13. Public health, sanitation conservancy and solid waste management.</b></li> </ol> <p><b>The above change may be implemented from 1<sup>st</sup> January, 2022.</b></p> <p><b>2. Simultaneously, a clarification may be issued for the past</b></p>

Sl. No.	Proposal	Justification	Comments
			<p><b>indicating that the intention was to exempt only the above services.</b></p> <p>The issue was discussed in depth. It was felt that issuing a clarification that only those services which are directly and integrally in relation to municipality or panchayat functions may not resolve the issue. It would lead to disputes as to what is directly or integrally connected with the functions specified in schedule 11 or 12 of the constitution.</p> <p>It was also felt that giving too liberal an interpretation to the exemption or leaving it to the government or local authorities to interpret what service is in relation to the functions specified in 11<sup>th</sup>/12<sup>th</sup> schedule may lead to different tax treatment of the same supply by different governments and the local authorities.</p> <p>Entries at Sl. No. 3 and 3A of Notification No. 12/2017-Central Tax (Rate) are being interpreted too widely. The intention was to exempt services which are directly connected with the functions entrusted to Panchayat or Municipality and not services remotely or vaguely connected with those functions such as consultancy, surveying, advertising or designing service etc.</p>
26.	(a) To prescribe End-use certification system / form for notification number 12/2017-CT (Rate) [entry no. 3], which exempts pure services provided to Government, Local Authority in relation to Municipality functions.	Under notification number 12/2017-CT (Rate) [entry no. 3], “pure services” provided to the Government or Local Authority or a Government authority by way of any activity in relation to any	<b>Recommendation: As at Sl. No. 25 above</b>

Sl. No.	Proposal	Justification	Comments
		<p>function entrusted to a Panchayat under Article 243G of the Constitution or to a Municipality under Article 243W of the Constitution are exempt from levy of GST.</p> <p>Law Committee has decided that the expression “in relation to” has a wide meaning and therefore the exemption would cover all services such as advertisement in the print media for floating a tender for laying water pipeline, contract for counting the number of trees, survey of number of people living below the poverty line, services by consulting engineers, project management consultants for mono-rails, metro rails, roads etc.,</p> <p>As the suppliers of services to the Panchayat or Municipality are not in a position to know whether the services supplied are really in relation to a function entrusted to a Panchayat or Municipality, some sort of end-use certification system / form be devised which will be issued by the Panchayat / Municipality inter-alia declaring that the services supplied to them are in relation to a</p>	

Sl. No.	Proposal	Justification	Comments
	<p>(b) Request to clarify that the services of hiring manpower by Cantonment Board for providing services of health, public garden, promotion of education etc. which are the functions entrusted to Municipality under Article 243W of the Constitution are exempt from GST</p> <p>‘Cantonment Board’ is a local municipal authority, defined under Section 10(2) of the Cantonment Act, 2006.</p>	<p>function entrusted under the Constitution as referred to above.</p> <p>“Pure services” provided to the Government or Local Authority or a Government authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or to a Municipality under Article 243W of the Constitution are exempt from levy of GST.</p> <p>They hire various manpower for providing various services in relation to functions entrusted to Municipality under Article 243W of the Constitution such as they hire contractual Doctors, lab attendants, pharmacists, staff nurses etc. for providing health services; mali, chowkidars for providing public gardens; contractual teachers, safaiwala etc. for promoting education; electrician, helpers etc. for providing street lighting.</p> <p>All these functions are delegated to municipality and the services of manpower is received to fulfill</p>	

Sl. No.	Proposal	Justification	Comments
	<p>(c) To clarify that the services provided by the implementing agency, i.e. CSC-SPV, provided to MoSPI that activity of “Enumeration &amp; Supervision” is exempt from GST under exemption entry 3 of notification No. 12/2017-CT(R) dated 28.06.2017.</p>	<p>these functions by the Cantonment.</p> <p>The Ministry of Statistics and Programme Implementation (MoSPI) has engaged the CSC e-Governance Services India Ltd, a Special Purpose Vehicle (hereinafter referred as CSC-SPV) of the Ministry of Electronics and Information Technology, as implementing agency for the conduct of 7th Economic Census (EC).</p> <p>Economic Census is a periodic exercise undertaken to measure the spread and penetration of the economic activities across the country through door to door survey in prescribed questionnaire form.</p> <p>The activities to be carried out by the implementing agency along with approved cost for each of the components are as under:</p> <ol style="list-style-type: none"> <li>1. Enumeration &amp; Supervision (through door to door visit throughout country).</li> <li>2. Training and assessment of the Enumerators &amp; Supervisors engaged in field work of EC.</li> </ol>	

Sl. No.	Proposal	Justification	Comments
		<p>3. Deployment of manpower to assist MoSPI and State/UT Governments in 7th EC activities.</p> <p>4. Helpdesk and Call-centre support.</p> <p>5. Awareness and sensitization</p> <p>6. Project Management Charges (@ 8% of project cost)</p> <p>With respect to tax liability admissible on the aforementioned components, the implementing agency has informed that the collection of data and supervision component is not liable to draw tax under GST as per notification No.12/2017- Central Tax (Rate) New Delhi dated 28th June, 2017 (Sl. No. 3).</p>	
	<p>(d) To clarify that the services of spatial planning study, provided by the institutes to Ministry of Panchayati Raj is exempt from GST under exemption entry 3 of notification No. 12/2017-CT(R) dated 28.06.2017.</p>	<p>The Ministry of Panchayati Raj, in collaboration with 16 architecture as well as engineering institutes has taken up the initiative for Gram Panchayat Spatial Development Planning on pilot basis.</p> <p>The proposed study seeks to set out a framework as to how a particular area in the panchayat can be developed taking into account available</p>	

Sl. No.	Proposal	Justification	Comments
		<p>resources. It seeks to promote decentralized planning with strengthening of local identity to create a framework for future policy decisions.</p> <p>As the ongoing spatial planning study seeks to enable panchayats to function as institutions of self-government in accordance with Article 243G of the Constitution.</p>	
27.	To clarify about liability of GST on Man Power Supply Services received by Panchayats, Municipalities and Local Bodies	<p>Notification No 12/2017 Central Tax-Rate dated: 28-06-2017 exempts certain services from the levy of central tax and similar notifications are issued by the state. Entry No. 3 of the said notification reads as under:</p> <p><i>“3.Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union Territory or local authority or a Governmental Authority by way of any activity in relation to any function entrusted to a Panchayat, under Article 243 G of Constitution or in relation to any function entrusted to</i></p>	<b>Recommendation: As at Sl. No. 25 above</b>

Sl. No.	Proposal	Justification	Comments
		<p><i>Municipality under Article 243-W of Constitution.”</i></p> <p>In this regard any pure service related to those functions entrusted to a panchayat under Article 243 G of Constitution and those entrusted to Municipality under Article 243-W of Constitution are exempted.</p> <p>Many of Panchayats, Municipalities and Local Bodies are Obtaining Manpower like Computer Operators and office Personnel who are not directly related to service are received by these bodies. Such services has held not to be directly related to the functions entrusted to Panchayat under Article 243 G of Constitution and those entrusted to Municipality under Article 243-W of Constitution and hence tax was collected from such local bodies and Government Departments by the Contractors.</p> <p>In view of the above a clarification may be issued on the scope of</p>	

Sl. No.	Proposal	Justification	Comments
		the words “ in relation to” in the interest of uniformity across the country	
<b>View to be taken by GST Council</b>			
28.	<p>To exempt GST on the following facilities provided to the members and ex-members of the Legislative Assembly, Secretariat, at Bengaluru</p> <p>a) Accommodation at Legislators Home Complex at nominal rent</p> <p>b) Conveyance within BBMP agglomeration limits with nominal rate per km</p> <p>c) Health Club for exclusive use of members and ex-members at nominal rate</p> <p>d) Commercial Establishments for essential needs of members like laundry, Bookshops, Railway/ KSRTC reservation counters, hotel, bakery given to private parties on rent</p>	<p>Hon’ble Home Minister and GST Council Member from Karnataka State in his note dated: 02-02-2021 has informed that the above facilities are provided by Karnataka Legislative Assembly Secretariat to their Hon’ble Members and ex-members to effectively discharge their constitutional duties and responsibilities as public representative and therefore collecting GST from them does not arise and requested to consider the proposal of exempting income earned by Karnataka Legislative Assembly Secretariat by excluding the above facilities provided to Hon’ble members and ex-members from the ambit of GST with retrospective effect.</p> <p>The Government is not considered to cover the Legislature as the Parliament and Legislative Assemblies and Council have their own secretariat and are providing services. Services provided by</p>	<p>Similar request for exemption for Parliament Secretariat was discussed in the 25<sup>th</sup> meeting of GST Council. The Council decided not to exempt the same observing that the law regarding registration was approved by the Parliament itself and it need not seek exemption from the same. The Council further observed that the pick-up charges by road for MPs was very small and they could afford to pay tax on the same.</p> <p>On the same reasoning, exemption may not be merited in this case too. However, GST Council may take a view.</p>

Sl. No.	Proposal	Justification	Comments
		<p>Government (Executive) and the Judiciary are exempted whereas the services provided by Legislature Secretariats are not specifically exempted.</p> <p>Further, the main issue relates to transportation services provided – whether it amounts to renting of vehicles or transportation of passengers.</p>	
29.	<p>To exempt Entry tickets, viewing gallery tickets, bus services and other services provided by Sardar Vallabhbhai Patel Rashtriya Ekta Trust (SVPRET) from GST.</p>	<p>Sardar Vallabhbhai Patel Rashtriya Ekta Trust (SVPRET) sponsored by the Govt. of Gujarat is managing the national project of “Statue of Unity”. The statue of unity is a memorial to the great Indian patriot and freedom fighter – Sardar Patel in the form of 182mtr high statue- the tallest in the world.</p> <p>This project will help to promote tourism in Gujarat as it is one of the major tourism destinations. On an average 15000 tourist are expected to visit this memorial daily. Since it is double the height of New York’s world-famous Statue of Liberty, decent number of foreign tourists are also likely to visit.</p>	<p><b>Recommendation: GST Council may take a view.</b></p> <p>1. Notification No. 47/2017-CT(Rate) under Sl. No. 79A has exempted services by way of admission to a protected monument so declared under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or any of the State Acts, for the time being in force.</p> <p>2. Section 2(1) of the Gujarat Ancient Monuments and Archaeological Sites and Remains Act, 1965 defines “ancient and historical monument” as <i>“any structure, erection or monument, or any tumulus or place of interment, or any cave, rock sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than one hundred years-,”</i></p> <p>3. Also, “protected monument” means an ancient and historical monument which is deemed or declared to be protected monument by or under this Act as per Section 2(12) of the Act.</p>

Sl. No.	Proposal	Justification	Comments
			<p>Section 4 of the Act empowers the State Government to declare ancient monuments to be protected monuments. SVPRET does not fall under the category of Ancient Monument or Protected Monument.</p> <p>4. A view may be taken</p>

**Suggestions on Committee on E-Commerce Sectoral study of E-Commerce Operator (ECO) and Suppliers/ECOs dealing in Foods delivery etc. such as Swiggy and Zomato**

**As-Is State:**

1. Restaurants charge and deposit 5% GST on the supply of services including supply of food and beverages. There is no ITC available to restaurants on this supply. Further, services upto Rs. 20 lacs have been exempted from registration under the Act. This exemption for services was extended to inter-State supply of services and supply through E-Commerce operators also.
2. It may also be noted that food aggregators such as Swiggy and Zomato are registered under Section 52 as tax collectors at source. It was noticed in one of the cases that a small pizza company in Haryana had a taxable turnover gap of more than Rs. 6 Crore in the turnover declared by Swiggy / Zomato in their GSTR-8 and the turnover declared by the said company in its GSTR-3B.
3. The committee observed there was no mandatory registration check by Swiggy / Zomato and there were restaurants supplying through Swiggy / Zomato which were unregistered.
4. It may be noted that even though the rate of tax is low but since food delivery is a flourishing business and the volumes are high, the amount of tax evasion is also high.
5. It is also seen that supply of food through such aggregators have increased especially in Covid times.

**Gap:**

6. In the State of Haryana, the data for Zomato, from October 2018 to December 2020 was analyzed and it was found that the gap in taxable turnover for suppliers where TCS deducted by Zomato was greater than turnover declared by such suppliers is **101 Cr.** Therefore, evasion of tax amount is around Rs. **5.20 Cr.**
7. In the State of Haryana, the data for Swiggy, from October 2018 to December 2020 was analyzed and it was found that the gap in taxable turnover for suppliers where TCS deducted by Swiggy was greater than turnover declared by such suppliers is **91 Cr.** Therefore, evasion of tax amount would be **4.5 Cr.**
8. It is important to note that this turnover may be much higher since there may be domestic supplies of these restaurants which may also not be reported.
9. It may be noted that since these are small restaurants which may be popular through social media but exists in small inaccessible places, it is difficult to detect and recovery tax revenues.
10. The concept of cloud kitchen was also discussed by the Committee and it was observed that most of these kitchens do not have a customer interface / dine-in facility, therefore, administration of taxes in such places which do not exist formally is difficult. It was also discussed that many of such kitchens show very high turnover.
11. It was also discussed that many of the restaurant businesses may not require extensive capital investment and may exist as mom and pop store which are started for very short period on experimental basis and then closed. Government of Haryana gave examples of two restaurant owners from other State who did supply of more than Rs. 4.5 Cr and Rs. 1.8 Cr in the State and are now untraceable.
12. It was discussed that in most of the cases the tax was being collected but it was not paid to the Government since the onus of return filing was on the restaurant owner. In many cases, the restaurant owner does not file his return or adjusts the tax collected through ECO in his domestic supplies.

13. It was discussed that an alternate mechanism to collect taxes at the time of supply should be devised.

**Options to increase tax compliance:**

**(A) Option 1: To notify ECO as aggregator under section 9 (5) of the Act.**

14. E-Commerce companies such as Swiggy / Zomato involved in supply of foods may be notified as E- Commerce Aggregators under Section 9(5) of the GST Act. Section 9(5) is reproduced as under :-

*Section 9 (5): The Government may, on the recommendations of the Council, by notification, **specify categories of services** the tax on **intra-State supplies** of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:*

*Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:*

*Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.*

It is pertinent to note that Section 9(5) can only be applied for **supply of services** and for **intra-State** supply of services.

15. It may be noted that the place of supply of restaurant services is the location where the services are actually performed i.e. the location of the restaurant itself.
16. Therefore, the services of supply, by way or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration may be notified as a category of service under Section 9(5) of the CGST / HGST Act.

**Exclusion of supply of certain goods though being food or any other article for human consumption or any drink**

17. It may be noted that other than restaurant services, there are goods such as ice cream, bakery items, chocolates etc. which are also supplied through online platforms such as Swiggy and Zomato. However, since there may be classification disputes in these items as now the online platform will be liable for classification and payment of taxes, the 9(5) levy may be restricted to restaurant services only.

**Exclusion of certain restaurant services**

18. Further, restaurants within hotel where the room tariff is more than Rs. 7500 may be excluded from this levy as the rate of tax is 18% for such supplies.
19. Currently, no separate GST return has been prescribed for Aggregators (Section 9(5) of the GST Act). In future, if it is decided that supply of food through E-Commerce will be converted into aggregators then a separate return will have to be prescribed for aggregators where GSTIN wise details of supply on which tax is being collected and paid by the E-Commerce operator will have to be declared. This return will be similar to GSTR-8 (TCS) return.

20. However, for complete data analysis the supply on which tax has been collected and paid by the ECO has to be declared somewhere by the restaurant in his GSTR-1 and GSTR-3B. This is to ensure that the restaurant continues to pay his taxes on non-ECO supplies. Alternatively, similar to the treatment of other aggregators, the supply on which tax has been collected as aggregator may not be declared by the restaurant in his GSTR-3B at all. This will ensure simplicity of compliance and return filing.
21. It may be noted that Notification 65/2017-CT dated 15<sup>th</sup> November 2017 extends the 20-lakh turnover (exemption) limit exempted for a person who supplies services through ECO. This limit is not applicable to those supplying under Section 9(5) of the GST Act. It is recommended that at the time of drafting the notification etc. it may be taken care that all restaurant services irrespective of the turnover fall under the aggregator category.
22. It may also be noted that currently aggregators are not paying any GST on delivery services stating that their delivery partners (mostly unregistered) are giving directly to their customers. The assumption is that since most of the electric partners will individually be less than Rs. 20 lacs therefore, there is no need of registration for them. It may be noted that the end customer does not have a choice of choosing the delivery partner, further, there is no invoice raised by the independent delivery partner to the end customer. The invoice, payment, refund and the entire lifecycle of the transaction is managed by E-Cos such as Swiggy and Zomato. Therefore, it is recommended that the E-Cos may also be made aggregators for such delivery services.
23. GSTN was requested to analyze the difference the taxable turnover gap between GSTR-8 (TCS) and GSTR-3B return for only those supplies who are supplying through Swiggy / Zomato. However, the turnover difference of all GSTR-8 and GSTR-3B was analyzed. The following results were obtained :-

FY	Difference between GSTR-3B and GSTR-8	Count of GSTINs	Total value in GSTR-8	Total value in GSTR-3B	Total Difference
2020-21	Upto 1000	23,218	358.29	357.29	0.99
2020-21	1000 to 10,000	40,053	781.98	765.59	16.38
2020-21	10,000 to 50,000	31,003	1,337.58	1,260.63	76.95
2020-21	50,000 to 1,00,000	12,382	861.40	772.15	89.25
2020-21	1 Lakh to 5 Lakhs	25,570	3,330.23	2,717.52	612.72
2020-21	5 Lakhs to 10 Lakhs	8,156	1,916.70	1,338.64	578.06
2020-21	10 Lakhs to 25 Lakhs	7,572	2,894.71	1,702.60	1,192.11
2020-21	25 Lakhs to 50 Lakhs	3,216	2,314.78	1,201.09	1,113.69
2020-21	50 Lakhs to 1 Crore	1,591	1,913.66	824.64	1,089.02
2020-21	Above 1 Crore	825	5,510.74	2,881.86	2,628.89
FY	Difference between GSTR-3B and GSTR-8	Count of GSTINs	Total value in GSTR-8	Total value in GSTR-3B	Total Difference
2019-20	Upto 1000	15,453	276.57	275.90	0.67
2019-20	1000 to 10,000	26,732	535.92	524.93	10.99
2019-20	10,000 to 50,000	21,316	883.37	829.83	53.54
2019-20	50,000 to 1,00,000	9,245	588.48	521.86	66.63
2019-20	1 Lakh to 5 Lakhs	19,516	2,207.03	1,738.04	468.98
2019-20	5 Lakhs to 10 Lakhs	6,166	1,386.91	948.64	438.27
2019-20	10 Lakhs to 25 Lakhs	5,919	2,243.16	1,308.91	934.25
2019-20	25 Lakhs to 50 Lakhs	2,678	1,871.47	930.68	940.79
2019-20	50 Lakhs to 1 Crore	1,566	1,928.22	843.81	1,084.42
2019-20	Above 1 Crore	1,104	6,710.63	2,939.85	3,770.78

It may be noted that the total taxable gap for the country in 2019-20 and 20-21 is **Rs. 15,167 Crores**. If average tax rate of 12% is assumed that is tax loss of **approx. Rs. 2000 Crores**.

**(B) Option 2: To notify ECO as deemed supplier under the Act:**

**24. Details of Proposal:**

**(i) Declaring two separate supply:**

- (a) Present supply of food material from restaurant (or supplier of goods e.g. drinks) to consumer through E-commerce Company may be declared as two separate supplies i.e. supply from restaurant (or supplier other than restaurant) to ECO (**Supply-1**) and then supply from ECO to consumer (**Supply-2**).
- (b) Thus, this option declares ECO as deemed supplier, and not as an aggregator.

**(ii) Rate of tax and admissibility of ITC for supply-1:**

- (a) No change in rate of tax and admissibility of ITC with respect to supply of food by restaurant and by supplier on supply of goods e.g. drinks.
- (b) Rate of tax on restaurant service (i.e. supply-1) will be as per the present provision of law i.e. 5% without ITC and 18% with ITC.
- (c) Rate of tax on supplies other than restaurant services will also be as per the present provision of law say on supply of ice cream, rate of tax will be 18% with admissibility of ITC.

**(iii) Rate of tax and admissibility of ITC for supply-2:**

- (a) **Rate of tax:** We may notify uniform rate of 5% on all supplies of food materials made by ECO, whether it is supply of food through restaurant services or supply of other goods (i.e. cold drinks, ice-cream, bakery items, chocolates, etc.)
- (b) **Admissibility of ITC:**
  - I. Admissibility of ITC on restaurant service or any food material: It will be restricted to the extent of 5% of value of restaurant services or any food material (i.e. drinks, ice-cream, bakery items, chocolates, etc.).
  - II. Admissibility of ITC on any services other than restaurant services and any goods other than food material: ITC will not be admissible on any services other than restaurant services i.e. IT services, man-power services, renting of premises, etc. or on any goods other than food material i.e. AC, furniture etc.

**25. Why this option is preferable:**

- (i) It is very simple option and doesn't distinguish between restaurant services and other food material.
- (ii) As rate on outward supply is same, there will be no issue relating to classification of goods.
- (iii) As ITC to the extent of 5% of the value of inward supply of restaurant service or any food material is admissible and other ITC is not admissible, computation of net tax liability is simple.
- (iv) There is no clarity how to treat supply from restaurant to ECO **in option 1** especially in cases where restaurant is registered person.
- (v) In option-1, ECO will not be eligible to avail ITC as rate is 5% without ITC. This will considerably reduce their profit margin. Therefore, this may not be acceptable to them.
- (vi) Though revenue to Government is less, model is clean, as it considers ECO as deemed supplier and therefore possibility of tax evasion is negligible.
- (vii) In future, other supply through ECOs may be declared as separate supply which may

assure tax compliance.

26. **Issue involved in preferring this option:**

- (i) It requires amendment in the Act, therefore its implementation may take longer time.
- (ii) It may generate fear among other ECOs such that they may be declared as deemed supplier in future.

## Issues where no change has been proposed by the Fitment Committee in relation to services

Sl. No.	Proposal	Justification	Comments																																					
1.	GST on transportation of goods through multimodal transportation, particularly involving a coastal leg may be reduced from 12% to 5%	5% GST is levied on transportation of goods through road, rail, vessels and pipeline. However, 12% GST is levied if goods are transported by multimodal mode (involving two or more modes of transportation). Thus, single mode transportation is being preferred by the industry. As a result, the saving (in fuel, time, and expense) through coastal movement or multimodal transport becomes zero or negative. This anomaly is a discouraging factor for multi-modal transport.	<p>The existing rate structure of transport of goods is as under:</p> <table border="1"> <thead> <tr> <th>Service Description</th> <th>Rate</th> <th>Condition</th> </tr> </thead> <tbody> <tr> <td colspan="3"><b>By Vessel</b></td> </tr> <tr> <td>In a vessel from a place outside India to customs station of clearance in India</td> <td>5</td> <td rowspan="2">No ITC of Input Goods except on vessels/ bulk carriers and tankers</td> </tr> <tr> <td>In a vessel, coastal transport</td> <td>5</td> </tr> <tr> <td>In a vessel from customs station of clearance in India to a place outside India</td> <td>Nil</td> <td>-</td> </tr> <tr> <td>By Inland Waterways</td> <td>Nil</td> <td>-</td> </tr> <tr> <td colspan="3"><b>By Rail</b></td> </tr> <tr> <td>By Rail [other than in containers by anyone other than Indian Railways]</td> <td>5</td> <td>No ITC of Input Goods</td> </tr> <tr> <td>In containers by anyone other than Indian Railways</td> <td>12</td> <td>-</td> </tr> <tr> <td colspan="3"><b>By Road</b></td> </tr> <tr> <td rowspan="2">By GTA</td> <td>5</td> <td>No ITC of Input Goods and Services</td> </tr> <tr> <td>12</td> <td>With ITC</td> </tr> <tr> <td><b>Multimodal</b></td> <td>12</td> <td>With ITC</td> </tr> </tbody> </table> <p>GST is a value added tax and availability of ITC of tax paid on inputs and input services at each stage of value addition is its fundamental feature. Seamless ITC chain helps. Therefore, multimodal transport may continue to be taxed at 12% with full ITC as it is not comparable to</p>	Service Description	Rate	Condition	<b>By Vessel</b>			In a vessel from a place outside India to customs station of clearance in India	5	No ITC of Input Goods except on vessels/ bulk carriers and tankers	In a vessel, coastal transport	5	In a vessel from customs station of clearance in India to a place outside India	Nil	-	By Inland Waterways	Nil	-	<b>By Rail</b>			By Rail [other than in containers by anyone other than Indian Railways]	5	No ITC of Input Goods	In containers by anyone other than Indian Railways	12	-	<b>By Road</b>			By GTA	5	No ITC of Input Goods and Services	12	With ITC	<b>Multimodal</b>	12	With ITC
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Sl. No.	Proposal	Justification	Comments
			<p>GTAs, most of whom are small players.</p> <p>Fitment Committee does not recommend any change.</p>
2.	<p>To amend Circular No. 354/119/2017-TRU (Pt) dated 07.07.2017 which exempts interstate movement of goods between distinct persons to include supply of services between distinct persons also.</p>	<p>The nature of GTA services mainly consist of booking Less than Truck Load (LTL) consignments from various customers in booking offices, aggregating the said consignments at applicable trans-shipments Hubs, transport of these consignments to an earmarked trans-shipment hub, redistribution of consignment to nearest delivery office and finally delivery of consignment to end customer.</p> <p>To conduct this entire operation, there is a network of many trans-shipment hubs and various branches/agencies.</p> <p>Under GST regime GSTIN has to be obtained in all the states, in which firm operates. The revenue is considered as taxable in the booking state where the goods are accepted for purpose of transportation. To complete the entire service the booking</p>	<p>The issue arises as GTA service attracts 5% on reverse charge without ITC. There is a need to resolve this issue to avoid double taxation. However, service provider has option to avail 12% rate with ITC which resolves this issue.</p> <p>Fitment Committee does not recommend any change for present.</p>

Sl. No.	Proposal	Justification	Comments
		state has to depend on various transshipment hubs and delivery offices located in other states. These units are considered as distinct entity/person under GST Law.	
3.	<p>1. Allow the airlines to pay GST on inputs and input services such as, aircraft lease rentals, MRO costs, computer reservation system (CRS) and global distribution system (GDS) charges under RCM, through utilization of input tax credit (ITC).</p> <p>2. Abolition of GST of 5% on import of owned aircrafts and lease payments on leased aircraft and Engines.</p> <p>3. Increase output GST liability to 12%.</p>	<p>Obligation to discharge GST liability on certain substantial costs such as, aircraft lease rentals, MRO costs, computer reservation system (CRS) and global distribution system (GDS) charges under RCM is leading to huge cash outflow for airlines, especially at this time when airlines are operating at less than 50% of their total capacity and facing liquidity and financial challenges</p> <p>It has been stated that airlines have inverted duty structure as output is subject to 5% GST but most of the Goods and Services are subject to 18% GST, resulting in large accumulation of credits. Therefore, it is recommended to increase output GST to 12%.</p>	<p>This request of the Civil Aviation industry has been driven by their desire to utilize the accumulated ITC. Examination of ITC ledgers and monthly returns, filed by 3 major airlines (Indigo, Spice Jet and Air India) at Delhi, Mumbai and Chennai reveals that they have mostly discharged their entire outward tax liability through ITC and even after discharging their entire tax liability, they have substantial accumulated ITC left in their ledgers. The reason of overflow of ITC in the aviation sector mainly is the low rate of 5% levy on economy class travel and availability of ITC of input services at this rate. Most of their major expenditure is towards input services which comprises aircraft lease rentals, MRO, airport charges etc.</p> <p>Structural change is required for civil aviation sector. All their output services could be taken to 12%. However this may not be feasible in present situation of civil aviation sector.</p> <p>Fitment Committee does not recommend any change.</p>
4.	Proposal for issuing a corrigendum to the Circular No. 34/8/2018-GST dt. 01.03.2018 by TRU clearly stating that considerations in	<p>Viewpoint 1:</p> <p>1. Rental of electric meters does not involve any transfer of property in goods</p>	<p>Circular No. 34/8/2018-GST dt 01.03.2018 clarified that:</p> <p><i>“Issue: Whether the activities carried by DISCOMS against recovery of charges from consumers under State Electricity Act</i></p>

Sl. No.	Proposal	Justification	Comments
	<p>respect of</p> <p>(i) rental charges against electricity meter;</p> <p>(ii) application fees for providing electricity connection;</p> <p>(iii) testing fees for meters/transformers/capacitors;</p> <p>(iv) labour charges from customers for shifting of meters/service lines &amp;</p> <p>(v) charges for duplicate bills;</p> <p>provided by Electricity distribution companies being essentially &amp; directly related to services of “Transmission or distribution of electricity by an electricity transmission or distribution utility”, are also exempted from levy of GST.</p>	<p>but only a right to use given to the customer by the distribution company. Thus, such rental is also a service as per Sl. No. 5(f) of Schedule II of the CGST/SGST Acts, 2017.</p> <p>2. Notification No. 32/2010 - ST dated 22.06.2010 exempted “the taxable service provided to any person, by a distribution licensee, a distribution franchisee, or any other person by whatever name called, authorized to distribute power under the Electricity Act, 2003(36 of 2003), for distribution of electricity, from the whole of service tax leviable thereon under section 66 of the said Finance Act.”</p> <p>3. Notification No. 11/2010-ST dated 27.02.2010 exempted “the taxable service provided to any person, by any other person for transmission of electricity, from the whole of service tax leviable thereon</p>	<p><i>are exempt from GST?</i></p> <p><i>Clarification: Service by way of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST under notification No. 12/2017- CT (R), Sl. No. 25.</i></p> <p><i>The other services such as, -</i></p> <p><i>i. Application fee for releasing connection of electricity;</i></p> <p><i>ii. Rental Charges against metering equipment;</i></p> <p><i>iii. Testing fee for meters/ transformers, capacitors etc.;</i></p> <p><i>iv. Labour charges from customers for shifting of meters or shifting of service lines;</i></p> <p><i>v. charges for duplicate bill;</i></p> <p><i>provided by DISCOMS to consumer are taxable.”</i></p> <p>2. However, Hon’ble HC of Gujarat in case of Torrent Power Ltd Vs Union of India [Special Civil Application No. 5343 of 2018] dated 19.12.2018 has struck down the para 4(1) of the Circular No. 34/8/2018-GST dt 01.03.2018 as ultra vires the provisions of section 8 of the Central GST Act, 2017 as well as Notification No.12/2017- CT (R) serial No.25.</p> <p>3. The matter is pending for hearing before Hon’ble Supreme Court [24733 of 2019 in case of Union of India Vs Torrent Power Limited]. As the issue involves questions of law related to composite supply, the Apex Court may take suitable decision on the pending appeal.</p> <p><b>Fitment Committee does not recommend any action as matter is sub-judice.</b></p>

Sl. No.	Proposal	Justification	Comments
		<p>under section 66 of the said Finance Act.”</p> <p><b>4.</b> It may also be stated in this context that a similar view was taken by the same TRU in a Service Tax Circular No. 131/13/2010-ST dt.07.12.2010.</p> <p>Viewpoint: 2</p> <p><b>5.</b> These services are all intrinsic parts &amp; parcel of the electricity distribution service itself and cannot be treated in isolation of such distribution service.</p> <p><b>6.</b> So, as per the definitions above, such services as stated in Paras 1 &amp; 2 above, form a part of a composite supply as per S. 2(30) where the predominant supply is electricity distribution service.</p> <p><b>7.</b> Electricity distribution service being exempted from GST, as discussed in Para 10, the tax on such composite supply will also thus be exempted, based on the principle of</p>	

Sl. No.	Proposal	Justification	Comments
		<p>GST levy on composite supplies based on principal supply.</p> <p>8. The same principles have been upheld by the Hon'ble High Court of Gujarat in the order dated 19.12.2018 in the case of TORRENT POWER LTD. versus UNION OF INDIA [R/SPECIAL CIVIL APPLICATION NO. 5343 of 2018].</p>	
5.	To allow ITC on works contract, goods and services on construction of immovable property	<p>ITC pertaining to works contract services or supply of goods and services or both received by airport operators would not be available (except for ITC on machinery) due to restriction placed by Section 17(5) of CGST Act, 2017.</p> <p>Allowing ITC would indirectly benefit customers through reduced cost of services at the same time resolve cash flow issues faced by airports also.</p>	<p>Opening up ITC of Works Contract Service supplied for construction of immovable property, would promote procurement by businesses/ manufacturers of tax paid WCS. This would in turn encourage suppliers of WCS to procure tax paid inputs, capital goods and services. This will make manufacturing and export of goods and services more competitive.</p> <p>The proposal for opening up of ITC of WCS for suppliers of all taxable goods and services is in keeping with the cardinal principle of GST of allowing seamless flow of ITC. However, revenue implication of this proposal is expected to be of the order of magnitude of Rs 6300 crore at the same level of economic activity as in 2016-17.</p> <p>May not be accepted</p>
6.	To exempt GST on entry fee for regional language films	The Karnataka Film Chamber and Commerce Industry have raised the issue	In pre- GST regime, weighted average of entertainment tax on admission to cinema, based on GSDP data, was 30%. Further

Sl. No.	Proposal	Justification	Comments
	<p>screened on single screen.</p>	<p>of exemption of GST on regional language films like Kannada, Kodava, Tulu, Konkani and Banjara films in Karnataka. These films were exempted from payment of Entertainment tax prior to the introduction of GST.</p> <p>Representatives of the film industry have informed that due to the Covid-19 pandemic and consequent lock down, the survival of the film industry has become difficult and has requested regional films screened in single screen theatres to be exempted from GST.</p>	<p>ITC of tax paid on goods and input services were not available, taking the effective incidence to a higher level. In GST regime, ITC now being freely available, making effective rate of GST is lower than 18%.</p> <p>Further, to address the issue of regional cinema, rate has already been reduced to 12% where price of admission ticket is 100 or less and to 18% where price of admission ticket is more than Rs. 100.</p> <p>GST Council in its 16<sup>th</sup> Meeting held on 11<sup>th</sup> June 2017 has decided that, as the country is going in for One India-One Tax under GST, it might not be possible to have a lower rate in different States for different regional films. It would be better if the States reimbursed the regional film industry or the cinema theatres screening regional films in any manner that would best promote regional films.</p> <p>It was also decided by the GSTC that states may promote regional cinema by grant. WB has come up with a subsidy scheme. Fitment Committee felt that other States could also evolve similar subsidy scheme. Alternatively, State may devise suitable State specific scheme to exempt the local movie.</p> <p><b>Fitment Committee does not propose any change.</b></p>
7.	<p>To reduce GST on ropeway travel from 18% to 5%.</p>	<p>Ropeways are an important component of transport network of the country and are essential to provide last mile connectivity and mobility in hilly areas. They should not just be seen as a tourism activity</p>	<p>Transport of goods and passengers by all major modes of transport attract GST at the rate of 5% (without ITC) or 12% (with ITC).</p> <p>However, sale of cruise tickets attracts GST @ 18%. The reason behind lower GST rates on transport sector is that their major input i.e., petrol, diesel and ATF outside GST ambit. With respect to ropeway travel, one of the main inputs is</p>

Sl. No.	Proposal	Justification	Comments
			<p>electricity, which is also outside ambit of GST.</p> <p>Reducing the rate of GST to 5% without for ropeway travel will result in inversion; it will block the free flow of ITC and also increase the cost of suppliers of ropeway travel services.</p> <p>Considering the above facts and the fact that Ropeways are an important component of transport network of the country and are essential to provide last mile connectivity and mobility in hilly areas, Fitment may examine the request.</p> <p><b>No change recommended.</b></p>
8.	To ease the burden on power sector, GST on railway freight (5%) may be waived off for the year 2020-21.	To ease the burden on the power sector	<p>Transport of goods by rail is already taxed at the lower GST rate of 5% with ITC of input services. Any further reduction would not only have adverse revenue impact but also block the ITC of IR and the same will add to the cost.</p> <p><b>No change recommended.</b></p>
9.	Request for GST exemption on hiring of office space by MoSPI from the MTNL on rental basis.	MTNL has demanded 18% of GST on the advance rent paid by MoSPI. Since the GST amount is substantially high and it is to be paid from Government to a PSU, MoSPI has requested for GST exemption on the same.	<p>Presently, services of renting of space attracts standard rate of GST of 18%. Renting of space by Government from a PSU or private owner is not exempt from GST. All the Ministries of Government are paying GST on the renting service.</p> <p><b>May not be accepted.</b></p>
10.	Exempt GST on services provided by International Financial Services Centres Authority (IFSCA).	Services provided by other regulatory bodies like RBI, SEBI, PFRDA, IRDAI are also exempt from GST. IFSCA may also be exempted on similar lines.  <u>Further, they have</u>	<p>There is no blanket exemption to statutory bodies in GST. Many statutory bodies like Warehousing Development and Regulatory Authority (WDRA), Petroleum and Natural Gas Regulatory Board) are not exempt from GST. Further, the nature of work of IFSCA differs from other RBI, SEBI, PFRDA and IRDAI. Further, GST on services provided by IFSCA to business entities would be available as ITC to the</p>

Sl. No.	Proposal	Justification	Comments
		<p><u>stated that section 26 of the IFSCA Act, 2019 states as follows:</u></p> <p><i>“Nothing contained in any other law or enactment for the time being in force, in relation to taxation, including the Income Tax Act, 1961, shall make the Authority liable to pay income-tax or any other tax or duty with respect to its income, services or profits or gains.”</i></p>	<p>business entities.</p> <p>With regard to section 26 of the IFSCA Act, 2019, it may be stated that GST is a federal tax where the power to exempt any supply rests with the GST Council, which consists of members of Centre and States. The said section of the Act would not be implementable without the approval of the Council. Including such a provision in any act would be infructuous as it would not lead to exemption from state GST since it flows from respective GST acts of the states.</p> <p>Further, in terms of the Government of India (Transaction of Business) Rules, 1961 all business allotted to a Department is required to be disposed of by or under the general or special directions of the Minister in charge. In particular, any proposal having revenue implication has to be through the concerned tax legislation and not through any other Act.</p> <p>May not be accepted.</p>
11.	Request for retrospective exemption from GST on the services provided by CCI.	According to CCI, the activities performed by them are not in the nature of service qua any person or party who approaches them but are essentially for protection of competition in the market and to remove distortions, in the national interest. It has also been emphasized that the activities undertaken by the Commission are statutory obligations. The statutory duties performed by CCI cannot be equated with any economic activity pursued in general trade (or) commerce so as to attract any	<p>In pre-GST regime, it was clarified vide CBIC circular dated 13.04.2016 that any activity undertaken against a consideration constitutes a service and the amount charged for performing such activities is liable to Service Tax. It is immaterial whether such activities are undertaken as a statutory or mandatory requirement under the law and irrespective of whether the amount charged for such service is laid down in a statute or not.</p> <p>2. In GST, exemption to SEBI and IRDAI has continued. In addition, Food Safety and Standards Authority of India (FSSAI) was given exemption from GST w.e.f 27.07.2018. FSSAI had also requested for retrospective exemption from GST but the same was not acceded to by GST Council.</p> <p>3 Further, Pension Fund Regulatory and Development Authority of India (PFRDA), Warehousing Development and</p>

Sl. No.	Proposal	Justification	Comments
		<p>indirect taxation. The statutory fees deposited by the parties in respect of any information filed or for any combinations are only incidental and not in the nature of 'consideration' which is pre-requisite for being classified as any service.</p> <p>2. It has also been pointed out by CCI that other regulatory bodies like SEBI and IRDAI, have been exempted from the liability of GST. Further, specified income of CCI namely, the amount received in the form of Government grants, the fees received by them and the interest accrued on such grants and fees are exempt under Income Tax Act, 1961.</p>	<p>Regulatory Authority (WDRA) and Petroleum and Natural Gas Regulatory Board (PNGRB) had also requested for GST exemption on services provided by them. However, GST Council has rejected these exemption requests.</p> <p><b>May not be accepted</b></p>
12.	<p>To consider our long pending demand to <b>treat tourism industry as deemed exporter</b> at par with IT Industry under Export of Services based on their foreign exchange earnings by relaxing the parameters/definition of Export of Service and by changing the criteria of place of supply.</p>	<p>Tour operators are earning valuable foreign exchange for the country by organizing inbound tours. However, under GST law, the place of supply of tour operator services is not linked with the location of overseas tourist / FTO / customer (the place of supply is declared as the location where services are actually performed i.e. in India). The place of supply should be</p>	<p>It was taxed in service tax regime in similar manner. Further, relaxation in this regard may impact revenue. Relaxing definition for a particular sector is not feasible.</p> <p><b>May not be accepted.</b></p>

Sl. No.	Proposal	Justification	Comments
		<p>linked with location of foreign tourist / FTO as in the case of IT Industry.</p> <p><b>IATO Request:-</b></p> <p>The services of tour operators earning foreign exchange for the country may be accorded with the status of “export of services” outside India.</p>	
13.	Request to exempt Mega International Conference of Asian Civil Engineering Coordinating Council being hosted by Institution of Civil Engineers (India) from 21 <sup>st</sup> to 23 <sup>rd</sup> September, 2022.	<p>It is the first time this international conference is being held in India. The event will unite nearly 800 professionals from over 15 countries to discuss the latest innovations, new strategies and best practices.</p> <p>Further various ministries are already supporting this as knowledge partners.</p>	<p>This is a request for new exemption. No exemption from GST has been granted to any such conferences in any case.</p> <p><b>May not be accepted.</b></p>
14.	Request to exempt all outward supplies of goods and services made by International Crops Research Institute for semi-arid tropics (ICRISAT).	<p>ICRISAT has been recognized by Government of India as an International Organization and granted privileges, benefits and exemptions under the United Nations (Privileges &amp; Immunities) Act, 1947 through Gazette Notification No. UI/222(66)/71 dated 28<sup>th</sup> October 1972 issued by Ministry of External Affairs, Government of India.</p> <p>It has been stated by</p>	<p>Section 8 of the Schedule to UN (P&amp;I) Act, 1947 provides that, “<i>While the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.</i>” This is being achieved through Section 55 of CGST Act, 2017, as quoted above. UN (P&amp;I) Act, 1947, however, does not exempt any outward supply of the international organisations notified under it.</p>

Sl. No.	Proposal	Justification	Comments
		<p>ICRISAT that exempt provisions of UNPI Act for transactions/activities undertaken by an organization notified under UNPI Act like ICRISAT have been missed in GST Act.</p> <p>Key activities of ICRISAT include:</p> <p>a. Capacity building activities like holding scientific conferences and seminars, training and workshops, meetings, and other agriculture related events for knowledge dissemination to researchers/scientists working in public and private organizations.</p> <p>b. Technical, scientific and research assistance/ guidance to public and private organizations.</p> <p>c. Technology transfer and knowledge dissemination to public and private organizations.</p> <p>d. Disposal of old and used machinery/ equipment/ goods, used vehicles, waste and scrap etc.</p>	<p>The benefits under UN (P&amp;I) Act, 1947 were extended to ICRISAT by Ministry of External Affairs Notification vide notification dated 28<sup>th</sup> October, 1972. By virtue of being notified as a specified international organization under section 3 of UN (P&amp;I) Act, 1947, following entitlements are available to ICRISAT:</p> <p>a. ICRISAT is entitled to claim refund of taxes paid on the notified supplies of goods or services or both received by them, as provided in section 55 of CGST Act, 2017 and notified vide Notification No. 16/2017-Central Tax (Rate) dated 28th June, 2017.</p> <p>b. Import of services by ICRISAT is exempt from paying GST vide entry no. 10G of Notification No. 9/2017-Integrated Tax (Rate) dated 28th June, 2017.</p> <p>It may not be advisable to exempt output supplies of ICRISAT in isolation when UN and other international organizations are not eligible for exemption.</p> <p><b>May not be accepted.</b></p>
15.	GST exemption on freight and air freight agents' commission for air transport of agri-horti produce,	There is no GST on transportation of the said items by road or rail. It hampers growth of air cargo sector.	The matter was discussed in detail. It was felt that presently airlines are eligible to take full ITC in respect of transport of agri-horticulture produce, fruits & vegetables, fish, shrimps, flowers and perishables.

Sl. No.	Proposal	Justification	Comments
	fruits & vegetables, fish, shrimps, flowers and perishables	<p>Some remote states and NE States have ample produce of such items and air cargo is the best way to carry these perishable items and give good returns to farmers of these states.</p> <p>It will also help Govt. Krishi UDAN &amp; RCS/UDAN Schemes.</p>	<p>Exemption would block their ITC which they would pass on to recipients of service as part of the freight. An exemption may therefore, instead of helping the suppliers of the said items from north-east may actually harm them.</p> <p>Domestic transport of agricultural produce, milk, salt and food grain including flours, pulses and rice <u>by rail, vessel and road</u> is exempt vide S. No. 20 and 21 of notification No. 12/2017-CT (R) dated 28.6.17.</p> <p>Request is for extending exemption to air transport of agri-horticulture produce, fruits &amp; vegetables, fish, shrimps, flowers and perishables.</p> <p><b>May not be accepted.</b></p>

Sl. No.	Proposal	Justification	Comments
16.	To grant GST exemption to Japan International Consultants Consortium for design and consultancy work for electrical packages for Mumbai Ahmedabad High Speed Rail (MASHR) Project.	<p>National High Speed Rail Corporation Limited (NHSRCL), a SPV of Ministry of Railways (MoR), is implementing the Mumbai Ahmedabad High Speed Rail Project with technical and financial assistance in form of Overseas Development Assistance from Japan.</p> <p>For the project consultancy work Japan International Consultants Consortium is funded by Japan International Cooperation Agency (JICA) as a grant for detailed design study of MASHR project.</p> <p>Now, NHSRCL is going to engage Japan International Consultants Consortium for design and consultancy work for electrical packages for MASHR Project and have requested for exemption as the services are provided under JICA grant.</p>	<p><b>The issue was discussed in detail. It was felt that any exemption on services supplied by the consultants/sub-consultants would require them to proportionately reverse their ITC. An exemption may not help either the JICA consultants or the railways as the blocked ITC would be passed on by the vendors to JICA consultants/railways as part of cost.</b></p> <p><b>As regards the services provided by JIC (JICA Consultants) site office in India to JIC, Japan, more details would be obtained as regards markup charged by them for further examination.</b></p>

## Issues deferred by Fitment Committee for further examination in relation to services

Sl. No.	Proposal	Justification	Comments
1.	Exemption of GST payable on premium amount for long-term leases of 30 years and above executed by Government owned Institutions/ Industrial Development Corporations/ Undertakings.	<p>The Madhya Pradesh Tourism Development Corporation (MPTDC) grants long term leases of land for a period of 30 to 90 years to investors willing to invest in tourism related projects in the state. Such leases are currently not being considered within the exemption as the land in question does not lie within Industrial areas and the projects cannot be strictly termed as "Infrastructure development projects for Financial Business".</p> <p>Thus, it is proposed that Entry No 41 of the notification No. 12/2017-CT(R) be amended as follows:- <i>"Upfront amount( called as Premium, Salami, cost, price, development charges or by any other name) In respect of service by the way of granting of long-term lease of 30 years or more of plots for development of infrastructure for industry and for financial or other business, provided by the State Government Industrial Development Corporation or Undertaking or by any other entity having 20% or more ownership of Central Government, State Government, Union Territory to the industrial units or the developer."</i></p>	<p><b>Recommendation: Deferred. GoM to take a view.</b></p> <ul style="list-style-type: none"> <li>Request of GST rate reduction on long term lease by Government owned Institutions/ Industrial Development Corporations/ Undertaking is already under consideration of GoM (Real Estate).</li> <li>During GoM (Real Estate) meeting dated 21.11.19, it was, inter alia, proposed that the- <i>GST @ 5% may be levied on long term lease of land (thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by a *private person or entity, or an entity having less than 20% ownership of the Government.</i></li> <li>The said recommendation was also placed before council in 38th meeting along with other recommendations of GoM. As per para 10.12 of the minutes of 38<sup>th</sup> meeting, the council agreed to the suggestion to refer the said issue to Fitment committee and then their recommendations might be discussed in GST council for the reason that it require little more examination on the account of its cross-implication.</li> </ul>
2.	Exemption on the redevelopment of buildings in own co-operative housing society on ownership basis in Abhyuday	1. It has been decided to re-develop Abhyuday Nagar Co-operative Housing Societies Ltd. having 48 buildings and to allot occupants of these buildings	<p><b>Recommendation: Deferred. Matter is pending with GoM (Real Estate).</b></p> <p>Request to exempt the supply of construction services provided by the Co-operative Housing Society to its members</p>

Sl. No.	Proposal	Justification	Comments
	Nagar, Mumbai	<p>their own houses on ownership basis.</p> <p>2. It is claimed that there is no clarity on the GST applicable on the cost of the new alternate permanent accommodation to be provided to occupants. Earlier at the time of VAT such alternate permanent accommodation were exempted from VAT but due to GST this process of redevelopment is getting delayed.</p> <p>3. It is requested that it will be a landmark decision for the lower middle class if exemption is provided in this regard.</p>	is pending with GoM (Real Estate).
3.	Proposal to exempt the supply of construction services provided by the Co-operative Housing Society to its members.	<p>1. The Co-operative Housing Societies just reimburse the expenses incurred for procuring goods and services for construction purpose. In some cases, the Co-operative Housing Societies collect advance payment from members as per agreed term and conditions to meet the expenses to be incurred for construction of residential real estate property for the members.</p> <p>2. So, ideally there is no value addition when a Co-operative Housing Society is subsequently supplying of goods and services to the members.</p>	<b>Recommendation: Deferred. Matter is pending with GoM (Real Estate).</b>

Sl. No.	Proposal	Justification	Comments
		<p>3. But, the Co-operative Housing Society is liable to take registration since; it is providing taxable supplies to members in relation to construction of residential real estate property for the members.</p>	
4.	<p>(1) Request to reduce GST from 28% to 18% on wagering in <b>horse racing</b></p> <p>(2) Request to exclude prize money from the taxable value of <b>horse racing</b>.</p> <p>(3) Request for clarification of taxability and valuation of supply in Casinos.</p> <p>(4) Clarification on the valuation and rates of GST on Online Gaming</p>	<p>There are disputes on these issues.</p> <p>Taxing the gross value of these activities d discouraging their consumption and deviation from international practice.</p> <p>Clarity is needed on valuation and taxability</p>	<p><b>Recommendation: Deferred. Matter is pending with GoM.</b></p>
5.	<p>Removal of cascading effect of GST on Tourism Industry by charging GST on Deemed Value.</p>	<p>Cascading effect of taxes under GST has been hurting the industry's margin and consequently, business to the extent that survival of small players is under threat. Under the GST regime, tour operator services are taxed under 5% tax slab with denial of Input Tax Credit (ITC) under SAC code 9985. 5% tax on entire package value results in taxing all the input service procurements made by the tour operator once again. This has resulted in cascading of taxes in the</p>	<p><b>Recommendation: Deferred. The Fitment Committee felt that the issues relating to tour operators/ tourism sector require comprehensive examination and these would be examined in details after obtaining all relevant information.</b></p>

Sl. No.	Proposal	Justification	Comments
		<p>entire supply chain. This defeats the very purpose of GST. A tour operator typically earns a mark-up of approx. 10% of his gross billing. Thus, income of a tour operator is primarily the margin earned which should only be taxed.</p> <p>After the implementation of GST tourism has been heavily taxed and the average tax on tourism industry works out to in the range of 18% to 23%. Indian tour operators are not able to compete with the neighbouring countries. Many foreign tour operators (FTOs) have started avoiding selling India as a tourist destination and instead they are promoting our neighbouring countries like Nepal, Bhutan, Sri Lanka, Malaysia, Thailand, Indonesia, UAE and Maldives etc. where taxes are between 6-8% only.</p> <p><b>A deemed value of 10% of gross billing of the tour operator may be considered as the taxable value</b> which means effective rate of GST on the total package cost will work out to 1.8% of gross billing of the tour operator present rate of 5% GST on the gross billing is tax on</p>	
6.	Removal of GST on services provided outside India to foreign Tourists.	Many of our members while conducting tour to India for the foreign tourists include Nepal, Bhutan, Sri Lanka, Maldives and other neighbouring countries. In such tours IGST is payable on the entire package cost including services provided in neighbouring countries.	<b>Recommendation: Deferred. The Fitment Committee felt that the issues relating to tour operators/ tourism sector require comprehensive examination and these would be examined in details after obtaining all relevant information.</b>

Sl. No.	Proposal	Justification	Comments
		<p>However, IGST is fully exempted in case services are provided wholly outside India to foreign tourists and India is not part of the package tour (refer SI. No. 54 of IGST Exemption Not. No. 9/2017-IT(R) dated 28.06.2017). Also if such services are provided by the tour operator located in Nepal, Bhutan, Sri Lanka, Maldives, etc. GST is not applicable.</p> <p>GST/IGST may be fully exempted on the services provided outside India i.e. in neighbouring countries even if package includes India tour.</p>	
7.	Exempt services provided by District Mineral Foundations from GST	<p>A District Mineral Foundation (DMF) Trust is established by the State Government under section 9B of the MMDR Act, 1957, with an objective to work for the interest and benefit of persons and areas affected by mining related <u>operations by regulating receipt and expenditure from the respective Mineral Development Funds</u> created in the concerned district. They provide services related to drinking water supply, environment protection, health care facilities etc.</p>	<p><b>Recommendation: Deferred. The issue is not clear. The nature of activities undertaken by DMF may be obtained from Odisha.</b></p> <p>‘Local Authority’ has been defined u/s 2(69) of the CGST Act. It includes, among others, a Municipal Committee, a Zilla Parishad, a District Board, and <u>any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund.</u> The DMFs are constituted by the Government under a statute to supervise and regulate Mineral Development Fund created in a particular District.</p>

## **Agenda Item 15: Recommendations of the 15<sup>th</sup> IT Grievance Redressal Committee for approval/decision of the GST Council**

The 15<sup>th</sup> meeting of the IT Grievance Redressal Committee (ITGRC) was held in online mode over WebEx platform on 12<sup>th</sup> August, 2021 at 11.00 a.m. to resolve grievances of the taxpayers arising out of technical problems faced by them on GSTN portal in relation to GST compliance filings along with cases of non-technical nature.

The agenda for the 15<sup>th</sup> ITGRC meeting covered the following issues-

1. Eleven cases of TRAN-1/TRAN-2 filing pertaining to Court cases.
2. Four cases of TRAN-1/TRAN-2 filing forwarded by nodal officers in terms of the decision taken in 43<sup>rd</sup> meeting of the GST Council to take up these cases which had been received from nodal officers prior to 31/08/2020.
3. Four cases of non-technical nature as per extended scope of the ITGRC, approved during the 32<sup>nd</sup> Meeting of the GST Council; and arising out of court cases.
4. Approval of Standard Operating Procedure (SOP) for correcting Technical issues requiring data fixes through backend utilities.
5. Reversal of interest paid on delayed filing of statement in Form GSTR-8 by e-commerce operators due to technical glitches.
6. Additional Agenda containing suggested resolution procedure for Refund case of M/s Atibir Industries in WP (T) No. 4061/2019

### **2. Recommendations of ITGRC in TRAN-1/TRAN-2 Cases forwarded by the nodal officers and court cases**

The GSTN post technical analysis categorized the TRAN-1/TRAN 2 cases as:

- (A) category A1- Cases where the taxpayer received the error 'Processed with error.' As per GST system logs the taxpayer has attempted to submit first time/fresh or revise TRAN1 but could not file because of errors **or**
- (B) categories B1/B2/B3/B4/B6/B7 -where evidence of technical glitches were not observed post technical analysis. (details of categories mentioned in Annexure-2 of the minutes of 15<sup>th</sup> ITGRC

The Committee decided to recommend that:

- a. out of four cases forwarded by the nodal officers; one case falling under category A1 merits acceptance for opening the Portal for filing Tran-1 and remaining 03 cases falling under category B1 & B7 are liable to be rejected as no technical glitch was noticed by GSTN in these cases post technical analysis.
- b. out of 11 court cases; 2 court cases of TRAN-1 falling under category A1 are recommended for opening the Portal for filing Tran-1 and 08 cases of TRAN-1 & 01 case of Tran-2 falling under categories B1/B2/B3/B4/B6 are recommended for rejection.

### **3. Recommendations of ITGRC in cases forwarded by the Nodal Officers in the category of non-technical nature in terms of extended scope of ITGRC as per the 32<sup>nd</sup> GST Council meeting and as per the High Court order**

The ITGRC recommended the 03 cases of M/s Ram Auto, Madurai, M/s. Precision Gasification Service Pvt. Ltd and M/s Carl Stahl Craftsman Enterprises Pvt. Ltd. that were covered under the prescribed parameters in terms of the extended scope of ITGRC by 32<sup>nd</sup> GST Council Meeting be

allowed for opening the Portal for filing Tran-1 and the rejected the case of M/s Precision Rubber Industries as it was not covered within the prescribed parameters.

**4. ITGRC recommendation/decision on agenda for approval of Standard Operating Procedure (SOP) for correcting technical issues requiring data fixes through backend utilities**

In the agenda, the GSTN has classified the issues pertaining to data fixes in the following two categories:

- A complaint got raised by taxpayer/ tax officer,
- Result of a periodic internal and external audits.

In order to perform the data fixes, the GSTN suggested that it would perform data analysis, and confirm if the data indeed contained discrepancy. Upon confirmation of the defect, complete list of similar cases would be extracted from the system that are suspected to require data fix, and an approval note with root cause analysis would be prepared and placed before a competent authority, who would approve for the data fix including the manner in which it is to be applied.

4.1 In this sequence of activities, the GSTN had prepared a generic list of typologies of errors that could come based on the pattern noticed so far and the approving authority for allowing the correction of the errors by GSTN would be as follows:

<b>Sr. No</b>	<b>Technical issue Category</b>	<b>Modules affected</b>	<b>Type of error and knowledge of correct data</b>	<b>Approving Authority</b>
1	Technical issue with no financial implications	Such as Registration, Back office, Front Office etc.	Correct data known	Internal (SVP, GSTN)
2	Technical issue with no financial implications,	Such as Registration, Back office, Front Office etc.	Correct data not known	Internal (EVP GSTN) for resetting/ reopening the forms.
3	Technical issue affecting locally with financial implications	Such as Returns, cash ledger/ ITC ledger/ Refund etc.	Correct data known	GSTN to correct data after Internal Approval by EVP/CEO. The tax administration to be provided with MIS.

4	Technical issue affecting locally with financial implications	Such as Returns, cash ledger/ ITC ledger/ Refund etc.	Correct data not known with certainty	GSTN to correct data after internal approval by EVP/CEO. GSTN to enable the reset button so that the taxpayer can correct the form and file again. Post facto the approval of ITGRC to be taken and tax administration to be provided with MIS.
5	Technical issue affecting globally with financial implications	Such as cash ledger/ ITC ledger/ Refund etc.	Correct data not Certainly known	GSTN to enable the appropriate data fix after Approval of the ITGRC – Tax payer can reset the form and file again. The tax administration to be provided with MIS.
6	Taxpayers Claiming technical issue to be Defect	NA	No Action required– Clarification provided to the taxpayer	Not Applicable

4.2 The process to be adopted for correction by GSTN would be as follows:

- I. For most of the issues, as depicted in the above table, GSTN would be allowed to fix issues from backend with the approval of the ‘Competent Authority’ as may be approved/ nominated.
- II. For all the issues, a list with impacted GSTIN’s, CINs etc. would be prepared and shared with the competent authority as per Col. 5 above.
- III. The steps involved in the process would be:
  - a. The data discrepancy will be first analysed and confirmation will be sought from MSP
  - b. Upon confirmation, a utility will be written by MSP to extract all similar cases from GST System data stores.
  - c. A root cause analysis will be sought and fix would be implemented by MSP in consultation with GSTN to prevent further damage to data consistency.
  - d. Scripts (SQL or Java depending upon type of defect) will be prepared for data fix and would be tested in multiple cycles by MSP and GSTN.
  - e. Approval note will then be prepared and presented to competent authority for approval to go ahead.
  - f. Once approval is provided, audit entries will be created for each mutation affecting the data state.
  - g. Scripts will be executed and post execution state of data will also be stored for reference later.
  - h. List of all such changes will be presented and explained to GST policy wing & ITGRC

and periodic internal audit will also be undertaken.

4.3 The SoP, as above at para 4.1 and 4.2 was agreed by the ITGRC members and recommended for the approval by the GST Council.

**5. ITGRC recommendation on Reversal of interest paid on delayed filing of statement in Form GSTR-8 by e-commerce operators due to technical glitches.**

The following points emerged during discussion on the agenda at 15<sup>th</sup> meeting of the ITGRC:

- a. There is merit in waiver of interest being the cases analogous to the cases of waiver of fine and penalty.
  - b. There was a technical glitch in filing GSTR-8 Returns in all these cases but there was no glitch in payment of TCS amount into cash ledger.
  - c. The ITGRC recommends the waiver of interest only from the date on which deposit was made till the actual filing of the GSTR-8 statement wherever it could not happen because of technical glitch. However, in case there was delay in deposit of TCS from the due date of filing of Return, the ITGRC is not recommending waiver of interest.
  - d. ITGRC further observed that, there is no mandate for the ITGRC to consider cases of waiver/refund of interest due to technical glitch as the Circular no. 39/13/2018-GST dated 3<sup>rd</sup> April, 2018 mandates the ITGRC to recommend the cases of waiver of fine and penalty only.
  - e. Since there is no legal provision either in the GST laws for waiver or refund of interest, therefore, the decision needs to be taken by the GST Council to issue an appropriate notification under Section 148 of the CGST Act.
6. As regards the additional agenda of ITGRC containing suggested resolution procedure for Refund case of M/s Atibir Industries in WP (T) No. 4061/2019, as the same was returned by the ITGRC to GSTN for resolution through the tax administration, not being an IT issue.
7. The recommendations of ITGRC as per attached Minutes of the 15<sup>th</sup> ITGRC Meeting are placed as Annexure-A for information of the Council.
- a. The GST Council may give its approval on the TRAN-1/TRAN-2 cases and cases of non-technical nature recommended by ITGRC in para 2 and 3 above.
  - b. The GST Council may give its approval on the SOP to be adopted by the GSTN for correcting technical issues requiring data fixes through backend utilities, as per para 4 above.
  - c. GST Council may also issue suitable directions on issues raised in para 5 above, as proposed by the ITGRC.

**Minutes of the 15th IT Grievance Redressal Committee (ITGRC) meeting dated 12/08/2021 held in online mode over WebEx Platform**

The 15<sup>th</sup> meeting of the IT Grievance Redressal Committee (ITGRC) was held in online mode over WebEx platform on 12<sup>th</sup> August, 2021 at 11.00 am. The list of Committee officers who attended the meeting is attached as **Annexure-1**.

2. Ms. Ashima Bansal, Joint Secretary, GST Council Secretariat, initiated the proceedings of the meeting with the approval of the Chair. She welcomed the Chairman of the committee, members of the committee and gave a briefing about the agenda of the 15<sup>th</sup> ITGRC meeting. She informed that 15<sup>th</sup> ITGRC meeting is being held with the approval of the competent authority in the wake of technical issues requiring data fixes through backend utilities; reversal of interest paid on delayed filing of statement in Form GSTR-8 by e-commerce operators due to technical glitches; the pending TRAN-1/TRAN-2 cases involving writ petitions before various High Courts and refund case. She further informed that there are **4 cases** forwarded by the Nodal officers and **11 court cases** pertaining to TRAN-1, TRAN-2 which are being presented in the 15<sup>th</sup> ITGRC for decision. Out of these 15 cases, **13 cases pertain to TRAN-1 and 02 cases pertain to TRAN-2** (enclosed as **Annexure-2**). Other agenda items pertain to **technical issues requiring data fixes through backend utilities** (enclosed as **Annexure-3**) and **Reversal of interest paid** (enclosed as **Annexure-4**).

3. She also informed that besides these, there are four non-technical cases on agenda (enclosed as **Annexure-5**), pertaining to M/S Ram Auto, Madurai, M/s. Precision Gasification Service Pvt. Ltd, M/S Carl Stahl Craftsman Enterprises Pvt Ltd., Coimbatore and M/s Precision Rubber Industries, Coimbatore pursuant to Hon'ble High Court's decision. These are being presented before ITGRC as per extended scope of the ITGRC in terms of decision of 32<sup>nd</sup> GST Council meeting. Another agenda item, to be presented by the GSTN, pertained to refund case of M/s Atibir Industries Co. Ltd. vs. UOI and Ors, (enclosed as **Annexure-6**).

4. The Chairman ruled that first the committee would take up the regular agenda of the ITGRC and the agenda pertaining to data fixes, interest waiver and other agenda items would be taken up thereafter.

5. Sh. Dheeraj Rastogi, Executive Vice President, GSTN made a power point presentation on the background of the ITGRC meetings conducted so far which is attached as **Annexure-7**. He further presented the agenda of the present ITGRC in detail which is summarized in below paragraphs and table.

6. **Proposal of GSTN for 15<sup>th</sup> ITGRC meeting**

- (1) As explained above, a total of 04 cases (03 cases pertaining to TRAN-1 and 1 case pertaining to TRAN-2), received from Nodal officers along with 11 Court cases (10 cases pertaining to TRAN-1 and 1 case pertaining to TRAN-2), after technical examination by Infosys and GSTN, are being presented before 15<sup>th</sup> ITGRC for decision.
- (2) Considering the fact that the taxpayers have filed Writ Petitions alleging and insisting technical glitches, e-mails were sent to them with request to provide below mentioned information for further examination in respect of cases falling under category "B":

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

7. **Category-wise analysis of 15 (4 Nodal and 11 Court cases) TRAN-1 and TRAN-2 cases, received from Nodal Officers/Court Cases, are given below:**

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

**A1. Processed with error-**In this category, the taxpayer has received error message as “Processed with Error”. The taxpayer could not claim transitional credit as the line items requiring declarations of earlier existing law registration were processed with error since the taxpayer had not added them in his registration details. **A total of 01 case received from Nodal officers and 02 cases received as court case are falling in this category.**

ii) **Cases where no evidence of technical glitches have been found after analysis of System logs:**

**B1. Cases in which, there are no evidences of error on submission/filing of TRAN1, as per GST System log-** As per GST System log, there are no evidences of error or submission/filing of TRAN-1. **A total of 02 cases received from Nodal officers and 05 cases received as court case are falling in this category.**

**B2. Cases in which filing of TRAN-1 Fresh/Revision Attempted with No error/ No valid error reported.** - As per GST System logs, the taxpayers have claimed that they tried to save/submit for the first time or for revision of TRAN 1 but analysis of logs show that there is no system error. **A total of 01 cases received as court case is falling in this category.**

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

**B4. TRAN-1 filed once but credit not received.** - Cases where the taxpayer has filed TRAN1 once and claims that no credit have been posted. No technical issues have been observed in the logs. **A total of 01 case received as court case is falling in this category.**

**B6. TRAN-1 filed, eligible for TRAN-2. TRAN-2 fresh/revision attempted with no error or no valid error reported.**As per Logs TRAN-1 filed successfully. Eligible for TRAN-2. TRAN-2 fresh/revision attempted with no error or no valid error reported in logs. **A total of 01 cases received as court case is falling in this category.**

**B7. Cases where TRAN-1 not filed, hence TRAN-2 not attempted** - As per Logs Tran-1 not filed. Table 7(a) & section 7b or section 7(d) value has not been declared from the Taxpayer. Hence Taxpayer was not eligible for filing Tran-2. Also as per logs User neither submitted nor filed the form. No logs of save as well. ITC ledger also not updated. **A total of 01 case received from Nodal officers is falling in this category.**

**Case wise Discussion by ITGRC in matters of Writ Petition:**

**Category-wise count of Orders passed in court cases**

Sr. No.	Court Order/WPs	Category A (TRAN-1/TRAN-2)	Category B (TRAN-1/ TRAN-2)	Total
1	Direction to allow filing of TRAN-1/TRAN-2 manually/electronically	1	1	2
2	No specific order passed	1	7	8
3	Direction to Respondents/Nodal Officer to pass appropriate orders	-	1	1
	<b>Total</b>	<b>2</b>	<b>9</b>	<b>11</b>

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

**8.1 CWP 4547/2021-M/s AAR AAR Technoplast Pvt. Ltd, Faridabad Vs UOI & Ors.**

GSTIN/ Provisional ID	State	Constitution of Business
06AADCA2129G1Z5	Haryana	Private Limited Company

**Issue:** The Petitioner submitted TRAN-1 on 26.08.2017. The message “Processed with error” was displayed on the GST Portal. The Petitioner was entitled to carry forward ITC of Rs. 4,78,364/- which remained unutilised in view of the technical glitches of the GST Portal. The Petitioner submitted TRAN-1 but CENVAT credit was reflected in the credit ledger.

**Status:** GSTN is a party in this matter. GSTN vide email dated 26.02.2021 apprised the status of case to the CGST Commissionerate (Faridabad) in terms of CBIC’s Circular no. 39/13/2018 dated 03.04.2018. The matter is pending Hon’ble High court of Punjab & Haryana. The court vide order dated 26.02.2021 has directed that the matter should be listed after the decision of SLP (C) Nos.7425-7428 of 2020 therefore the next date of hearing is not available on the court’s website. No effective order is available on the court’s website in this matter.

**Technical Analysis:** -As per GST System logs, the Petitioner first time opened TRAN-1 and filed. ARN was generated for first attempt. Revision was also tried by the Petitioner. The Petitioner tried to save data as well. During first attempt and revision, while doing save/submit attempt, error was reported on the GST Portal. PE (Process with error) was reported for invalid registration for VAT/CENVAT/SVAT no. AADCA2129GXM002/AADCA2129GXM001 /AADCA2129GSD004. This registration was not added till 27/12/2017. ITC ledger was also not updated for first filing. From the above it can be seen that the Petitioner faced technical glitches while filing TRAN-1.

### **Discussion & Decision:**

The ITGRC approved the proposal of the GSTN in view of the technical analysis report and recommended the case.

#### **8.2 W.P. (c) 221/2020-M/S U.K. Paints India Private Limited v. UOI& Ors.**

<b>GSTIN/ Provisional ID</b>	<b>State</b>	<b>Constitution of Business</b>
09AAACU0057C1ZR	Uttar Pradesh	Private Limited Company

**Issue:** The petitioner has alleged that due to glitch in the GST system the GST TRAN-1 form could not be filed as during the filing of the details in the form, the window was automatically logged out, resulting in non-filing of the form.

**Status:** GSTN is a party in this matter. GSTN vide email dated 19.3.2021 apprised the status of case to Delhi Commissionerate in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter has been disposed off vide order dated 27.05.2021. The Court has directed that Respondents are directed to either re-open the online portal so as to enable the Petitioners to file TRAN-1 Form electronically, or to accept the same manually on or before 30th June, 2021. The Respondents shall process the Petitioners' claims in accordance with law once the TRAN-1 Form is filed.

**Technical Analysis:** -As per GST System logs the Petitioner first time opened TRAN-1 and filed it. ARN was generated for first attempt. During first attempt and revision while doing save/submit attempt error was reported on GST Portal. PE (Process with error) was reported for invalid registration for VAT/CENVAT/SVAT no. 09267900686/09268900686C/ 09AAACU0057C1ZR and 09267900686/09268900686C. These registration details were not added till 27/12/2017. Ledger was updated for first filing. From the above it can be seen that the Petitioner faced technical glitches while filing TRAN-1.

The Petitioner was also trying to claim ITC by adding his own GSTIN 09AAACU0057C1ZRITC in TRAN-1. This was a wrong way to claim ITC.

### **Discussion & Decision:**

The ITGRC approved the proposal of the GSTN in view of the technical analysis report and recommended the case.

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

#### **8.3 SBCWP No. 1687/2020 M/s Nakoda Medical Agencies v. UOI & Ors**

<b>GSTIN/ Provisional ID</b>	<b>State</b>	<b>Constitution of Business</b>
08AEXPB4584P1ZJ	Rajasthan	Proprietorship

**Issue:** The petitioner filed TRAN-1 on 26.12.2017 for carrying forward a credit of Rs. 2,62,716/- as SGST and Rs. 1,03,816.08/- as CGST, however due to technical glitches, same could not be filed through online mode. On account of such glitch, the amount entered in TRAN-1 was not reflected in electronic ledger.

**Status:** GSTN is a party in this matter. GSTN vide email dated 12.2.2021 apprised the status of case to Jodhpur Commissionerate in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Rajasthan and the next date of hearing is not available on court's website. No effective order is available on the Court's website.

**Further investigation by GSTN:** An email dated 13.03.2021 was sent to the Petitioner requesting for the following information:-

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

The Petitioner was requested to provide the details by 15.03.2021. The Petitioner replied vide email dated 15.03.2021 explaining that due to technical glitches, system errors and huge traffic at common portal ([www.gst.gov.in](http://www.gst.gov.in)) they failed to upload form GST TRAN-1 by due date of 27-12-2017. No screen shot evidencing error has been provided by them as they contended that they were not aware regarding preserving any evidences e.g. screenshots, etc. of attempt made by the petitioner firm while uploading form GST Tran-1.

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

**Discussion & Decision:**

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

**8.4 W.P.A. No.10104/2021-Hospital Supply Company Pvt. Ltd v. Union of India& Ors.**

<b>GSTIN/ Provisional ID</b>	<b>State</b>	<b>Constitution of Business</b>
19AABCH9266R1ZM	West Bengal	Private Limited Company

**Issue:** The petitioner failed to file TRAN-1 form due to technical glitches on the GST Portal.

**Status:** GSTN is a party in this matter. GSTN vide email dated 19.5.2021 apprised the status of case to Kolkata Commissionerate in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Kolkata and the last date of hearing was 3.05.2021. The next date of hearing in this matter is not updated on courts website.

**Further investigation by GSTN:-**An email dated 10.06.2021 was sent to the Petitioner requesting for the following information:-

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

The Petitioner was requested to provide the details by 11.06.2021. No response was received by the Petitioner.

As per GST System logs the Petitioner neither submitted nor filed TRAN-1. There are no logs of “save” as well. ITC ledger has also not been updated.

**Discussion & Decision:**

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

**8.5 W.P.A. No.10103/2021-P. Bhogilal Pvt. Ltd v. Union of India & Ors.**

GSTIN/ Provisional ID	State	Constitution of Business
19AABCP7871N1ZN	West Bengal	Private Limited Company

**Issue:** The petitioner failed to file TRAN-1 form due to technical glitches on the GST Portal.

**Status:** GSTN is a party in this matter. GSTN vide email dated 20.5.2021 apprised the status of case to Kolkata Commissionerate in terms of CBIC’s Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon’ble High Court of Kolkata and the last date of hearing is 3.05.2021. The next date of hearing in this matter is not updated on courts website.

**Further investigation by GSTN:-**An email dated 10.06.2021 was sent to the Petitioner requesting for the following information:-

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

The Petitioner was requested to provide the details by 11.06.2021. No response was received from the Petitioner.

As per GST System logs the Petitioner neither submitted nor filed TRAN-1. There are no logs of “save” as well. ITC ledger has also not been updated

**Discussion & Decision:**

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

**8.6 SCA No. 10257/2020-M/s Kishore Vadilal (P) Ltd. v. UOI & Ors**

GSTIN/ Provisional ID	State	Constitution of Business
24AAACK5882F1ZK	Gujarat	Private Limited Company

**Issue:** The Petitioner stated that they were unable to file the GST FORM TRAN 1 due to technical glitch. The Petitioner alleged that the glitch was due to the error in the core field of registration of the Petitioner. The Petitioner was erroneously granted registration certificate as a proprietorship firm on account of error in migration instead of Private Limited Company. The Petitioner’s letter of undertaking was not accepted. Petitioner had tried to file an online application dated 03/03/2018 for amendment in the registration and subsequently amended registration certificate was issued to the petitioner on 26/04/2018.

**Status:** GSTN is a party in this matter. GSTN vide mail dated 08.03.2021 shared its comments in the matter with the concerned Commissionerate in terms of CBIC’s Circular no. 39/13/2018 dated

03.04.2018. The matter is pending before the Ahmedabad bench of Gujarat High Court. The next date of hearing in this matter is not updated on courts website. No effective order is available on the Court's website.

**Further investigation by GSTN:-**An email dated 10.06.2021 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
  - ii. Nature of error noticed
  - iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.
- The Petitioner was requested to provide the details by 11.06.2021.

The Petitioner responded vide email dated 11.06.2021 that the petitioner alleged that the glitch was due to the error in the core field of registration of the petitioner. The petitioner was erroneously granted registration certificate (01/07/2017) as a proprietorship on account of error in migration instead of Private Limited Company. Amended registration certificate was issued to the petitioner on 26.04.2018.

As per GST System logs the Petitioner neither submitted nor filed TRAN-1. There are no logs of "save" as well. ITC ledger has also not been updated. The Petitioner had done core amendment for change in Constitution of Business on 2<sup>nd</sup> April, 2018 which is after the due date of filing TRAN1. He has not attempted to file TRAN-1 on or before the due date of 27<sup>th</sup> Dec, 2017.

#### **Discussion & Decision:**

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

#### **8.7 WP(C) 1560/2021-M/s. Tarun Enterprises Pvt. Ltd. v.UOI & Ors.**

<b>GSTIN/ Provisional ID</b>	<b>State</b>	<b>Constitution of Business</b>
07AAACT4460C2ZO	Delhi	Private Limited Company

**Issue:** The Petitioner has alleged that due to technical glitch in the GST system the TRAN-1 form could not be filed. During the filing of the details in the form, the window was automatically logged out, resulting in non-filing of the form.

**Status:** GSTN is a party in this matter. GSTN vide email dated 19.3.2021 apprised the status of case to Delhi Commissionerate in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Delhi and the next date of hearing is 31.08.2021. No effective order is available on the Court's website.

**Further investigation by GSTN:-**An email dated 10.06.2021 was sent to the Petitioner requesting for the following information:-

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

The Petitioner was requested to provide the details by 11.06.2021. No response was received from the Petitioner.

As per GST System logs the Petitioner neither submitted nor filed TRAN-1. There are no logs of "save" as well. ITC ledger has also not been updated.

### **Discussion & Decision:**

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

### **Category B2: Trans-1 Fresh/Revision Attempted with No error or No valid error reported**

#### **8.8 WP No. 853/2021 M/s Pee Yel Jay International V. Chairman, GSTC & Ors.**

<b>GSTIN/ Provisional ID</b>	<b>State</b>	<b>Constitution of Business</b>
33AAPFP7604Q1ZK	Tamil Nadu	Partnership

**Issue:** The petitioner had filed TRAN -1 to carry forward the credit of Rs. 10,18,143/- which was available to the petitioner under TNVAT Act. The credit was not reflected in the ledger of the Petitioner. Due to technical glitch an error appeared on the screen. Whenever the Petitioner tried uploading the TRAN1, pop up dialogue box opened and the message “proxy error” was displayed on the screen. The Petitioner was not able to complete the submission as the GST website was automatically jumping, showing error message and sometime there was no response.

**Status:** GSTN is a party in this matter. GSTN vide email dated 22.02.2021 apprised the status of case to the CGST Commissionerate (Madurai) in terms of CBIC’s Circular no. 39/13/2018 dated 03.04.2018. The matter has been disposed off vide order dated 05.03.2021. The Court vide order dated 05.03.2021 has directed that the jurisdictional officer/6th respondent is directed to verify the correctness of the facts projected in the petition mentioned representations dated 20.02.2020 and on being satisfied with the same, forward the petitioners' case to the Nodal Officer, namely, fifth respondent herein who will coordinate with the first respondent (GSTC) so that the petition mentioned credit amounts filed in Form TRAN 1 are duly carried forward to the petition mentioned Electronic Credit Ledger pertaining to the respective writ petitioners. This exercise shall be carried out and completed within a period of twelve weeks from the date of receipt of a copy of this order.

**Further investigation by GSTN:** An email dated 13.03.2021 was sent to the Petitioner requesting for the following information: -

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

The Petitioner was requested to provide the details by 15.03.2021, however, no reply was received from the Petitioner.

On completion of technical analysis conducted by GSTN, it was observed in the logs that the Petitioner submitted TRAN-1 on 27/12/2017 and the same was successfully processed. TRAN-1 filing however, was not attempted. Further no error was reported in logs and ITC ledger has not been updated. Thus, the Petitioner’s case may be considered as not having faced any technical difficulties.

### **Discussion & Decision:**

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

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

#### **8.9 W.P.A.7926/2021-Ad Well International Private & Anr. V. The SGST Nodal Officers, Technical Glitches & Ors.**

<b>GSTIN/ Provisional ID</b>	<b>State</b>	<b>Constitution of Business</b>
19AADCA3627K1ZK	West Bengal	Private Limited Company

**Issue:** The Petitioner submitted that the declaration in Form TRAN-1 was filed within due date. Petitioner successfully claimed the transactional credit of VAT amounting to Rs.33,27,308/- under the West Bengal Value Added Tax Act,2003 and further fed the data relating to CENVAT credit of Rs. 65,73,765/- on the GST Portal but the said data was not uploaded. The VAT credit amounting to Rs.33,27,308/- was credited in the electronic credit ledger but CENVAT credit of Rs.65,73,765 was not credited due to technical glitches of the GST portal.

**Status:** GSTN is a party in this matter. GSTN vide email dated 25.3.2021 apprised the status of case to Kolkata Commissionerate in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Kolkata and the last date of hearing is 24.03.2021. The next date of hearing in this matter is not updated on courts website.

**Further investigation by GSTN:** An email dated 10.06.2021 was sent to the Petitioner requesting for the following information: -

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

The Petitioner was requested to provide the details by 11.06.2021. The Petitioner responded vide email dated 11.06.2021 and stated that while filing TRAN-1 only VAT amount could be uploaded. Excise Duty of Rs.65,73,765.00 by way of balance in the form of CENVAT Credit could not be uploaded. As regards screen shot of the error the Petitioner stated that screen shot of the technical error was not saved. A letter dated 30.08.2018 was sent to the SGST Nodal Officer, Technical Glitches, 14, Beliaghata Main Road, Sales Tax Building, Kolkata-700015. The Petitioner was requested to share the details of the same by EOD 14.06.2021. The Petitioner provided the scanned copy of the letter vide email dated 14.06.2021. In the attached letter Petitioner has mentioned that due to some system error the data fed into the system was not uploaded. No screen shot of the error is available with the Petitioner.

As per GST System logs the Petitioner first time opened TRAN-1 and tried to file. It got stuck in "FRZ" later on filing was done and ARN was generated. For first successful submission ITC ledger was updated. Two unique ARN's were generated due to the fact that the TRAN-1 was stuck in "FRZ" and there were multiple clicks for filing of TRAN-1.

**Discussion & Decision:**

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

**Category B4: TRAN-1 filed but credit not received.**

**8.10 WP No. 226277/2020 M/s INM Technologies Private Ltd. v. UOI & Ors.**

<b>GSTIN/ Provisional ID</b>	<b>State</b>	<b>Constitution of Business</b>
29AADCI7257B1ZK	Karnataka	Private Limited Company

**Issue:** The petitioner filed TRAN- 1 within the due date but credit amount of Rs.16,27,341/- was not reflected in the electronic credit ledger.

**Status:** GSTN is a party in this matter. GSTN vide email dated 15.01.2021 apprised the status of case to the CGST Commissionerate (Bengaluru) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is disposed of by Hon'ble High court of Karnataka vide order dated 3.02.2021. The Court has directed that respondents are required to make available necessary provisions on the website of the portal of the respondent to enable the petitioner to claim such credit.

**Further investigation by GSTN:** An email dated 13.03.2021 was sent to the Petitioner requesting for the following information: -

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

The Petitioner was requested to provide the details by 15.03.2021, however, no reply was received from the Petitioner.

On completion of technical analysis conducted by GSTN it was observed in the logs that Petitioner has tried to save TRAN-1 form which was processed. The Petitioner filed TRAN-1 successfully and ARN was also generated. ITC ledger was not updated. Further, no error reported in logs. Revision was not attempted by the Petitioner. Thus, the Petitioner's case may be considered as not having faced any technical difficulties.

**Discussion & Decision:**

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

**(B) TRAN-2 Cases**

**Category B6-Tran-1 Filed, Eligible for Tran-2.Trans-2 Fresh/Revision Attempted with No error or No valid error reported**

**8.11 DB CWP 2938/2021-M/s Bubugao Communication Pvt Ltd vs. Commissioner, CGST, Jaipur &Ors.**

<b>GSTIN/ Provisional ID</b>	<b>State</b>	<b>Constitution of Business</b>
08AAGCB0384H1ZQ	Rajasthan	Private Limited Company

**Issue:** -Petitioner saved data in Form TRAN-2 for the month of July,2017, as these showed in draft, but while submitting the final TRAN-2 form for the month of July, 2017 the same is showing as 'Nil'. Therefore, it appears that the Petitioner may have submitted 'Nil' data in their TRAN-2 form for the month of July, 2017.

**Status:** - GSTN is a party in this matter. GSTN's comments were sent to Jaipur Commissionerate vide email dated 02.06. 2021. The matter is pending before Hon'ble High Court of Jaipur. The next date of hearing in this matter is 07.07.2021. No effective order is available on the court's website.

**Further investigation by GSTN:** An email dated 30.06.2021 was sent to the Petitioner requesting for the following information: -

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

iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers. The Petitioner was requested to provide the details by 02.07.2021. The Petitioner responded vide email dated 01.07.2021. The Petitioner did not provide any screen shots of the alleged technical glitches of the GST Portal. The Petitioner has stated that no data of outward supply on which transition credit was claimed was reflected in Final Form Tran-2 for the month of July-17 when the draft Form Tran-2 for the month of July-17 had complete details. They have filed Final GST Form Tran-2 for the month of July-17 on the same date i.e. 14.06.2018 on which date Form Tran-2 for the month of Aug-17 and Sep-17 was also filed. But the TRAN-2 Form for July-17 had no details and was blank without any details of outward supply and input tax credit whereas Form Tran-2 for the month of Aug-17 and Sep-17 had complete details. For this technical error in Form Tran-2 for July-17 we raised a complaint to the GST help Desk for which ticket ID-SR201806142643144 was allotted.

Ticket no. 201806142643144 was raised on 14.06.2018 and closed on 17.06.2018. The following issue was raised “while filing Trans 2 we have added the details in July month and submit the same but after filing when we check the same it has been filed blank. So kindly open the option in Trans 2 July month so we can add the same and claim credit. As we have both preview draft and final submit draft.” The following resolution was provided to the Petitioner “This is in reference to your query related to the functionality to reset TRAN 2, we would like to inform you that the reset option for TRAN 2 is not available on the GST portal. Kindly wait for further notification, if any. In case, for further concern, please feel free to contact the GST helpdesk number (0120-4888999) or visit Grievance Redressal Portal <https://selfservice.gstsystem.in/> to log a ticket. We regret for any inconvenience this may have caused.”

On completion of technical analysis conducted by GSTN it was observed in the logs that Petitioner successfully filed TRAN-1 on 25/08/2017 & 26/12/2017. ARN was received for the same and ITC ledger was also updated. The Petitioner filed TRAN-2 for 07, 2017, 08, 2017, 09, 2017 period before 30/06/2018. Valid System message was displayed to the Petitioner while filing TRAN-2 for the period 10, 2017 as Petitioner’s closing balance declared in TRAN-2 for the period 10, 2017 was 0. The message displayed to the Petitioner was “You cannot ADD/EDIT Invoice as closing balance is zero”. ITC ledger of the Petitioner was updated for 3 filed periods.

**Discussion & Decision:**

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

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

Category No.	Category	Count of Taxpayers
A1	Processed with error.	01
B1	As per GST system log, there are no evidences of error on submission/filing of TRAN1.	02
B7	TRAN-1 not filed, hence TRAN-2 not attempted	01
	<b>Grand Total</b>	<b>4</b>

### **Discussion & Decision:**

The Committee decided that case falling under category A1 merit acceptance and remaining 03 cases falling under category B1 & B7 are liable to be rejected as no technical glitch was noticed by GSTN in these cases post technical analysis. (Please refer Annexure-2).

#### **10. Cases forwarded by the Nodal Officers in the category of non-technical nature in terms of extended scope of ITGRC as per the 32<sup>nd</sup> GST Council meeting and as per the High Court order**

Ms. Ashima Bansal, JS, GSTC Secretariat presented the four cases forwarded by the Nodal Officers after the decisions of the respective Hon'ble High Court as non-technical cases in terms of extended scope of ITGRC as per the 32<sup>nd</sup> GST Council meeting, as under:

##### **10.1 Case of M/s Ram Auto, Madurai**

The issue involves rectification of Tran-I in case of M/S Ram Auto, Madurai as per the order of the High Court of Madras dated 16.02.2021 in Writ Petition Number 15531/2020. It is a case of transposition of column and is covered by the decision of the 32<sup>nd</sup> GSTC meeting which extended the scope of the ITGRC for non-technical issues. It is proposed that this case may be considered by the ITGRC.

In this case, the High Court has stated that-

*"In this view of the matter, the communication impugned in the writ petition is quashed. The second respondent i.e. the Principal Nodal Officer, Chennai is directed to forward the petitioner's application to the third respondent i.e. Goods and Service Tax Council forthwith and without any delay. The third respondent will verify the correctness of the averments set out in communication of the jurisdictional Assistant Commissioner to the Commissioner of Central Taxes & Central Excise, Madurai vide C.No.IV/16/48/2018-Tech, dated 17.05.2019. Upon the third respondent being satisfied with the correctness of the same, the third respondent will grant the relief as sought for by the writ petitioner.*

**Accordingly, as per the directions of the High Court and the recommendation of the jurisdictional Assistant Commissioner duly forwarded by the Principal Commissioner and Principal Nodal Officer, CGST, Chennai North, that it is an error apparent on record involving transposition of the column, the case may be considered by ITGRC.**

### **Discussion and decision:**

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

##### **10.2 Case of M/s. Precision Gasification Service Pvt. Ltd**

Rectification of Tran-I in case of M/s. Precision Gasification Service Pvt. Ltd as per the High Court of Gujarat order dated 18.03.2021 in R/o Special Civil Application no. 19818 of 2019. It is a case of transposition of column and is covered by the decision of the 32<sup>nd</sup> GSTC meeting which extended the scope of the ITGRC for non-technical issues. It is proposed that this case may be considered by the ITGRC.

In this case, the High Court has stated that-

*“The respondents are directed to either open the online portal, so as to enable the writ applicants to again file rectified Form GST TRAN-1 electronically or accept the manually filed from the GST TRAN-1 with necessary corrections on, or before, 18.05.2021.”*

**Accordingly, as per the directions of the High Court and the recommendation of the jurisdictional Joint Commissioner duly forwarded by the Commissioner and principal nodal officer, Ahmadabad Zone that it is an error apparent on record involving transposition of the column, the case may be considered by the ITGRC.**

**Discussion and decision:**

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

**10.3 Case of M/s Carl Stahl Craftsman Enterprises Pvt Ltd., Coimbatore**

The issue involves rectification of Tran-I in case of M/S Carl Stahl Craftsman Enterprises Pvt Ltd., Coimbatore as per the order of the High Court of Madras dated 23.04.2021 in Writ Petition Number 11119/2020. It is a case of transposition of column and is covered by the decision of the 32<sup>nd</sup> GSTC meeting which extended the scope of the ITGRC for non-technical issues since the case was presented in the 6<sup>th</sup> ITGRC meeting and the request of the taxpayer for re-opening of TRAN-1 was "Not approved" citing that the case falls under the category of B10 i.e. mistake/errors committed by taxpayers which was admitted apparently or inadvertently or due to misunderstanding in reporting correct values in TRAN-1 and IT-GRC decided not to reopen TRAN-1 in the case. It is proposed that this case may be considered by the ITGRC.

In this case, the High Court has stated that-

*“In the present case, the error is seen to be inadvertent, constituting a human error. The Revenue does not dispute this either. Moreover, the era of GST is nascent and I am of the view that a rigid view should not be taken in procedural matters such as the present one.*

*The petitioner is thus be permitted to transition the credit. After all, the consequence of such transition is only the availment of the credit and not the utilization itself, which is a matter of assessment and which can be looked into by the Assessing Officer at the appropriate stage.*

*This writ petition is allowed. The third respondent, i.e., Deputy Commissioner of GST Policy, the Nodal Officer will enable the modification to be effected as well as the transition within a period of four (4) weeks from date of uploading of this order upon an application to be made by the petitioner in this regard.”*

**Accordingly, as per the directions of the High Court and the recommendation of the jurisdictional Commissioner and of the Principal Commissioner and Principal Nodal Officer, CGST, Chennai North, that it is an error apparent on record involving transposition of the column, the case may be considered by ITGRC.**

**Discussion and decision:**

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

#### **10.4 Case of M/s Precision Rubber Industries, Coimbatore**

The taxpayer claimed to have made attempt to file TRAN-1 within the due date 27.12.2017. However, no material evidence has been produced. The case was presented in the 4<sup>th</sup> ITGRC wherein the case was presented in B1 Category: “Cases where the taxpayers say that they received error. As per GST system log, there are no evidences of error or submission/filing of TRAN1: As per GST System Logs, the taxpayer has neither tried for Saving / Submitting or Filing TRAN1”.

In the Writ Petition Number 11781 & 11784/2019, the High Court of Madras vide order dated 03.10.2019 has directed that-

*“The Principal Nodal Officer (Principal Commissioner, Chennai North) is directed, to take appropriate action without loss of further time so as to get the issues resolved by GSTN at the earliest possible time, at any event, within a period of six weeks from the date of receipt of a copy of this Order.”*

The High Court has further also stated that-

*“... Needless to say that the impugned denial is only because of the reason that the time for filing TRAN-1 had lapsed and since that issue is sought to be resolved before GSTN.*

The case was again presented before 9<sup>th</sup> ITGRC under Category C: “Cases already presented before 1st to 7th ITGRC but not recommended by ITGRC and now as per 32nd GST Council decision, it has been forwarded without recommendation by jurisdictional tax authority.” The ITGRC had directed State/CBIC tax authorities to re-examine these cases and forward properly, only if they fulfill the parameters/conditions as laid down in 32nd GST Council Meeting.

In view of the above, the Principal Commissioner, Coimbatore has re-examined the case and recommended that since the taxpayer is otherwise eligible for the credit but for this procedural lapse of non-filing Tran-I within time, their representation may please be considered.

**However, this case does not fulfil the criteria set by 32<sup>nd</sup> GST Council meeting while extending the scope of ITGRC to consider non-technical issues viz. error apparent on the face of record. In this case, the assessee failed to submit the Tran-I on time and there is no error apparent on the face of record.**

#### **Discussion and decision:**

All the committee members agreed that the case should not be recommended on merit as per the extended scope of ITGRC approved by the 32nd GST Council meeting and rejected the same.

#### **11. Agenda Note for ITGRC for Technical Issues requiring data fixes through backend utilities**

**11.1** GST system was envisioned to have gone live with all software components ready for go live on 1<sup>st</sup> of July, 2017. GSTN, accordingly developed the application modules keeping in mind the GST Law, rules and format, stipulated in Software Requirement Specifications (SRS). However, keeping in mind the fact that GST is a new law and taxpayers may not have clarity on a lot of details pertaining to information sought in forms, GST Council approved new formats changing the structure of major

returns processing. Besides, the rules and formats for many other forms could not be notified in time. Pursuant to various feedbacks received from industry bodies and trade, many changes were also stipulated in prevailing laws and rules that required changes to be continuously made in the GST System.

11.2 Therefore, GSTN moved to an agile methodology of developing applications for GST System keeping it modular to handle frequent changes in law and rules incorporated in a running application. This created an overhead of integrating all new application changes downstream being dependent on the module undergoing the change. This led to following issues:

- Some corner scenarios owing to varying taxpayer actions and system behaviour when subjected to heavy load, went unhandled leading to inconsistent data persisting in GSTSystem.
- The data inconsistencies varied from ledger getting improper debits/credits, the return details stored in the system having incorrect information relating to situations where an irreversible commit had happened in the database,
- No option available to taxpayer to seek remedy in GST System leading to a need of performing data fixes through auditable utilities.

11.3 Due to the complex set of validations and process requirements through multiple touch points in GST System's application, the processing errors either due to unhandled exceptional scenarios or any software glitches occasionally occur. In order to remediate such issues, the processed incorrect data require fixing, collecting correct data besides solving the software/platform issues being faced by respective stakeholders.

11.4 As part of medium term measure, GSTN proposes to perform the following:

- GSTN to request MSP (Infosys) to undertake a detailed assessment of any of such problem being reported in order to ascertain whether the problem at hand is due to the technical glitches that have been reported by the stakeholders. GSTN intends to seek a detailed assessment report from MSP and get them corrected.
- Upon confirmation of glitch, post internal approval through CEO GSTN, GSTN shall intimate MSP to perform data fix as immediate relief for issue at the hand as in the absence of such step, the taxpayer would be left in lurch and not able to complete compliance.
- After execution of data fix utility, GSTN will request a detailed report of the impacted stakeholder such as taxpayers and the respective data fixes applied. The report generated shall be shared with ITGRC and respective Centre/State jurisdictional officers for information on a fortnightly basis.
- All such reports shall also be submitted to the GST Council.
- GSTN shall ensure maintenance of complete audit trail of such data fixes applied for future audit requirements.
- GSTN shall perform a periodic sample-based audit of data fixes to ensure necessary governance and control mechanism are in place.

### **11.5 Action that should be taken by GSTN**

The issues generally have been noticed after

- A complaint got raised by taxpayer/ tax officer,
- Result of a periodic internal and external audits.

GSTN then usually performs data analysis, and confirms if the data indeed contained discrepancy. Upon confirmation of the defect, complete list of similar cases would be extracted from the system that are suspected to require data fix, and an approval note with root cause analysis would be prepared and placed before a competent authority, who would approve for the data fix including the manner in which it is to be applied. In this sequence of activities, the GSTN has prepared a generic list of typologies of errors that could come based on the pattern noticed so far and has proposed an approval process on which approval is required by GSTN. The method followed would be as follows:

#### 11.6 The classification of issues and the method to correct them:

The Issues can be identified into following 5 categories:

Sr. No	Technical issue Category	Modules affected	Type of error and knowledge of correct data	Approving Authority
1	Technical issue with no financial implications	Such as Registration, Back office, Front Office etc.	Correct data known	Internal (SVP, GSTN)
2	Technical issue with no financial implications	Such as Registration, Back office, Front Office etc.	Correct data not known	Internal (EVP GSTN) for resetting/ reopening the forms.
3	Technical issue affecting locally with financial implications	Such as Returns, cash ledger/ ITC ledger/ Refund etc.	Correct data known	GSTN to correct data after Internal Approval by EVP/CEO. The tax administration to be provided with MIS.
4	Technical issue affecting locally with financial implications	Such as Returns, cash ledger/ ITC ledger/ Refund etc.	Correct data not known with certainty	GSTN to correct data after Internal Approval by EVP/CEO GSTN to enable the reset button so that the taxpayer can correct the form and file again. Post facto the approval of ITGRC to be taken and tax administration to be provided with MIS.

5	Technical issue affecting globally with financial implications	Such as cash ledger/ ITC ledger/ Refundetc.	Correct data not Certainly known	GSTN to enable the appropriate data fix after Approval of the ITGRC – Taxpayer can reset the form and file again. The tax administration to be provided with MIS.
6	Taxpayers Claiming technical issue to be Defect	NA	No Action required– Clarification provided to the taxpayer	Not Applicable

### 11.7 The process to be adopted for correction:

- I. For most of the issues, as depicted in the above table, it is advised that GSTN may be allowed to fix issues from backend with the approval of the ‘Competent Authority’ as may be approved/ nominated.
- II. For all the issues, a list with impacted GSTIN’s, CINs etc. will be prepared and shared with the competent authority as per Col. 5 above, as approved by ITGRC.
- III. The steps involved in the process shall be:
  - a. The data discrepancy will be first analyzed and confirmation will be sought from MSP
  - b. Upon confirmation, a utility will be written by MSP to extract all similar cases from GST System data stores.
  - c. A root cause analysis will be sought and fix would be implemented by MSP in consultation with GSTN to prevent further damage to data consistency
  - d. Scripts (SQL or Java depending upon type of defect) will be prepared for data fix and are tested in multiple cycles by MSP and GSTN.
  - e. Approval note will then be prepared and presented to competent authority for approval to go ahead.
  - f. Once approval is provided, audit entries will be created for each mutation affecting the data state.
  - g. Scripts will be executed and post execution state of data will also be stored for reference later.
  - h. List of all such changes will be presented and explained to GST policy wing & ITGRC and periodic internal audit will also be undertaken.

### Discussion

(i) Shri Dheeraj Rastogi, from GSTN stated that in GSTN, they are often faced with above situations. In addition to their own discovery of data inconsistencies, recently CAG took the IT Audit of the GSTN and the CAG pointed out that in certain cases, there were some inconsistencies in the data where something else was recorded in Hadoop data base and some other amount was there in the taxpayer’s ledger.

(ii) The Chairman then asked him to explain the corner situations, being referred to by him. He

explained that by the corner situations, he meant an existing situation of very low probability which the GSTN was not able to anticipate at the time of design of the software but subsequently when the software was in operation and a ticket was lodged by a taxpayer, such kind of situation was brought to the notice and these had to be fixed.

(iii) ITGRC members deliberated and agreed that there was a need for establishing a procedure through which GSTN can handle the incorrect data. Since GSTN handled data on behalf of centre and states, some unworkable situations arose at times needing urgent attention such as, if the taxpayers' return was stuck due to a technical issue, it would attract the late fee, penalty and the like consequences. Hence, there is a need for such SOP, as proposed by GSTN, to handle the situations at different levels or to seek the intervention of tax administration or the ITGRC to deal with such scenarios in suitable cases.

(iv) GSTN explained that they have designed a process, which is a three-part procedure. One was that of preparatory work that the GSTN would be undertaking, then there were certain suggested procedures that they would undertake with the approval of competent authority and then the safeguards that GSTN would keep while incorporating corrections in Data. That in urgent situations they had proposed to keep internal approval process at the level of SVP or EVP for incorporation with regards to correction in Data discrepancy; while in other situations, they would take prior approval of the authority within GSTN or outside GSTN such as ITGRC. Further, the safeguard that, they would make a data report which would be shared with ITGRC and the centre and state jurisdictional officers so that they could do whatever audit they wanted and maintain the audit trail in the system also seemed appropriate.

It was clarified by GSTN that for most of the issues, they are proposing to seek the internal approval of the authorities in the GSTN, as they were of urgent nature. Wherever there would be serious situations wherein either financial implications are there or the issue has travelled to some other system, in such instances, the GSTN proposed the intervention at the level of ITGRC.

(v) The Chairman stated that there were broadly two issues. One was within the mandate of ITGRC and second was what GSTN had presented was a mix situation where they knew the corrections to somebody's returns or cash Ledger and those were data errors and need not necessarily be system glitches. He therefore inquired as to whether later type of issues were required to be brought before ITGRC as the issue was regarding data which pertained to the return or the cash Ledger or refund. It is quite possible that there would be a legal requirement of seeking somebody's approval for making a change being an amendment in any of those documents. He further stated that it was not clear that as per the process suggested by GSTN, whether the taxpayer would approach the jurisdictional authority or that their raising a ticket with the GSTN would be proper. He suggested that committee members may deliberate on these two issues before getting into the nitty gritty of the SOP.

(vi) Member from Tamil Nadu enquired whether MIS would be provided to Model-1 states and sought clarification about 1151 cases mentioned in Annexure - 3(a) to the Agenda. EVP, GSTN clarified that the compilation in Annexure 3(a) was of kinds of errors that had been noticed so far and corrected and it only gave flavour as to what kind of errors keep on happening. Further, there was no set process as to how to handle them and with whose approval to correct them and that GSTN wanted to lay down the process.

(vii) Mrs. Ashima Bansal, Joint Secretary, GSTC Secretariat submitted that she found that SOP proposed by GSTN and enumerated at para 12.5 and 12.6 was quite good in the sense that whenever

financial implications were global, GSTN would be presenting to ITGRC and after its approval, the data fix would be done and where the financial implication was local, in those cases, GSTN would be taking up the issue at their own level and even in those cases, they would be seeking the approval of the ITGRC later on. She further observed that where ever financial implications were there, they would be coming to the ITGRC either prior or afterwards. In that sense, this SOP was very much reasonable and must be considered positively.

(viii) ITGRC Member from West Bengal supported the proposed SOP. ITGRC Member from Haryana also stated that it was quite reasonable and very much needed to fix data problems such as the one faced last year with respect to GSTR-8 returns. He then requested for similar procedures with regard to debiting and crediting of taxpayer's ledger/bank account as there were lot of issues at RBI end. With respect to the issue raised by ITGRC Member from Haryana, the GSTN clarified that there were certain limitations in this respect and there was already a process in place regarding it. GSTN further observed that this particular issue was beyond the proposed agenda.

(ix) The Chairman brought up two more queries for GSTN to seek clarification with regards to Annexure - 3(a). He further inquired that the if Annexure - 3(a) was just an illustrative list and GSTN might have more instances, apart from the ones currently listed therein, which might come in the future but did they all fit into the typology of the proposed criteria. The second point that the Chairman inquired was with regards to requirement of taking prior permission for the amendment in data as discussed earlier. He further enquired that assuming that there is an amendment required to be made in the return data which requires some approval legally, then the taxpayer would first have to obtain that approval and then come to GSTN for making a suitable amendment. However, there is no such provision in the GST law which mandates that somebody's approval needs to be taken for making an amendment in data. So, this needs to be looked into. He also added that from perusal of the situation pointed out by GSTN in the annex, it seemed that GSTN had been handling them manually and GSTN might inform how they had dealt with them so far.

(x) EVP, GSTN clarified that in actual practice, a particular taxpayer would raise a particular issue that he had faced e.g. in case of TCS ledger; that had happened with some taxpayers was that there was a double credit of TCS amount in the ledger of the Taxpayer, then one of the taxpayers had raised the issue seeking rectification. GSTN then investigated the issue and found that such error had happened in 150 taxpayers' ledger. Thus, after the analysis, GSTN noticed that it was something which was having financial implication but they knew for sure that double credit had happened and they knew what should be the correct balance, so after the approval of the EVP in the GSTN the software defect was cured and appropriate debit entries were also passed in the affected ledgers. Further, it was not done manually but was done with a script and they kept all the audit trails. Thus, in a nut shell, if any glitch was found, they scanned the entire data base and tried to find out the root cause and how many cases were affected. First GSTN fixed the problem and then made appropriate data fix to resolve the cases. Further, in all such situations, no adjudications were required as these were not pertaining to legal disputes about correct filing of the Form/ Return but correction of wrongly passed entries into the Data base.

(xi) The committee then approved the proposal of the GSTN unanimously. The Chairman further emphasised that in their SOP, it should be specifically added that proper trail of those amendments should be kept for the purpose of audit and in those cases, where somebody raises objection about correctness of amendment, then some records should be available to show how they carried out the amendments and on what basis that was done. EVP, GSTN replied that GSTN normally had files in e-

office and all were traceable and that they kept both the data in the DB, the earlier one would be dormant and 2ndone after data fix would be visible and effective.

(xii) The Chairman further enquired about the domino effect of data corrections to which GSTN replied that so far, they had not encountered any such issue. Further, EVP GSTN clarified that such cases were covered under serial no. 5 of the table at para 13.5.

### **Decision**

Pursuant to the discussions above, the ITGRC approved the SOPs proposed by GSTN, as enumerated at Para 11.5, 11.6 and 11.7 above.

## **12. Reversal of interest paid on delayed filing of statement in Form GSTR-8 by e-commerce operators due to technical glitches.**

12.1 Section 52 of the GST Act mandates an e-commerce operator to collect tax at the specified rate on the net value of the supplies made through it by other suppliers where consideration has to be collected by the operator. The operator has to file the details of tax so collected in a statement in Form GSTR-8 on monthly basis. On the basis of statement so filed by operators, the tax collected is made available to the suppliers for taking the credit into their cash ledgers.

The operators are not required to file the aforesaid statement for the month in which no supply has been made by any supplier through his portal. But the details provided in a statement of the month can be amended at the time of filing statement of the subsequent month if supplier has not taken the credit till such time or supplier had rejected the details uploaded by the operator. Additional amount is paid by the operator in case of upward amendment and he gets credit by reduction in liability if amendment is made downwards.

There is no late fee payable by operators on delayed filing of the statement of a month but interest is payable for delayed filing. Interest is computed by system based on the net liability and the period of delay.

Tax collected and paid in a statement can be adjusted in subsequent statement if goods supplied are returned. It means that liability is paid on net of basis in GSTR-8. Details are provided GSTIN wise for a tax period.

### **12.2 System glitches**

Sometime during filing of return or statement, it so happens that though acknowledgement (ARN) is generated but filing process is not completed. It may happen due to immediate logging out of user after filing or interruption in internet connectivity or due to defect in system application.

The e-commerce operators are required to file statement in Form GSTR-8 on monthly basis. While filing statement for the month of November, 2020, in 74 users, the filing process could not be completed in the system. When the impacted operators came to file statement December, 2020 in January, 2021, system started showing error that your previous tax period's statement has not been filed. After noticing the defect, the same was fixed on 23-01-2021.

Due date of filing GSTR-8 of a tax period is 10<sup>th</sup> of the next month. Due to the defect, the filing of the said statement was delayed by few days. Though, there is no late fee on delayed filing of GSTR-8 but interest becomes payable after due date and same is computed by system. Although, the defect was noticed in filing of statement but there was no defect in depositing the amount of liability. Out of 74 operators, 60 have deposited the amount of liability by due date i.e. by 10<sup>th</sup> January, 2021. 10 operators have deposited the liability at the time of filing the said statement. Since, filing of GSTR-8 is not mandatory for every operator, 4 operators have not filed the statement of December, 2020.

In the second case, few operators belonging to GOIBIBO and MMT could not file the statement of

September, 2020 due a defect in system application. Though, defect had not impacted all operators but due to multiple amendments 9 operators of GOIBIBO and 6 operators of MMT were stuck up due to the defect. In case of GOIBIBO, all operators have deposited the liability by due date for all applicable tax period but in case of MMT, the liability was deposited at the time filing the statement in Form GSTR-8. Though, few operators of MMT have deposited the liability few days before filing the said statement.

The details of fixes provided in above cases is shown in the table below:

	FIX PROVIDED ON	RQM ID
74 CASES	22-Jan-21	19830
MMT & GIBIBO	17-Feb-21	19830

### 12.3 Interest paid

A. Summary of the interest paid by the operators who have deposited the liability by due date and those have deposited after due date but few days before filing the statement in Form GSTR-8 is given as under:

Type of defect	Tax deposit status	No. of statements	Tax period	Amount of interest to be re-credited		
				IGST	CGST	SGST/UTGST
1	2	3	4	5	6	7
(1) Incomplete filing process of November, 2020 tax period	Deposited by due date	60	Dec, 2020	7215692	1297419	1297419
(2)(a) Stuck up in September 2020 tax period	Deposited by due date	9	Sep, 2020	87460	334919	334919
		9	Oct, 2020	99471	385394	385394
		9	Nov, 2020	98207	318254	318254
		9	Dec, 2020	70897	221576	221576
		9	Jan, 2021	19297	65506	65506
	<b>Sub-total (2a)</b>	<b>45</b>		<b>375332</b>	<b>1325649</b>	<b>1325649</b>
(2)(b) Stuck up in September, 2020 tax period	Deposited after due date but before filing statement	1	Sep, 2020	1497	9505	9505
		3	Oct, 2020	2089	21127	21127
		3	Nov, 2020	2283	22070	22070
		3	Dec, 2020	2715	31710	31710
		1	Jan, 2021	1996	16216	16216
	<b>Sub-total (2b)</b>	<b>11</b>		<b>10580</b>	<b>100628</b>	<b>100628</b>

<b>TOTAL</b>		<b>116</b>		<b>7601604</b>	<b>2723696</b>	<b>2723696</b>
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The amount deposited through challan is credited to cash ledger of the concerned person after confirmation of the deposit from bank / RBI. The RBI credits the amount to Consolidated Fund or India for IGST, CGST and Cess and the amount deposited under SGST is credited to the Consolidated Fund of concerned State.

B. The operators who have deposited the amount of liability on the day of filing the statement in Form GSTR-8 and excludes the amount of interest paid from the date of deposit to date filing the said statement, is given as under:

Type of defect	Tax deposit status	No. of statements	Tax period	Amount of interest paid		
				IGST	CGST	SGST/UTGST
1	2	3	4	5	6	7
1) Incomplete filing process of November, 2020 tax period	Deposited after due date	10	Dec, 2020	236960	10422	10422
	Deposited after due date	6	Sep, 2020	97869	995253	995253
		6	Oct, 2020	55773	694023	694023
2) Stuck up in September, 2020 tax period	(on the day of filing statement or before filing the same)	6	Nov, 2020	47801	510515	510515
		6	Dec, 2020	28893	372103	372103
		6	Jan, 2020	9214	122600	122600
	<b>Sub-total (2)</b>	<b>24</b>		<b>239550</b>	<b>2694494</b>	<b>2694494</b>
	<b>Total (1+2)</b>	<b>34</b>		<b>476510</b>	<b>2704916</b>	<b>2704916</b>

#### **12.4 Proposal for refund of interest paid**

ITGRC may take a view whether to refund the interest paid by the operators detailed at para A or to refund the amount paid at details given at para B also. Amount of interest to be refunded will be credited to cash ledger under respective major head.

#### **Discussion**

(i) GSTN presented this agenda, which pertains to TCS collection by the e-commerce operator at source under Section 52 of the CGST and SGST Act, 2017 and subsequent deposit of the same while filing the GSTR- 8 statement. EVP, GSTN informed that E-commerce operators collected tax at source under Section 52 of the CGST and SGST Act, 2017 and deposited that along with filing of the GSTR-8 statement and filing of the GSTR-8 statement was successful only after payment of tax. Though there was no late fee prescribed for the E-commerce operators for late filing of the return,

however, system automatically calculated the interest for any delay at the time of filing the GSTR-8 statement. There were 2 distinct cases pertaining to GSTR 8 Return. In 1<sup>st</sup> Case, the Non-completion of return filing process pertained to November where acknowledgement was generated but filing process could not be completed for the month of November, 2020 in 74 cases. The impacted cases could not file the statement for the month of December, 2020. The defect was fixed on urgent basis after noticing the same. However, there was no defect in depositing tax liability by the operators. As a result, 60 operators had deposited the amount of tax liability in Cash Ledger by due date; 10 operators deposited the tax liability after due date at the time of filing the statement. Remaining 4 operators had neither deposited tax nor filed the statement for the month of Dec, 2020 (Reason: May be no transaction during the month)

In 2<sup>nd</sup> Case; reported by GOIBIBO and MMT and subsequently a WP was also filed before Delhi HC by them. It pertained to Non-filing of statement for the month of September, 2020 by some registrations of GOIBIBO and MMT. The defect had impacted GSTR-8 filing of GOIBIBO in 9 States and 6 States in case of MMT. Out of the two operators, GOIBIBO had deposited the tax liability by due date; while MMT, deposited the tax liability after due date.

(ii) EVP, GSTN further informed that the entire instances where the TCS amount was deposited before the due date of filing the Return i.e. in first category (incomplete filing process of November 2020), 60 instances were reported, while in second category (persons who were unable to file tax liability for September 2020), 45 instances were reported. There were remaining 11 cases in which persons who were unable to file returns due to technical glitches; they deposited the tax after due date of Return filing but before filing the Return.

(iii) The Chairman inquired about the legal position and the Principal Commissioner, GST Policy Wing, CBIC informed that as far as the present legal position was concerned, the deposit of amount in electronic cash ledger did not amount to payment of tax. The tax is considered to have been paid only when the relevant return is filed on the portal. Therefore, in case of any delayed filing of return, interest liability will arise from the due date of filing the return, till the actual date of filing the return. The interest would accrue till tax was actually adjusted while the return was filed. He further added that in present cases, the operators had intended to file the return by depositing the cash in electronic cash ledger by due date but they could not file GSTR-8 return on the portal because of some system related technical issues. The GSTN has clarified that tax was deposited in the electronic cash ledger by due date in some cases but was not debited towards payment of tax due to technical glitch in filing the GSTR-8 Return statement subsequently.

(iv) The Chairman observed that the implication of the same is that the tax was not paid effectively by the due date, as per the law.

(v) The Member from West Bengal observed that strictly speaking, the interest was leviable in both the cases because filing of return by due date was criteria for levy of interest. He further stated that they had two cases in hand. However, there is a need to look at both the situations closely to see the intention of the operator. In first case, the intention was very clear to pay the tax on time, as he had deposited amount in electronic cash ledger. He wanted to file the return but couldn't do it due to system glitches. However, in the second case, the person concerned had not even deposited the tax in cash ledger. So, these two cases need to be distinguished and while the first case may be considered for interest waiver, the 2<sup>nd</sup> case may not be considered for interest waiver.

(vi) The Member from Haryana observed that earlier also GSTN had done similar action a couple of times in 2018 and 2019 where they did a last moment GSTR 3B date extension and they returned some money back to the cash ledger but the GSTN never had done it through a decision of the GIC or ITGRC. He was therefore of the view that if a refund of money has to be made into someone's cash Ledger, the matter should not be dealt at ITGRC level but it should go to the Council. The Chairman

clarified that the ITGRC could just confirm that there was a technical glitch and it would not take a decision about whether the refund was due or not due. He further mentioned that as Member from West Bengal had observed, they could just recommend to the Council that in one category of cases, interest waiver appeared to be due and in the other category, it did not appear to be due. He further clarified that ITGRC was not taking a decision on actually recrediting the interest in the cash ledger.

(vii) The Member from Haryana submitted that if the cash was deposited in the ledger but not debited, interest would always be leviable. The Chairman asked that if interest would be leviable even if someone was prevented from debiting the interest due to technical glitches. The Member from Haryana clarified that the cases referred by GSTN are special cases, in these cases tax could not be paid through returns due to the system fault.

(viii) Principal Commissioner, GSTPW added that there was no doubt about accrual of interest in such cases as per the present position of the law. However, ITGRC could consider the special circumstances, under which due to the technical glitch on the portal, returns could not be filed in time, and accordingly make suitable recommendations to the Council for directions/ decision.

(ix) EVP, GSTN further drew the attention of the committee towards the fact that many of the operators had deposited tax in their cash ledger by due date of the filing of return but in some cases, they had deposited tax after due date but before filing of the returns. The Member from West Bengal observed that if someone was filing the return belatedly, no waiver should be allowed. EVP, GSTN clarified that return filing was late due to system glitch. The Member from West Bengal agreed that if there existed a system glitch, then they might recommend to the Council to consider waiver of interest in both the cases.

(x) Joint Secretary, GSTC submitted that they had never allowed waiver of interest so far. She further mentioned that interest was a natural corollary to the tax and, in many cases, Supreme Court had also observed the same. As long as amount was not debited, the tax did not go to the kitty of the department. The Chairman observed that interest liability had arisen because of technical glitches and mandate of ITGRC was to look into cases where there was a technical glitch while either filing return or TRAN1 or any tax on time. On enquiry by Joint Secretary, GSTC, about other such cases, EVP GSTN clarified that those were unique cases and other cases had been resolved.

(xi) DG, Systems submitted that as per his understanding, interest was calculated from the due date till the time debit was made in the return. So, to bring the parity in the decision that if they recommended that interest was to be waived in case the amount was deposited before the due date and because of technical glitch, they could not make the debit entry in their return or file the return, then the same facility had to be given if taxes were paid on a later date after the due date but because of technical glitch, debit could not be made. So, while the interest for the period from the date of deposit till the time debit was made should be waived in both the situations whether it was paid before the due date or after that date **but** for the period from due date till the time amount was deposited, the interest was chargeable and could not be waived. **EVP** GSTN clarified that actually the agenda had highlighted this difference and was seeking the interest waiver only for the intervening period when the deposit was made and offset was done in the return.

(xii) The Member from Tamil Nadu observed that the first thing, there was no provision for waiver of interest and second thing whether ITGRC could recommend legally to refund the interest to the electronic commerce operator. If so, what are the means and the provisions under which they could refund the amount of interest.

(xiii) Principal Commissioner, GST PW clarified quoting para number 7 of the Circular no. 39/13/2018-GST dated 3<sup>rd</sup> April 2018 which mentioned specifically about authorisation given to the ITGRC for waiver of fine and penalty but the said para was silent about waiver of Interest. He

mentioned that accordingly, as per the present mandate of ITGRC, there is no mandate available with ITGRC for waiver/ refund of interest. He further clarified that there was no express provision in law for waiver of interest. However, since the issue was of system related technical fault, hence, ITGRC could find a solution and make the recommendations to the Council for directions.

(xiii) On this, the Chairman suggested that ITGRC should take a decision on whether there was a technical glitch or not and place before the Council for directions, as there was no express provision in the circular or OM issued laying mandate of ITGRC on waiver of interest and there was no legal provision either for waiver of interest. He added that if at all interest had to be waived, notification needed to be issued under Section 148 of CGST Act which required the mandate of Council. Further, ITGRC needs to decide whether or not, there was a technical glitch and can make suitable recommendation to the council whether there appeared to be a case for waiver of interest or not. He further enquired all the committee members about their decision. The Member from Tamil Nadu agreed to the proposal.

(xiv) The Member from West Bengal submitted that this being a typical case of system glitch, it was acceptable to go to Council with recommendations and seek directions of the Council.

(xv) It was unanimously agreed that ITGRC may categorically recommend that as there was a technical glitch in those cases, there was a merit in waiving the interest because of that technical glitch. However, as there is a gap owing to the absence of legal provision and the mandate given to ITGRC, specific directions of the Council may be sought. It was also agreed that the recommendation may be made for waiver of the interest only from the date on which deposit was made in electronic cash ledger till the actual filing of the return filing, which could not be filed timely because of technical glitch. However, if the deposit was made in electronic cash ledger after the due date of filing of the return filing, the interest waiver will not be recommended for such delayed deposit beyond due date. GST Council Secretariat would place the proposal before the Council seeking directions of the Council in such cases of technical glitch on the portal and the Council could take a view.

### **Decision:**

The committee agreed to recommend unanimously the following to the GST Council:

- a. There was a technical glitch in filing GSTR-8 Returns in all these cases but there was no glitch in payment of TCS amount into cash ledger.
- b. There is merit in waiver of interest being the cases analogous to the cases of waiver of fine and penalty.
- c. Thus, the ITGRC recommends the waiver of interest only from the date on which deposit was made in electronic cash ledger till the actual date of filing of the GSTR-8 statement, wherever it could not happen because of technical glitch, as per details provided by GSTN.
- d. However, in cases, where there was delay in deposit of the amount in electronic cash ledger beyond the due date of filing of Return, the ITGRC is not recommending waiver of interest.
- e. ITGRC further observed that, there is no mandate for the ITGRC to consider cases of waiver/refund of interest due to technical glitch as the Circular no. 39/13/2018-GST dated 3<sup>rd</sup> April, 2018 mandates the ITGRC to recommend the cases of waiver of fine and penalty only. Since there is no legal provision in the GST laws for waiver or refund of interest; therefore, the decision needs to be taken by the GST Council in the matter of issuance of an appropriate notification under Section 148 of CGST, Act for waiver of interest in such cases, as recommended by ITGRC.

### **13. Additional Agenda – Refund case of M/s Atibir Industries Co. Ltd. Vs. UOI and Ors**

Sh. Dheeraj Rastogi, Executive Vice President, GSTN has presented the refund case of **M/s Atibir Industries Co. Ltd as per order of Hon’ble High Court of Jharkhand** in Writ Petition No. 4061 of 2019.

#### **13.1. Facts of the case**

1. The aforesaid Writ Petition No. 4061 of 2019 filed by M/s Atibir Industries (**GSTIN 20AADCA1825B1ZO**) in the High Court of Jharkhand wherein GSTN was also made as one of the Respondent. The petitioner argued that they couldn’t file application for refund of unutilized ITC w.r.t. compensation cess in Form GST RFD-01 pertaining to the periods 2017-18 and 2018-19 on GST Portal due to technical difficulty. After hearing the Petitioner and Respondents, it was held in the Order dated 04.01.2021 passed by the Hon’ble High Court that the petitioner would be entitled to avail of the opportunity to file applications for refund of compensation cess for FY 2017-18 and 2018-19. The respondents were directed to communicate the petitioner through email as to whether they would open the GSTN portal or would accept the refund applications manually within a period of 15 days.
2. Subsequently, the Departments have filed two Review Petition i.e. Civil Review Petition No. 20/2021 and Civil Review Petition No. 30/2021 in WP (T) 4061 of 2019. The Hon’ble High Court has dismissed the said Review petition vide order dated 29.07.2021 with further direction to the concerned Respondent to consider the refund application in accordance with law.
3. Further, as per the High Court’s Website Petitioner has also filed a Contempt Case (Civil No.) 340 of 2021, wherein the Hon’ble High Court vide order dated 29.07.2021 allowed three weeks’ time to the Respondents to file show cause regarding compliance of the direction made in the writ petition being WP(T) No. 4061/2019. The contempt petition matter is listed for hearing in the week of 23rd August 2021.
4. Commissioner of State Tax (Jurisdictional office) has also decided not to file SLP before the Hon’ble Supreme Court.

#### **Observation of the GSTN:**

1. It is submitted that while filing the online refund application on the GST portal, the taxpayer has to select the category of refund and a particular tax period. For few categories of Refund including refund of ITC may be filed for multiple tax periods in a single refund application. There is a validation on GST portal that refund for a particular period under a particular category can be filed only once.

In the case of GSTIN 20AADCA1825B1ZO, the details of applications of refund filed by the Taxpayer for the FY 2017-18 and FY 2018-19 are given in the following table:

ARN	Date of Filing	Status	Refund Type	From Period	To Period	Claim amount
AA200619006822 H	25/06/19	RSA	EXPWOP	201707	201803	1031171
AA200719000632 O	02/07/19	RSA	EXPWOP	201804	201903	12973905

2. As seen from the above table, the Taxpayer/Petitioner has filed applications under the category of unutilised ITC for the FY 2017-18 and FY 2018-19. In such scenario, the system validation doesn't allow the Tax payer to file another refund claim of the same category for the same period. Whereas, the High court of Jharkhand has directed GSTN to allow Taxpayer to file refund of unutilised ITC of compensation cess for the FY 2017-18 and FY 2018-19. In the present Refund application framework, the applications will not be allowed to be filed in the system. Any change in the refund framework to allow this refund application may impact the existing refund functionality and in turn the stability of the GST system.

#### **Recommendation of the GSTN:**

To handle extraordinary scenarios that may arise due to non-availability of a particular category or due to the presence of any system validation, the GST portal gives the option to file refund claim under the 'Any others' category. The taxpayer can state his case and request for grant of refund.

In the instant case, the Hon'ble High Court has already deliberated upon the matter and passed a detailed order directing the Respondents to open GST portal enabling the Taxpayer/Petitioner to file Refund application (RFD-01) for the period 2017-18 and 2018-19. However, in the present case in order to comply with the direction of the High Court there is a need for waiver of the limitation of the filing of a refund application for a particular period under a particular category 'only once', as imposed by GST system and allowing M/s Atibir Industries to file application for refund of ITC of compensation cess under "Any Others" category.

In view of the aforesaid facts and circumstances GSTN has sought decision in this matter on further action required to be taken by GSTN.

#### **Discussion and decision:**

The Chairman observed that technically speaking, it is not a case of technical glitch and it requires an executive decision which needs to be taken by the jurisdictional Commissioner. The issue should not come to the ITGRC. There are other instances also. Member from West Bengal observed that this case is not in the preview of ITGRC and should be forwarded to Law Committee. Principal Commissioner, GSTPW clarified that it is not law committee issue either. This case should be dealt by Jurisdictional GST Commissioner. Member from Haryana suggested that the taxpayer may be asked to file refund in "Other Category" and the proper officer can deal it as per law. Principal Commissioner, GSTPW also supported this view.

The committee decided that it is not a case for the ITGRC to decide and the jurisdictional officer should deal with it as per the law. GSTN may allow the Taxpayer to file the refund in "Other Category". GSTN stated that they would inform the Jurisdictional Commissioner accordingly.

CENTRE:

1. Sh. Vivek Johri, Member, CBIC
2. Sh. Sanjay Kumar Agarwal, Principal Director General, DG Systems
3. Sh. Alok Tiwari, Pr. Chief Commissioner, CGST, Delhi Zone

GST Council Secretariat:

4. Dr. C. S. Mohapatra, Additional Secretary, GST Council Secretariat
5. Ms. Ashima Bansal, Joint Secretary, GSTC

States:

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

Special Invitee:

10. Sh. Manish Sinha, CEO, GSTN
11. Sh. Dheeraj Rastogi, VP, GSTN
12. Sh. Sanjay Mangal, Pr. Commissioner, GST Policy Wing

## 15<sup>TH</sup> IT GRIEVANCE REDRESSAL COMMITTEE MEETING AGENDA NOTE FOR TRAN-1/TRAN-2 CASES

### I. Brief Background and Updates:

A total no. of 3631 cases of TRAN-1 / TRAN-2 / TRAN-3 were received until 03.07.2021 from the Nodal officers of Centre and the States for consideration by ITGRC. These cases, excluding the court cases, were received in two phases i. e.

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

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

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

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

A total of 745 cases were received from jurisdictional Nodal officers under clause (B) above until 3<sup>rd</sup> July 2021 for consideration by the ITGRC. A summary view of these cases, excluding court, cases is given below:

<b>Sr. No.</b>	<b>Status</b>	<b>Cases forwarded by Nodal Officers</b>
<b>i.</b>	Cases decided by 11 <sup>th</sup> and 12 <sup>th</sup> ITGRC	361
<b>ii.</b>	Cases decided by 13th ITGRC	47
<b>iii.</b>	Cases decided by 14th ITGRC	43
<b>iv.</b>	<b>Cases being presented before 15th ITGRC (Annexure-1)</b>	04
<b>v.</b>	Cases Returned to Nodal Officers due to non-compliance with SOP.	290
<b>vi.</b>	<b>Total Cases ( i to v)</b>	<b>745</b>

### **Cases forwarded by Nodal Officers**

Presently, **04 cases at Sr. no. iv**(attached as Annexure-1)of TRAN-1/TRAN-2, processed by GSTN are being presented before the ITGRC for consideration and decision.

Further, **290 cases at Sr. no. v** were returned to jurisdictional Nodal officers due to following reasons:

- a) Some cases were already received and presented before the previous ITGRCs or
- b) Information was not received as per the SOP and the same were sent back or
- c) Incomplete details furnished by the Nodal Officer.

### **Court Cases Received through GSTN Nodal and other Sources:**

A total of 496 writ petitions have been received by GSTN pertaining to TRAN-1/TRAN-2/Migration as on 07.07.2021. A few cases were received from Nodal officers and were processed accordingly; however, later on GSTN had received Writ Petition also. Therefore, the present figures and figures provided in the ITGRC minutes vary. Further, court cases pertaining to TRAN-1/TRAN-2 are still being received on a regular basis and are being investigated and referred to ITGRC. These include the court cases received by GSTN Nodal officer at email ID tran.extscope@gstn.org.in as well as cases received through other sources.

A brief analysis of 496 court cases is given as under-

- i.** 482 Court cases were processed till 14<sup>th</sup> ITGRC meeting.
- ii.** 11 Court cases of TRAN-1/TRAN-2 have been processed at GSTN level and are being presented before 15<sup>th</sup> ITGRC for decision.
- iii.** 3 Court cases pertaining to TRAN-1 are pending technical analysis.

The details of 493 TRAN-1/TRAN-2/ Migration court cases presented/to be presented before ITGRC is as follows:

<b>ITGRC Meeting</b>	<b>TRAN-1</b>	<b>TRAN-2</b>	<b>Migration</b>	<b>Total</b>
1 <sup>st</sup> ITGRC Meeting	19	0	0	19

2 <sup>nd</sup> ITGRC Meeting	78	0	0	78
3 <sup>rd</sup> ITGRC Meeting	16	0	0	16
4 <sup>th</sup> ITGRC Meeting	53	0	0	53
5 <sup>th</sup> ITGRC Meeting	21	0	0	21
6 <sup>th</sup> ITGRC Meeting	88	0	0	88
7 <sup>th</sup> ITGRC Meeting	13	0	0	13
8 <sup>th</sup> ITGRC Meeting	45	2	0	47
9 <sup>th</sup> ITGRC Meeting	23	0	0	23
10 <sup>th</sup> ITGRC Meeting	12	1	0	13
11 <sup>th</sup> ITGRC Meeting	15	3	0	18
12 <sup>th</sup> ITGRC Meeting	14	0	0	14
13 <sup>th</sup> ITGRC Meeting	54	2	1	57
14 <sup>th</sup> ITGRC Meeting	19	2	1	22
To be presented before 15 <sup>th</sup> ITGRC Meeting	10	1	0	11
Total	480	11	2	493

**II.** As detailed below, fourteen meetings of ITGRC have been held so far. A total of **3789** TRAN-1/TRAN-2/TRAN-3 cases (**including court cases**) were presented before ITGRC in these meetings. Out of these, **a total of 1329 cases have been approved for filing** TRAN-1/TRAN-2. The decision of ITGRC regarding approval/non-approval of these cases has also been communicated to the jurisdictional Nodal officers for onward transmission to the taxpayers.

The detail of TRAN-1, TRAN-2 & TRAN 3 cases (including court cases) **approved/not approved/withdrawn** up to 14th ITGRC, are given below:

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

7 <sup>th</sup>	11.06.2019	98	151		249
8 <sup>th</sup>	13.08.2019	137	352	2	491
9 <sup>th</sup>	02.12.2019	72	194	13	279
10 <sup>th</sup>	22.01.2020	11	52		63
11 <sup>th</sup>	18.03.2020	82	193		275
12 <sup>th</sup>	26.05.2020	38	80		118
13 <sup>th</sup>	01.09.2020	26	78	-	104
14 <sup>th</sup>	04.03.2021	43	22	-	65
<b>Grand Total</b>		<b>1329</b>	<b>2445</b>	<b>15</b>	<b>3789</b>

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

### **III. Proposal for 15<sup>th</sup> ITGRC Meeting**

#### **i) Cases received from Nodal officers:**

As explained above, a total of **04cases** (enclosed as Annexure-1) received from Nodal officers (**excluding court cases**), are being presented before 15<sup>th</sup>ITGRC for decision, after technical examination by Infosys and GSTN. These cases have been received as per SOP and directions given in the letter/OM referred in **para I (B)**above.

#### **ii) Court cases**

As explained above a total of 11 court cases (enclosed as Annexure-2) are being presented before 15<sup>th</sup> ITGRC for decision after technical analysis.

In view of the fact that the taxpayers have filed Writ Petitions alleging and insisting technical glitches, e-mails were sent to them with request to provide below mentioned information for further examination in respect of cases falling under category “B”:

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

The taxpayers were requested to share the above-mentioned details to substantiate their claims within specific time. Replies were received in 5 cases (Sl. Nos. 3, 6, 8 and 9 for TRAN-1 and Sl. No. 1 for TRAN-2). The taxpayers did not share any screen shots evidencing any technical glitches of the GST Portal. The details of each case have been provided in Annexure-2 to this agenda.

**Accordingly, total 15 cases are being presented to the 15<sup>th</sup> ITGRC for consideration and decision. Out of these 15 cases, 4 cases have been received from Nodal Officers and 11 are court cases.**

**IV. Category-wise analysis of 15 (4 Nodal and 11 Court cases) TRAN-1 and TRAN-2 cases, received from Nodal Officers/Court Cases, are given below:**

**iii) Cases where the taxpayers could not file TRAN 1/TRAN-2 because of technical issues:**

**A1. Processed with error-**In this category, the taxpayer have received error message as "Processed with Error". The taxpayer could not claim transitional credit as the line items requiring declarations of earlier existing law registration were processed with error since the taxpayer had not added them in his registration details. A total of **01 case** received from Nodal officers and **02 cases** received as court case are falling in this category.

**Accordingly, 03 cases of TRAN-1 are being presented before 15<sup>th</sup> ITGRC for consideration and approval.**

**iv) Cases where no evidence of technical glitches have been found after analysis of System logs:**

**B1. Cases in which, there are no evidences of error on submission/filing of TRAN1, as per GST System log-** As per GST System log, there are no evidences of error or submission/filing of TRAN-1. A total of **02 cases** received from Nodal officers and **05 cases** received as court case are falling in this category.

**B2. Cases in which filing of TRAN-1 Fresh/Revision Attempted with No error/ No valid error reported. -** As per GST System logs, the taxpayers have claimed that they tried to save/submit for the first time or for revision of TRAN 1 but analysis of logs show that there is no system error. A total of **01 cases** received as court case is falling in this category.

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

**B4. TRAN-1 filed once but credit not received. -** Cases where the taxpayer has filed TRAN1 once and claims that no credit have been posted. No technical issues has been observed in the logs. A total of **01 case** received as court case is falling in this category.

**B6. TRAN-1 filed, eligible for TRAN-2. TRAN-2 fresh/revision attempted with no error or no valid error reported.** As per Logs TRAN-1 filed successfully. Eligible for TRAN-2. TRAN-2 fresh/revision attempted with no error or no valid error reported in logs. A total of **01 cases** received as court case is falling in this category.

**B7. Cases where TRAN-1 not filed, hence TRAN-2 not attempted -** As per Logs Tran-1 not filed. Table 7(a) & section 7b or section 7(d) value has not been declared from the Taxpayer hence Taxpayer was not eligible for filing Tran-2. Also As per logs User neither

submitted nor filed the form. No logs of save as well. ITC ledger also not updated. A total of **01 case** received from Nodal officers is falling in this category.

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

<b>Category No.</b>	<b>Category</b>	<b>Count of Taxpayers</b>
A1	Processed with error.	01
B1	As per GST system log, there are no evidences of error on submission/filing of TRAN1.	02
B7	TRAN-1 not filed, hence TRAN-2 not attempted	01
	<b>Grand Total</b>	<b>4</b>

**Category-wise count of Orders passed in court cases**

<b>Sr. No.</b>	<b>Court Order/WPs</b>	<b>Category A (TRAN-1/TRAN-2)</b>	<b>Category B (TRAN-1/ TRAN-2)</b>	<b>Total</b>
1	Direction to allow filing of TRAN-1/TRAN-2 manually/electronically	1	1	2
2	No specific order passed	1	7	8
3	Direction to Respondents/Nodal Officer to pass appropriate orders	-	1	1
	<b>Total</b>	<b>2</b>	<b>9</b>	<b>11</b>

**Cases sent by Nodal Officers of Centre/States**

	<b>Category</b>	<b>Detailed Description</b>	<b>Count of Taxpayer</b>
A1	Processed with error.	The taxpayer could not claim transitional credit as the line items requiring declarations of earlier existing law registration were processed with error since the taxpayer had not added them in his registration details.	01
B1	As per GST system log, there are no evidences of error or submission/filing of TRAN-1.	As per GST System Logs there is no evidence that the taxpayer has tried for Saving / Submitting / Filing TRAN-1	02
B7	TRAN-1 not filed, hence TRAN-2 not attempted.	As per Logs Tran-1 not filed. Table 7(a)-Part 7B or section 7(d) value has not been declared by the Taxpayer hence Taxpayer was not eligible for filing Tran-2. Also As per logs User neither submitted nor filed the form. No logs of save as well. ITC ledger also not updated.	01
	<b>Total</b>		<b>4</b>

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

<b>S. No.</b>	<b>GSTIN</b>	<b>Legal Name</b>	<b>Constitution of Business</b>	<b>Amount of Credit to be claimed in TRAN-1 (in Rs.)</b>	<b>State</b>	<b>Name and Designation of Nodal Officer</b>	<b>State/ Centre</b>	<b>Email ID of Nodal Officer</b>
1	24AAACK8850D1ZQ	KEVIN PROCESS TECHNOLOGIES PVT LTD	Private Limited Company	SGST Rs. 30,32,317/-	Guja rat	Shri A. A. Mansuri, Assistant Commissioner	Center	<a href="mailto:cexahmed@nic.in">cexahmed@nic.in</a> <a href="mailto:commr-cexamd3@nic.in">commr-cexamd3@nic.in</a>

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

S. No.	GSTIN	Legal Name	Constitution of Business	Amount of Credit to be claimed in TRAN-1 (in Rs.)	State	Name and Designation of Nodal Officer	State/ Centre	Email ID of Nodal Officer
1	36AAGCA1556J1ZN	ANU ADVANCE COMPOSITE PRODUCTS PRIVATE LIMITED	Private Limited Company	SGST : Rs. 9,38,030/-	Telangana	Shri. B. Raghu Kiran, Additional Commissioner	Center	cgst.adc1hydcommte@gov.in
2	09ACVPK6803A1ZJ	RAJEEV KUKREJA	Proprietorship	Not Available	Uttar Pradesh	Addl. Commissioner - Gr-2(IT)	State	ctithqlu-up@nic.in

**Category B7: Cases where TRAN-1 not filed, hence TRAN-2 not attempted: As per Logs Tran-1 not filed. Table 7(a) – Part 7(B) or Table 7(d) value has not been declared by the Taxpayer hence Taxpayer was not eligible for filing Tran-2. Also As per logs User neither submitted nor filed the form. No logs of save as well. ITC ledger also not updated.**

S. No.	GSTIN	Legal Name	Constitution of Businesses	Amount of Credit to be claimed in TRAN-1 (in Rs.)	State	Name and Designation of Nodal Officer	State/ Centre	Email ID of Nodal Officer
1	37AAACL2937J1ZD	LIFESTYLE INTERNATIONAL PRIVATE LIMITED	Private Limited Company	Rs. 59,77,434/-	Andhra Pradesh	S. Faheem Ahmed, Principal Commissioner	Center	ahmed.faheem@gov.in

**Writ Petition Cases**

**(A) TRAN-1 Cases**

<b>Category No.</b>	<b>Category</b>	<b>Detailed Description</b>	<b>Count of Taxpayer</b>
Category-A1	Processed with error	Cases where the taxpayer received the error 'Processed with error.' As per GST system logs the taxpayer has attempted to submit first time/fresh or revise TRAN1 but could not file because of errors.	2
Category-B1	As per GST system log, there are no evidences of error or submission/filing of TRAN-1	As per logs User neither submitted nor filed the form. No logs of save as well. ITC ledger also not updated. No Valid Error reported.	5
Category-B2	Trans-1 Fresh/Revision Attempted with No error or No valid error reported	As per GST System logs, the taxpayers have claimed that they tried to save/submit for the first time or for revision of TRAN 1 but analysis of logs show that there is no system error.	1
Category-B3	Successfully Filed as Per Logs with No Valid Error reported.	The Taxpayer has successfully filed TRAN-1 and no technical errors had been found in the examined technical logs.	1
Category-B4	TRAN-1 filed but credit not received	Cases where the taxpayer has filed TRAN1 once and claims that no credit has been posted. No technical issues have been observed in the logs.	1
	<b>Total</b>		<b>10</b>

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

**1. CWP 4547/2021-M/s AAR AAR Technoplast Pvt. Ltd, Faridabad Vs UOI &Ors.**

<b>GSTIN/ Provisional ID</b>	<b>State</b>	<b>Constitution of Business</b>
06AADCA2129G1Z5	Haryana	Private Limited Company

**Issue:** The Petitioner submitted TRAN-1 on 26.08.2017. The message "Processed with error" was displayed on the GST Portal. The Petitioner was entitled to carry forward ITC of Rs. 4,78,364/- which

remained unutilised in view of the technical glitches of the GST Portal. The Petitioner submitted TRAN-1 but CENVAT credit was reflected in the credit ledger.

**Status:** GSTN is a party in this matter. GSTN vide email dated 26.02.2021 apprised the status of case to the CGST Commissionerate (Faridabad) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending Hon'ble High court of Punjab & Haryana. The court vide order dated 26.02.2021 has directed that the matter should be listed after the decision of SLP (C) Nos.7425-7428 of 2020 therefore the next date of hearing is not available on the court's website. No effective order is available on the court's website in this matter.

**Technical Analysis:** -As per GST System logs, the Petitioner first time opened TRAN-1 and filed. ARN was generated for first attempt. Revision was also tried by the Petitioner. The Petitioner tried to save data as well. During first attempt and revision, while doing save/submit attempt, error was reported on the GST Portal. PE (Process with error) was reported for invalid registration for VAT/CENVAT/SVAT no. AADCA2129GXM002/AADCA2129GXM001/AADCA2129GSD004. This registration was not added till 27/12/2017. ITC ledger was also not updated for first filing. From the above it can be seen that the Petitioner faced technical glitches while filing TRAN-1.

**2. W.P. (c) 221/2020-M/S U.K. Paints India Private Limited v. UOI &Ors.**

GSTIN/ Provisional ID	State	Constitution of Business
09AAACU0057C1ZR	Uttar Pradesh	Private Limited Company

**Issue:** The petitioner has alleged that due to glitch in the GST system the GST TRAN-1 form could not be filed as during the filing of the details in the form, the window was automatically logged out, resulting in non-filing of the form.

**Status:** GSTN is a party in this matter. GSTN vide email dated 19.3.2021 apprised the status of case to Delhi Commissionerate in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter has been disposed off vide order dated 27.05.2021. The Court has directed that Respondents are directed to either re-open the online portal so as to enable the Petitioners to file TRAN-1 Form electronically, or to accept the same manually on or before 30th June, 2021. The Respondents shall process the Petitioners' claims in accordance with law once the TRAN-1 Form is filed.

**Technical Analysis:** - As per GST System logs the Petitioner first time opened TRAN-1 and filed it. ARN was generated for first attempt. During first attempt and revision while doing save/submit attempt error was reported on GST Portal. PE (Process with error) was reported for invalid registration for VAT/CENVAT/SVAT no. 09267900686/09268900686C/09AAACU0057C1ZR and 09267900686/09268900686C. These registration details were not added till 27/12/2017. Ledger was updated for first filing. From the above it can be seen that the Petitioner faced technical glitches while filing TRAN-1.

The Petitioner was also trying to claim ITC by adding his own GSTIN 09AAACU0057C1ZRITC in TRAN-1. This was a wrong way to claim ITC.

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

**3. SBCWP No. 1687/2020 M/s Nakoda Medical Agencies v. UOI &Ors**

GSTIN/ Provisional ID	State	Constitution of Business
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08AEXPB4584P1ZJ	Rajasthan	Proprietorship
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**Issue:** The petitioner filed TRAN-1 on 26.12.2017 for carrying forward a credit of Rs. 2,62,716/- as SGST and Rs. 1,03,816.08/- as CGST, however due to technical glitches, same could not be filed through online mode. On account of such glitch, the amount entered in TRAN-1 was not reflected in electronic ledger.

**Status:** GSTN is a party in this matter. GSTN vide email dated 12.2.2021 apprised the status of case to Jodhpur Commissionerate in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Rajasthan and the next date of hearing is not available on court's website. No effective order is available on the Court's website.

**Further investigation by GSTN:** An email dated 13.03.2021 was sent to the Petitioner requesting for the following information: -

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

The Petitioner was requested to provide the details by 15.03.2021. The Petitioner replied vide email dated 15.03.2021 explaining that due to technical glitches, system errors and huge traffic at common portal ([www.gst.gov.in](http://www.gst.gov.in)) they failed to upload form GST TRAN-1 by due date of 27-12-2017. No screen shot evidencing error has been provided by them as they contended that they were not aware regarding preserving any evidences e.g. screenshots, etc. of attempt made by the petitioner firm while uploading form GST Tran-1.

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

#### 4. W.P.A. No.10104/2021-Hospital Supply Company Pvt. Ltd v. Union of India &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
19AABCH9266R1ZM	West Bengal	Private Limited Company

**Issue:** The petitioner failed to file TRAN-1 form due to technical glitches on the GST Portal.

**Status:** GSTN is a party in this matter. GSTN vide email dated 19.5.2021 apprised the status of case to Kolkata Commissionerate in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Kolkata and the last date of hearing was 3.05.2021. The next date of hearing in this matter is not updated on courts website.

**Further investigation by GSTN:** -An email dated 10.06.2021 was sent to the Petitioner requesting for the following information: -

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

The Petitioner was requested to provide the details by 11.06.2021. No response was received by the Petitioner.

As per GST System logs the Petitioner neither submitted nor filed TRAN-1. There are no logs of “save” as well. ITC ledger has also not been updated.

**5. W.P.A. No.10103/2021-P. Bhogilal Pvt. Ltd v. Union of India &Ors.**

<b>GSTIN/ Provisional ID</b>	<b>State</b>	<b>Constitution of Business</b>
19AABCP7871N1ZN	West Bengal	Private Limited Company

**Issue:** The petitioner failed to file TRAN-1 form due to technical glitches on the GST Portal.

**Status:** GSTN is a party in this matter. GSTN vide email dated 20.5.2021 apprised the status of case to Kolkata Commissionerate in terms of CBIC’s Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon’ble High Court of Kolkata and the last date of hearing is 3.05.2021. The next date of hearing in this matter is not updated on courts website.

**Further investigation by GSTN:-**An email dated 10.06.2021 was sent to the Petitioner requesting for the following information:-

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

The Petitioner was requested to provide the details by 11.06.2021. No response was received from the Petitioner.

As per GST System logs the Petitioner neither submitted nor filed TRAN-1. There are no logs of “save” as well. ITC ledger has also not been updated.

**6. SCA No. 10257/2020-M/s Kishore Vadilal (P) Ltd. v. UOI & Ors**

<b>GSTIN/ Provisional ID</b>	<b>State</b>	<b>Constitution of Business</b>
24AAACK5882F1ZK	Gujrat	Private Limited Company

**Issue:** The Petitioner stated that they were unable to file the GST FORM TRAN 1 due to technical glitch. The Petitioner alleged that the glitch was due to the error in the core field of registration of the Petitioner. The Petitioner was erroneously granted registration certificate as a proprietorship firm on account of error in migration instead of Private Limited Company. The Petitioner’s letter of undertaking was not accepted. Petitioner had tried to file an online application dated 03/03/2018 for amendment in the registration and subsequently amended registration certificate was issued to the petitioner on 26/04/2018.

**Status:** GSTN is a party in this matter. GSTN vide mail dated 08.03.2021 shared its comments in the matter with the concerned Commissionerate in terms of CBIC’s Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Ahmedabad bench of Gujarat High Court. The next date of hearing in this matter is not updated on courts website. No effective order is available on the Court’s website.

**Further investigation by GSTN:** -An email dated 10.06.2021 was sent to the Petitioner requesting for the following information: -

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

The Petitioner was requested to provide the details by 11.06.2021.

The Petitioner responded vide email dated 11.06.2021 that the petitioner alleged that the glitch was due to the error in the core field of registration of the petitioner. The petitioner was erroneously granted registration certificate (01/07/2017) as a proprietorship on account of error in migration instead of Private Limited Company. Amended registration certificate was issued to the petitioner on 26.04.2018.

As per GST System logs the Petitioner neither submitted nor filed TRAN-1. There are no logs of “save” as well. ITC ledger has also not been updated. The Petitioner had done core amendment for change in Constitution of Business on 2<sup>nd</sup> April, 2018 which is after the due date of filing TRAN1. He has not attempted to file TRAN-1 on or before the due date of 27<sup>th</sup> Dec, 2017.

#### 7. M/s. Tarun Enterprises Pvt. Ltd. v. UOI & Ors

GSTIN/ Provisional ID	State	Constitution of Business
07AAACT4460C2ZO	Delhi	Private Limited Company

**Issue:** The Petitioner has alleged that due to technical glitch in the GST system the TRAN-1 form could not be filed. During the filing of the details in the form, the window was automatically logged out, resulting in non-filing of the form.

**Status:** GSTN is a party in this matter. GSTN vide email dated 19.3.2021 apprised the status of case to Delhi Commissionerate in terms of CBIC’s Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon’ble High Court of Delhi and the next date of hearing is 31.08.2021. No effective order is available on the Court’s website.

**Further investigation by GSTN:** -An email dated 10.06.2021 was sent to the Petitioner requesting for the following information: -

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

The Petitioner was requested to provide the details by 11.06.2021. No response was received from the Petitioner.

As per GST System logs the Petitioner neither submitted nor filed TRAN-1. There are no logs of “save” as well. ITC ledger has also not been updated.

#### Category B2: Trans-1 Fresh/Revision Attempted with No error or No valid error reported

**8. WP No. 853/2021 M/s Pee Yel Jay International V. Chairman, GSTC &Ors.**

<b>GSTIN/ Provisional ID</b>	<b>State</b>	<b>Constitution of Business</b>
33AAPFP7604Q1ZK	Tamil Nadu	Partnership

**Issue:** The petitioner had filed TRAN -1 to carry forward the credit of Rs. 10,18,143/- which was available to the petitioner under TNVAT Act. The credit was not reflected in the ledger of the Petitioner. Due to technical glitch an error appeared on the screen. Whenever the Petitioner tried uploading the TRAN1, pop up dialogue box opened and the message “proxy error” was displayed on the screen. The Petitioner was not able to complete the submission as the GST website was automatically jumping, showing error message and sometime there was no response.

**Status:** GSTN is a party in this matter. GSTN vide email dated 22.02.2021 apprised the status of case to the CGST Commissionerate (Madurai) in terms of CBIC’s Circular no. 39/13/2018 dated 03.04.2018. The matter has been disposed off vide order dated 05.03.2021. The Court vide order dated 05.03.2021 has directed that the jurisdictional officer/6th respondent is directed to verify the correctness of the facts projected in the petition mentioned representations dated 20.02.2020 and on being satisfied with the same, forward the petitioners' case to the Nodal Officer, namely, fifth respondent herein who will coordinate with the first respondent (GSTC) so that the petition mentioned credit amounts filed in Form TRAN 1 are duly carried forward to the petition mentioned Electronic Credit Ledger pertaining to the respective writ petitioners. This exercise shall be carried out and completed within a period of twelve weeks from the date of receipt of a copy of this order.

**Further investigation by GSTN:** An email dated 13.03.2021 was sent to the Petitioner requesting for the following information: -

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

The Petitioner was requested to provide the details by 15.03.2021, however, no reply was received from the Petitioner.

On completion of technical analysis conducted by GSTN, it was observed in the logs that the Petitioner submitted TRAN-1 on 27/12/2017 and the same was successfully processed. TRAN-1 filing however, was not attempted. Further no error was reported in logs and ITC ledger has not been updated. Thus, the Petitioner’s case may be considered as not having faced any technical difficulties.

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

**9. W.P.A.7926/2021-Ad Well International Private &Anr. V. The SGST Nodal Officers, Technical Glitches &Ors.**

<b>GSTIN/ Provisional ID</b>	<b>State</b>	<b>Constitution of Business</b>
19AADCA3627K1ZK	West Bengal	Private Limited Company

**Issue:** The Petitioner submitted that the declaration in Form TRAN-1 was filed within due date. Petitioner successfully claimed the transactional credit of VAT amounting to Rs.33,27,308/- under the West Bengal Value Added Tax Act,2003 and further fed the data relating to CENVAT credit of Rs. 65,73,765/- on the GST Portal but the said data was not uploaded. The VAT credit

amounting to Rs.33,27,308/- was credited in the electronic credit ledger but CENVAT credit of Rs.65,73,765 was not credited due to technical glitches of the GST portal.

**Status:** GSTN is a party in this matter. GSTN vide email dated 25.3.2021 apprised the status of case to Kolkata Commissionerate in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Kolkata and the last date of hearing is 24.03.2021. The next date of hearing in this matter is not updated on courts website.

**Further investigation by GSTN:** An email dated 10.06.2021 was sent to the Petitioner requesting for the following information: -

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

The Petitioner was requested to provide the details by 11.06.2021. The Petitioner responded vide email dated 11.06.2021 and stated that while filing TRAN-1 only VAT amount could be uploaded. Excise Duty of Rs.65,73,765.00 by way of balance in the form of CENVAT Credit could not be uploaded. As regards screen shot of the error the Petitioner stated that screen shot of the technical error was not saved. A letter dated 30.08.2018 was sent to the SGST Nodal Officer, Technical Glitches, 14, Beliaghata Main Road, Sales Tax Building, Kolkata-700015 which is annexed to the writ petition as Annexure "P-2". The Petitioner was requested to share the details of the same by EOD 14.06.2021. The Petitioner provided the scanned copy of the letter vide email dated 14.06.2021. In the attached letter Petitioner has mentioned that due to some system error the data fed into the system was not uploaded. No screen shot of the error is available with the Petitioner.

As per GST System logs the Petitioner first time opened TRAN-1 and tried to file. It got stuck in "FRZ" later on filing was done and ARN was generated. For first successful submission ITC ledger was updated. Two unique ARN's were generated due to the fact that the TRAN-1 was stuck in "FRZ" and there were multiple clicks for filing of TRAN-1.

**Category B4: TRAN-1 filed but credit not received.**

**10. WP No. 226277/2020 M/s INM Technologies Private Ltd. v. UOI &Ors.**

GSTIN/ Provisional ID	State	Constitution of Business
29AADC17257B1ZK	Karnataka	Private Limited Company

**Issue:** The petitioner filed TRAN- 1 within the due date but credit amount of Rs.16,27,341/- was not reflected in the electronic credit ledger.

**Status:** GSTN is a party in this matter. GSTN vide email dated 15.01.2021 apprised the status of case to the CGST Commissionerate (Bengaluru) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is disposed of by Hon'ble High court of Karnataka vide order dated 3.02.2021. The Court has directed that respondents are required to make available necessary provisions on the website of the portal of the respondent to enable the petitioner to claim such credit.

**Further investigation by GSTN:** An email dated 13.03.2021 was sent to the Petitioner requesting for the following information: -

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

The Petitioner was requested to provide the details by 15.03.2021, however, no reply was received from the Petitioner.

On completion of technical analysis conducted by GSTN it was observed in the logs that Petitioner has tried to save TRAN-1 form which was processed. The Petitioner filed TRAN-1 successfully and ARN was also generated. ITC ledger was not updated. Further, no error reported in logs. Revision was not attempted by the Petitioner. Thus, the Petitioner's case may be considered as not having faced any technical difficulties.

**(C) TRAN-2 Cases**

Category No.	Category	Detailed Description	Count of Taxpayer
Category-B6	Tran-1 Filed, Eligible for Tran-2. Tran-2 Fresh/Revision Attempted with No error or No valid error reported	As per Logs Tran-1 filed successfully. Taxpayer was eligible for filing Tran-2. As per logs taxpayer filed Tran-2 without any error.	1

**Category B6-Tran-1 Filed, Eligible for Tran-2, Trans-2 Fresh/Revision Attempted with No error or No valid error reported**

**1. DB CWP 2938/2021-M/s Bubugao Communication Pvt Ltd v. Commissioner, CGST, Jaipur &Ors.**

GSTIN/ Provisional ID	State	Constitution of Business
08AAGCB0384H1ZQ	Rajasthan	Private Limited Company

**Issue:** -Petitioner saved data in Form TRAN-2 for the month of July,2017, as these showed in draft, but while submitting the final TRAN-2 form for the month of July, 2017 the same is showing as 'Nil'. Therefore, it appears that the Petitioner may have submitted 'Nil' data in their TRAN-2 form for the month of July, 2017.

**Status:** - GSTN is a party in this matter. GSTN's comments were sent to Jaipur Commissionerate vide email dated 02.06. 2021. The matter is pending before Hon'ble High Court of Jaipur. The next date of hearing in this matter is 07.07.2021. No effective order is available on the court's website.

**Further investigation by GSTN:** An email dated 30.06.2021 was sent to the Petitioner requesting for the following information: -

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

The Petitioner was requested to provide the details by 02.07.2021. The Petitioner responded vide email dated 01.07.2021. The Petitioner did not provide any screen shots of the alleged technical

glitches of the GST Portal. The Petitioner has stated that no data of outward supply on which transition credit was claimed was reflected in Final Form Tran-2 for the month of July-17 when the draft Form Tran-2 for the month of July-17 had complete details. They have filed Final GST Form Tran-2 for the month of July-17 on the same date i.e. 14.06.2018 on which date Form Tran-2 for the month of Aug-17 and Sep-17 was also filed. But the TRAN-2 Form for July-17 had no details and was blank without any details of outward supply and input tax credit whereas Form Tran-2 for the month of Aug-17 and Sep-17 had complete details. For this technical error in Form Tran-2 for July-17 we raised a complaint to the GST help Desk for which ticket ID-SR201806142643144 was allotted.

Ticket no. 201806142643144 was raised on 14.06.2018 and closed on 17.06.2018. The following issue was raised “while filing Trans2 we have added the details in July month and submit the same but after filing when we check the same it has been filed blank. So kindly open the option in Trans 2 July month so we can add the same and claim credit. As we have both preview draft and final submit draft.” The following resolution was provided to the Petitioner “This is in reference to your query related to the functionality to reset TRAN 2, we would like to inform you that the reset option for TRAN 2 is not available on the GST portal. Kindly wait for further notification, if any. In case, for further concern, please feel free to contact the GST helpdesk number (0120-4888999) or visit Grievance Redressal portal <https://selfservice.gstsystem.in/> to log a ticket. We regret for any inconvenience this may have caused.”

On completion of technical analysis conducted by GSTN it was observed in the logs that Petitioner successfully filed TRAN-1 on 25/08/2017 & 26/12/2017. ARN was received for the same and ITC ledger was also updated. The Petitioner filed TRAN-2 for 07, 2017, 08, 2017, 09, 2017 period before 30/06/2018. Valid System message was displayed to the Petitioner while filing TRAN-2 for the period 10, 2017 as Petitioner’s closing balance declared in TRAN-2 for the period 10, 2017 was 0. The message displayed to the Petitioner was “You cannot ADD/EDIT Invoice as closing balance is zero”. ITC ledger of the Petitioner was updated for 3 filed periods.

**Subject: Agenda Note for ITGRC for Technical Issues requiring data fixes through backend utilities.**

**Background**

GST system was envisioned to have gone live with all software components ready for go live on 1<sup>st</sup> of July, 2017. GSTN, accordingly developed the application modules keeping in mind the GST Law, rules and format, stipulated in Software Requirement Specifications (SRS). However, keeping in mind the fact that GST is a new law and taxpayers may not have clarity on a lot of details pertaining to information sought in forms, GST Council approve new formats changing the structure of major returns processing. Besides, the rules and formats for many other forms were also not notified that were to be developed. Pursuant to various feedbacks received from industry bodies and trade, many changes were also stipulated in prevailing laws and rules that required changes to be continuously made in the GST System.

Therefore, GSTN moved to an agile methodology of developing applications for GST System keeping it modular to handle frequent changes in law and rules incorporated in a running application. This created an overhead of integrating all new application changes downstream being dependent on the module undergoing the change. This led to following issues:

- Some corner scenarios owing to varying taxpayer actions and system behaviour when subjected to heavy load, went unhandled leading to inconsistent data persisting in GST System.
- The data inconsistencies varied from ledger getting improper debits/credits, the return details stored in the system having incorrect information relating to situations where an irreversible commit had happened in the database,
- No option available to taxpayer to seek remedy in GST System leading to a need of performing data fixes through auditable utilities.

Due to the complex set of validations and process requirements through multiple touchpoints in GST System's application, the processing errors either due to unhandled exceptional scenarios or any software glitches occasionally occur. In order to remediate such issues, the processed incorrect data require fixing, collecting correct data besides solving the software/platform issues being faced by respective stakeholders.

As part of medium term measure, GSTN proposes to perform the following:

- GSTN to request MSP (Infosys) to undertake a detailed assessment of any of such problem being reported in order to ascertain whether the problem at hand is due to the technical glitches that have been reported by the stakeholders. GSTN intends to seek a detailed assessment report from MSP and get them corrected.
- Upon confirmation of glitch, post internal approval through CEO GSTN, GSTN shall intimate MSP to perform data fix as immediate relief for issue at the hand as in the absence of such step, the taxpayer would be left in lurch and not able to complete compliance.
- After execution of data fix utility, GSTN will request a detailed report of the impacted stakeholder such as taxpayers and the respective data fixes applied. The

report generated shall be shared with ITGRC and respective Centre/State jurisdictional officer for information on a fortnightly basis.

- All such reports shall also be submitted to the GST Council.
- GSTN shall ensure maintenance of complete audit trail of such data fixes applied for future audit requirements.
- GSTN shall perform a periodic sample-based audit of data fixes to ensure necessary governance and control mechanism are in place.

**Action that should be taken by GSTN**

The issues generally have been noticed after

- A complaint got raised by taxpayer/ tax officer,
- Result of a periodic internal and external audits.

GSTN then usually performs data analysis, and confirms if the data indeed contained discrepancy. Upon confirmation of the defect, complete list of similar cases would be extracted from the system that are suspected to require data fix, and an approval note with root cause analysis would be prepared and placed before a competent authority, who would approve for the data fix including the manner in which it is to be applied. In this sequence of activities, the GSTN has prepared a generic list of typologies of errors that could come based on the pattern noticed so far and has proposed an approval process on which approval is required by GSTN. The method followed would be as follows: as follows:

**The classification of issues and the method to correct them:**

The Issues can be identified into following 5 categories:

Sr. No	Technical issue Category	Modules affected	Type of error and knowledge of correct data	Approving Authority
1	Technical issue with no financial implications	Such as Registration, Back office, Front Office etc.	Correct data known	Internal (SVP, GSTN)
2	Technical issue with no financial implications,	Such as Registration, Back office, Front Office etc.	Correct data not known	Internal (EVP GSTN) for resetting/ reopening the forms.
3	Technical issue affecting locally with financial implications	Such as Returns, cash ledger/ ITC ledger/ Refund etc.	Correct data known	GSTN to correct data after Internal Approval by EVP/CEO. The tax administration to be provided with MIS.

4	Technical issue affecting locally with financial implications	Such as Returns, cash ledger/ ITC ledger/ Refund etc.	Correct data not known with certainty	GSTN to correct data after Internal Approval by EVP/CEO. GSTN to enable the reset button so that the taxpayer can correct the form and file again. Post facto the approval of ITGRC to be taken and tax administration to be provided with MIS.
5	Technical issue affecting globally with financial implications	Such as cash ledger/ ITC ledger/ Refund etc.	Correct data not Certainly known	GSTN to enable the appropriate data fix after Approval of the ITGRC – Taxpayer can reset the form and file again. The tax administration to be provided with MIS.
6	Taxpayers Claiming technical issue to be Defect	NA	No Action required – Clarification provided to the taxpayer	Not Applicable

**The process to be adopted for correction:**

1. For most of the issues, as depicted in the above table, it is advised that GSTN may be allowed to fix issues from backend with the approval of the ‘Competent Authority’ as may be approved/ nominated.
2. For all the issues, a list with impacted GSTIN’s, CINs etc. will be prepared and shared with the competent authority as per Col. 5 above, as approved by ITGRC.
3. The steps involved in the process shall be:
  - a. The data discrepancy will be first analyzed and confirmation will be sought from MSP
  - b. Upon confirmation, a utility will be written by MSP to extract all similar cases from GST System data stores.
  - c. A root cause analysis will be sought and fix would be implemented by MSP in consultation with GSTN to prevent further damage to data consistency
  - d. Scripts (SQL or Java depending upon type of defect) will be prepared for data fix and are tested in multiple cycles by MSP and GSTN.
  - e. Approval note will then be prepared and presented to competent authority for approval to go ahead.
  - f. Once approval is provided, audit entries will be created for each mutation affecting the data state.
  - g. Scripts will be executed and post execution state of data will also be stored for

referencelater.

- h. List of all such changes will be presented and explained to GST policy wing & ITGRC and periodic internal audit will also be undertaken.

**Please Note:**

1. While in most cases, where cash is involved, the tax amount would have already moved from taxpayer's bank account to Govt. account, and it will only entail changes to local ledgers in GST System without any requirement to correct records on downstream systems. Therefore, these changes may be allowed to be performed through audited scripts and procedures as mentioned at point number 3.
2. For certain category of issues in the table above, where the impact of the defect is limited to GST System only, an option will be given through an identified list of taxpayers impacted in self-service mode to correct the errors. This will be analysed and done case to case basis, and an enablement will be done for such taxpayers on their respective dashboards, such as Returns, Refunds, Registration etc. For other categories, data fix from the back end after the approval of the competent authority as proposed would be applied.
3. However, for some issues, such as Sl. no 5 of the above table e.g. cash ledger problems, because of unforeseen issues, the CPIN information travels from GST Portal to banks, to RBI, State Accounting authorities, Pr. CCA etc. Any replay of the records will also need to flow globally to all these entities and they need to make the correction across the board.

**Decision Point:**

Since these problems, though are now sparse, cannot be ruled out in future as well. Therefore, a competent authority may be approved/assigned at GSTN for the categories mentioned, upon whose approval; the data fixes can be performed.

Accordingly, for the data errors an approving authority to approve the change as column 5 of the table above may please be approved:

**Sample list of data errors with no financial impact**

In the below cases, there has been technical issue which has been fixed (data fix) by GSTN after taking internal approval.

<b>Sr. No.</b>	<b>Module</b>	<b>Issue Category</b>	<b>Note Statement</b>	<b>GSTIN Impacted</b>
1	Registration	Duplicate Registration incase of migrated Taxpayers	In case of migration of taxpayers from the old regime, in some cases it so happened that the taxpayer has migrated from the old registration number and obtained fresh registration from the GST Portal. In such cases, since the GSTIN was issued from two different systems, therefore the GSTIN in both the cases was same but in the database two reference IDs were created as both the processes happened independently. The reference ID which was not being used by the taxpayer was made inactive and any credit against the inactive reference ID was transferred to the Active Reference ID.	129
2	Registration	Duplicate Registration in case of UIN/TDS/GST P Temporary ID	The registration number for the UIN/TDS/GSTP and Temporary ID gets generated from a running serial Number. Due to technical issue, the running serialnumber was reset and the sameregistration number was allocated to UIN/TDS/GSTP and Temporary ID registrants. Therefore, one Reference ID was made inactive.	581
3	Cash Ledger	Double entry in Electronic CashLedger	Due to defect in the system application, against a single challan, two credit entries were posted in the Electronic Cash Ledger. This was due to technical issue as the banks were submitting remittances at the same time. In some cases, the taxpayers had paid voluntarily through form GST DRC-03.	5 Tickets raised.
4	TRAN-1	Wrong Credit posted in Credit Ledger	It was observed that wrong credit entry was posted after filing of TRAN1 form for claiming transitional credit. It has happened due to technical defect.	1151

Sr. No.	Module	Issue Category	Note Statement	GSTIN Impacted
5	Return /GSTR3B	Multiple Entries in Return Summary Table	After filing GSTR3B form, there is an internal table where the details of the GSTR3B form summary is being maintained. At high load due to exception, multiple summary entries for the same taxpayer and tax period were present. This is due to GSTR3B issues which have also impacted GSTR-9.	70
6	Return (GSTR3B /GSTR4)	Credit/Cash ledger has been either credited or debited twice	<p>It has been noticed that while filing return of a tax period in form GSTR3B, the credit ledger has been either credited or debited twice. The double debit behavior has been observed in Cash Ledger in few cases. On receiving the grievance through helpdesk, the entries have to be corrected by data fix.</p> <p>Consequently, system computed GSTR-9 had also undergone changes after the aforesaid data fix.</p>	36
7	Return/GST R-4	Incompletion of filing Process	System has allowed filing of GSTR-4 (quarterly) without setting off the liabilities. Since the debit entry was not made in cash ledger but liability was posted in the liability register, therefore system has stopped the taxpayer to file subsequent returns. Though, ARN was generated but entries in relevant tables for return filing was not updated.	16
8	Return/ GSTR 4	Negative Late fee	<p>System computes late fee at the time of filing return in form GSTR-4 up to the time of Submit of the said form. Since submit button was having some challenges, the same was removed and late fee was computed at the time of filing of the return.</p> <p>For the old cases. Late fee was becoming negative in some cases and the same was rectified subsequently by data fix after removal of submit button.</p>	57

Sr. No.	Module	Issue Category	Note Statement	GSTIN Impacted
9	Return/ GSTR4	Transferring reverse charge amount to cashledger	A composition taxpayer had paid excess amount by declaring inward supplies attracting reverse charge. Later on the taxpayer amended the transactions but there was no reverse charge liability to settle the excess amount paid in the earlier tax period. Therefore, the excess amount was credited back to his cash ledger.	1
10	Return/GST R4	Tax Amount Debited Twice from Cash Ledger	In GSTR-4 form, the tax amount has been debited twice from cash Ledger as the filing process was incomplete and the taxpayer filed the return again. This is due to user behavior as they have clicked on Filing Button twice during high peak load.	25
11	Return/ (GSTR-9A,GSTR-4)	Incomplete computation of GSTR-9A	During the FY 2017-18 and 2018-19, the composition taxpayers were required to file return in form GSTR-4 on quarterly basis. In addition, the taxpayers were also required to file annual return in form GSTR-9A. In few cases, the data in database of July to September 2017 was overwritten due to defect in the system. In such cases, GSTR-9A liability and other entries could not be computed for all quarterly returns of the year.	1 ticket
12	Return/ITC 03	ITC-03 filing process incomplete after filing	The taxpayer has filed Form GST ITC-03 and discharged the liability but the filing process was not completed due to technical issue and the taxpayer was not able to file statement in form GST CMP- 08 to discharge the liability.	1 ticket
13	Refund	Taxpayer not able to download application after filing	The taxpayer had filed the Refund Application and were not able to download the filed application form. This was due to technical deployment issue.	120 JSON
14	Refund	Duplicate ARN received after Filing.	After filing the refund application, duplicate ARN got generated for RFD01 application. This was due to technical issue where the validation that ARN should not be generated for the same tax period again.	921

<b>Sr. No.</b>	<b>Module</b>	<b>Issue Category</b>	<b>Note Statement</b>	<b>GSTIN Impacted</b>
15	Refund	Duplicate Refund Order for the same ARN.	There was technical issue in the signing process where the Tax Officer would get error on signing the Refund Order and he was able to sign again. This led to issue of Duplicate Refund Order.	80
16	Refund	Amount Not Credited to Ledger after Issuing Deficiency Memo/RFD-6	The amount was not getting credited back to the ledger after the tax Officer raises deficiency memo. Similarly, the amount deemed as inadmissible in RFD-06 was also not being credited back to the ledger. This was due to technical issue where the posting was failing in the ledger as the deficiency memo could be issued multiple times. The issue of deficiency memo was successful in the 1st attempt and was failing on subsequent occasions.	4500
17	Back Office	Change in Jurisdiction	Change of Jurisdiction, Assignment of Refund and Other Modules ARN to GST Officer in case of non-assignment of role by the Back Office Admin.	

**Sample list of data errors with no financial impact**

Technical Challenges faced by the taxpayer- GSTN to reset or enable the reset button after Internal Approval to enable the taxpayers to file again. In case of reset, the same late fee has to be taken which was paid by the taxpayer at the time of his 1st filing.

Sr. No.	Module	Issue Category	Note Statement	GSTIN Impacted
1	Return- (GSTR3B,GSTR4)	Mismatch in Saved and Data Posted in Ledger after filing	This is due to Taxpayer Behaviour where they have opened multiple tabs for the same GSTIN and working simultaneously. The GSTR3B form was filed successfully but has mismatch in the values posted in the ledger and values saved in the database. The GSTR3B form was reset and the taxpayer has filed GSTR3B again in 18534 cases. Presently 77058 cases are still pending for reset.  There are 32697 cases where the detail JSON file has been changed by the taxpayer after filing. For these cases, the summary JSON matches with the ledger.	77058
2	Return GSTR3B	GSTR3B Filed but filing process was incomplete	This has happened in GSTR3B because taxpayer tried to reset their data using the then “Reset” button provided on User Interface (which was provided from 20th Nov 2017 till 23rd Feb 2018, later again added from 27th March 2018 till 4th Sept 2018) which was intended to help taxpayers clear their liability and return filing status when they have not yet offset, but have already submitted the data for a particular return period. Eventually, when they clicked on “Reset” button, the ledger details were reset but return filing status still remained, resulting into a partial commit situation. Thereafter, taxpayer filed the return thinking he had already submitted the same, without checking liabilities and ITC were not offset.	109

3	Return/GSTR-4	GSTR-4 Filed but filing process was incomplete	It has been noticed that in GSTR-4 Composition Taxpayers form the filing was completed but the liability was not offset but posted in the liability ledger. As the liability was not offset, the taxpayers were not able to file the subsequent GSTR- 4/CMP-08 form for the next quarter.	11
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**In GST System - Taxpayers claiming to be Defect - Clarification provided to the taxpayer**

Sr. No.	Module	Issue Category	Note Statement	GSTIN Impacted
1	Return /GSTR9/ Other Returns	Incorrect data input by Taxpayer or System Defect	The taxpayer had negative value in Table 6 Details of ITC Availed during the Financial Year, in column (K) i.e. Transition Credit through TRAN1 (Including revision if any). He was taxpayer was asked to remove the negative value and save with positive number as he was not able to File GSTR-9 form. The taxpayer has logged ticket to reverse the late fee as he was able to file after the due date. Similar cases happen in other returns also	2

## Reversal of interest paid on delayed filing of statement in Form GSTR-8 by e-commerce operators due to technical glitches presented by GSTN

### 1. Background

1.1 Section 52 of the GST Act mandates an e-commerce operator to collect tax at the specified rate on the net value of the supplies made through it by other suppliers where consideration has to be collected by the operator. The operator has to file the details of tax so collected in a statement in Form GSTR-8 on monthly basis. On the basis of statement so filed by operators, the tax collected is made available to the suppliers for taking the credit into their cash ledgers.

1.2 The operators are not required to file the aforesaid statement for the month in which no supply has been made by any supplier through his portal. But the details provided in a statement of the month can be amended at the time of filing statement of the subsequent month if supplier has not taken the credit till such time or supplier had rejected the details uploaded by the operator. Additional amount is paid by the operator in case of upward amendment and he gets credit by reduction in liability if amendment is made downwards.

1.3 There is no late fee payable by operators on delayed filing of the statement of a month but interest is payable for delayed filing. Interest is computed by system based on the net liability and the period of delay.

1.4 Tax collected and paid in a statement can be adjusted in subsequent statement if goods supplied are returned. It means that liability is paid on net of basis in GSTR-8. Details are provided GSTIN wise for a tax period.

	FIX PROVIDED ON	RQM ID
74 CASES	22-Jan-21	19830
MMT & GIBIBO	17-Feb-21	19830

### 2. System glitches

2.1 Sometime during filing of return or statement, it so happens that though acknowledgement (ARN) is generated but filing process is not completed. It may happen due to immediate logging out of user after filing or interruption in internet connectivity or due to defect in system application.

2.2 The e-commerce operators are required to file statement in Form GSTR-8 on monthly basis. While filing statement for the month of November, 2020, in 74 users, the filing process could not be completed in the system. When the impacted operators came to file statement December, 2020 in January, 2021, system started showing error that your previous tax period's statement has not been filed. After noticing the defect, the same was fixed on 23-01-2021.

2.3 Due date of filing GSTR-8 of a tax period is 10<sup>th</sup> of the next month. Due to the defect, the filing of the said statement was delayed by few days. Though, there is no late fee on delayed filing of GSTR-8 but interest becomes payable after due date and same is computed by system. Although, the defect was noticed in filing of statement but there was no defect in depositing the amount of liability. Out of 74 operators, 60 have deposited the amount of liability by due date i.e. by 10<sup>th</sup> January, 2021. 10 operators have deposited the liability at the time of filing the said statement. Since, filing of GSTR-8 is not mandatory for every operator, 4 operators have not filed the statement of December, 2020.

2.4 In the second case, few operators belonging to GOIBIBO and MMT could not file the statement

of September, 2020 due a defect in system application. Though, defect had not impacted all operators but due to multiple amendments 9 operators of GOIBIBO and 6 operators of MMT were stuck up due to the defect. In case of GOIBIBO, all operators have deposited the liability by due date for all applicable tax period but in case of MMT, the liability was deposited at the time filing the statement in Form GSTR-8. Though, few operators of MMT have deposited the liability few days before filing the said statement.

### 3. Interest paid

3.1 Summary of the interest paid by the operators who have deposited the liability by due date and those have deposited after due date but few days before filing the statement in Form GSTR-8 is given as under:

Type of defect	Tax deposit status	No. of statements	Tax period	Amount of interest to be re-credited		
				IGST	CGST	SGST/UTGST
1	2	3	4	5	6	7
(1) Incomplete filing process of November, 2020 tax period	Deposited by due date	60	Dec, 2020	7215692	1297419	1297419
(2)(a) Stuck up in September 2020 tax period	Deposited by due date	9	Sep, 2020	87460	334919	334919
		9	Oct, 2020	99471	385394	385394
		9	Nov, 2020	98207	318254	318254
		9	Dec, 2020	70897	221576	221576
		9	Jan, 2021	19297	65506	65506
	<b>Sub-total (2a)</b>	<b>45</b>		<b>375332</b>	<b>1325649</b>	<b>1325649</b>
(2)(b) Stuck up in September, 2020 tax period	Deposited after due date but before filing statement	1	Sep, 2020	1497	9505	9505
		3	Oct, 2020	2089	21127	21127
		3	Nov, 2020	2283	22070	22070
		3	Dec, 2020	2715	31710	31710
		1	Jan, 2021	1996	16216	16216
	<b>Sub-total (2b)</b>	<b>11</b>		<b>10580</b>	<b>100628</b>	<b>100628</b>
<b>TOTAL</b>		<b>116</b>		<b>7601604</b>	<b>2723696</b>	<b>2723696</b>

3.2 The amount deposited through challan is credited to cash ledger of the concerned person after confirmation of the deposit from bank / RBI. The RBI credits the amount to Consolidated Fund or India for IGST, CGST and Cess and the amount deposited under SGST is credited to the Consolidated Fund of concerned State.

3.3 The operators who have deposited the amount of liability on the day of filing the statement in Form

GSTR-8 and excludes the amount of interest paid from the date of deposit to date filing the said statement, is given as under:

Type of defect	Tax deposit status	No. of statements	Tax period	Amount of interest paid		
				IGST	CGST	SGST/UTGST
1	2	3	4	5	6	7
1) Incomplete filing process of November, 2020 tax period	Deposited after due date	10	Dec, 2020	236960	10422	10422
	Deposited after due date	6	Sep, 2020	97869	995253	995253
		6	Oct, 2020	55773	694023	694023
2) Stuck up in September, 2020 tax period	(on the day of filing statement or before filing the same)	6	Nov, 2020	47801	510515	510515
		6	Dec, 2020	28893	372103	372103
		6	Jan, 2020	9214	122600	122600
	<b>Sub-total (2)</b>	<b>24</b>		<b>239550</b>	<b>2694494</b>	<b>2694494</b>
	<b>Total (1+2)</b>	<b>34</b>		<b>476510</b>	<b>2704916</b>	<b>2704916</b>

#### **4. Proposal for refund of interest paid**

ITGRC may take a view whether to refund the interest paid by the operators detailed at para **A** or to refund the amount paid at details given at para **B** also. Amount of interest to be refunded will be credited to cash ledger under respective major head.

**Agenda Note for cases under extended scope of ITGRC presented by GSTC**

**Subject: Agenda Note for ITGRC of cases forwarded by the Nodal Officers in the category of non-technical nature in terms of extended scope of ITGRC as per the 32<sup>nd</sup> GST Council meeting and as per the High Court order.**

There are four cases forwarded by the Nodal Officers after the decisions of the respective Hon'ble High Court as non-technical cases in terms of extended scope of ITGRC as per the 32<sup>nd</sup> GST Council meeting. However, only three cases appear to have been covered under the extended scope of ITGRC and the fourth case does not appear to be covered under the extended scope of ITGRC, which are being presented before the ITGRC for decision. The details of the all cases are as follows-

**1. Case of M/s Ram Auto Madurai**

The issue involves rectification of Tran-I in case of M/S Ram Auto, Madurai as per the order of the High Court of Madras dated 16.02.2021 in Writ Petition Number 15531/2020. It is a case of transposition of column and is covered by the decision of the 32<sup>nd</sup> GSTC meeting which extended the scope of the ITGRC for non-technical issues. It is proposed that this case may be considered by the ITGRC.

In this case, the High Court has stated that-

*“In this view of the matter, the communication impugned in the writ petition is quashed. The second respondent i.e. the Principal Nodal Officer, Chennai is directed to forward the petitioner's application to the third respondent i.e. Goods and Service Tax Council forthwith and without any delay. The third respondent will verify the correctness of the averments set out in communication of the jurisdictional Assistant Commissioner to the Commissioner of Central Taxes & Central Excise, Madurai vide C.No.IV/16/48/2018-Tech, dated 17.05.2019. Upon the third respondent being satisfied with the correctness of the same, the third respondent will grant the relief as sought for by the writ petitioner.*

**Accordingly, as per the directions of the High Court and the recommendation of the jurisdictional Assistant Commissioner duly forwarded by the Principal Commissioner and Principal Nodal Officer, CGST, Chennai North, that it is an error apparent on record involving transposition of the column, the case may be considered by ITGRC.**

**2. Case of M/s. Precision Gasification Service Pvt. Ltd**

Rectification of Tran-I in case of M/s. Precision Gasification Service Pvt. Ltd as per the High Court of Gujarat order dated 18.03.2021 in R/o Special Civil Application no. 19818 of 2019. It is a case of transposition of column and is covered by the decision of the 32<sup>nd</sup> GSTC meeting which extended the scope of the ITGRC for non-technical issues. It is proposed that this case may be considered by the ITGRC.

In this case, the High Court has stated that-

*“The respondents are directed to either open the online portal, so as to enable the writ applicants to again file rectified Form GST TRAN-1 electronically or accept the manually filed from the GST TRAN-1 with necessary corrections on, or before, 18.05.2021.”*

**Accordingly, as per the directions of the High Court and the recommendation of the jurisdictional Joint Commissioner duly forwarded by the Commissioner and principal nodal officer, Ahmadabad Zone that it is an error apparent on record involving transposition of the column, the case may be considered by the ITGRC.**

### **3. Case of M/s Carl Stahl Craftsman Enterprises Pvt Ltd., Coimbatore**

The issue involves rectification of Tran-I in case of M/S Carl Stahl Craftsman Enterprises Pvt Ltd., Coimbatore as per the order of the High Court of Madras dated 23.04.2021 in Writ Petition Number 11119/2020. It is a case of transposition of column and is covered by the decision of the 32<sup>nd</sup> GSTC meeting which extended the scope of the ITGRC for non-technical issues since the case was presented in the 6<sup>th</sup> ITGRC meeting and the request of the taxpayer for re-opening of TRAN-1 was "Not approved" citing that the case falls under the category of B10 i.e. mistake/errors committed by taxpayers which was admitted apparently or inadvertently or due to misunderstanding in reporting correct values in TRAN-1 and IT-GRC decided not to reopen TRAN-1 in the case. It is proposed that this case may be considered by the ITGRC.

In this case, the High Court has stated that-

*"In the present case, the error is seen to be inadvertent, constituting a human error. The Revenue does not dispute this either. Moreover, the era of GST is nascent and I am of the view that a rigid view should not be taken in procedural matters such as the present one.*

*The petitioner is thus be permitted to transition the credit. After all, the consequence of such transition is only the availment of the credit and not the utilization itself, which is a matter of assessment and which can be looked into by the Assessing Officer at the appropriate stage.*

*This writ petition is allowed. The third respondent, i.e., Deputy Commissioner of GST Policy, the Nodal Officer will enable the modification to be effected as well as the transition within a period of four (4) weeks from date of uploading of this order upon an application to be made by the petitioner in this regard."*

**Accordingly, as per the directions of the High Court and the recommendation of the jurisdictional Commissioner and of the Principal Commissioner and Principal Nodal Officer, CGST, Chennai North, that it is an error apparent on record involving transposition of the column, the case may be considered by ITGRC.**

### **4. Case of M/s Precision Rubber Industries, Coimbatore**

The taxpayer claimed to have made attempt to file TRAN-1 within the due date 27.12.2017. However, no material evidence has been produced. The case was presented in the 4<sup>th</sup> ITGRC wherein the case was presented in B1 Category: "Cases where the taxpayer say that they received error. As per GST system log, there are no evidences of error or submission/filing of TRAN1: As per GST System Logs, the taxpayer has neither tried for Saving / Submitting or Filing TRAN1".

In the Writ Petition Number 11781 & 11784/2019, the High Court of Madras vide order dated 03.10.2019 has directed that-

*"The Principal Nodal Officer (Principal Commissioner, Chennai North) is directed, to take appropriate action without loss of further time so as to get the issues resolved by GSTN at the earliest*

possible time, at any event, within a period of six weeks from the date of receipt of a copy of this Order.”

The High Court has further also stated that-

“.... Needless to say that the impugned denial is only because of the reason that the time for filing TRAN-1 had lapsed and since that issue is sought to be resolved before GSTN.

The case was again presented before 9<sup>th</sup> ITGRC under Category C: “Cases already presented before 1st to 7th ITGRC but not recommended by ITGRC and now as per 32<sup>nd</sup> GST Council decision also forwarded without recommendation by jurisdictional tax authority.” The ITGRC had directed State/CBIC tax authorities to re-examine these cases and forward properly, only if they fulfill the parameters/conditions as laid down in 32<sup>nd</sup> GST Council Meeting.

In view of the above, the Principal Commissioner, Coimbatore has re-examined the case and recommended that since the taxpayer is otherwise eligible for the credit but for this procedural lapse of non-filing Tran-I within time, their representation may please be considered.

**However, this case does not fulfill the criteria set by 32<sup>nd</sup> GST Council meeting while extending the scope of ITGRC to consider non-technical issues viz. error apparent on the face of record. In this case, the assessee failed to submit the Tran-I on time and there is no error apparent on the face of record.**

S. No.	GSTIN	Legal Name	Amount of Credit to be claimed in TRAN-1 (in Rs.)	Name of High Court and Order date	Name and Designation of Nodal Officer	Recommendation	Remarks
1	33AADFR0636C1ZT	M/s Ram Auto, Madurai	Rs.4,85,684/-	High Court of Madras . Order dt. 16.02.21 in Writ petition Number 15531/2020	G. Ravindranath Principal Commissioner, GST and Central Excise Chennai North, Principal Nodal Officer for IT Grievanc	This case relates to ‘Tax payer filed TRAN-1 but by mistake uploaded the details in wrong column/table’ which is covered under non-technical issues viz., errors apparent on the face of record’ and the Tax payer has also filed declaration before 27 <sup>th</sup> December 2017. As per GST Council Office memorandum F.No.71/Exemption/ITGRC /GSTC/2019/5235 dated 19.02.2019, this case is covered under non-	Covered under extended scope of ITGRC set by 32 <sup>nd</sup> GST Council Meeting

					es, Tamil Nadu and Puduche rry Zone	technical issue. Hence, this case is recommended for consideration.	
2.	24AAKCS69 48Q1ZE	M/s. Precisi on Gasific ation Servic e Pvt. Ltd	Rs. 12,30,84 3/- & Rs. 20,01,64 0/-	High Court of Gujarat . order dated 18.03.2 1 in R/Spec ial Civil Applic ation no. 19818 of 2019	Commis sioner & Principal Nodal Officer for Ahmeda bad Zone,  CGST & C.Ex, Gandhin agar	Taxpayer filed the TRAN-1 by due date but by mistake uploaded the details in wrong column. The case of the Petitioner appears to be genuine and may be considered being bonafide mistake made by them while filing GST TRAN-1 return.	Cove red under exten ded scope of ITGR C set by 32 <sup>nd</sup> GST Coun cil Meeti ng
3.	33AADCC2 950P1ZI	M/S Carl Stahl Crafts man Enterp rises Pvt Ltd., Coimb atore	Rs.25,88 ,556/-	High Court of Madras dated 23.04.2 021 in Writ Petitio n Numbe r 11119/ 2020.	G. Ravindra nath  Principal Commis sioner, GST and Central Excise Chennai North, Principal Nodal Officer for IT Grievanc es, Tamil Nadu and Puduche rry Zone	It appears that this is not a technical issue and a case of mistake committed by the taxpayer while filing TRAN-1	Cove red under exten ded scope of ITGR C set by 32 <sup>nd</sup> GST Coun cil Meeti ng

4.	33AADCG0 576B1Z5	M/s Precision Rubber Industries, Coimbatore	Rs. 32.89 Lakhs	High Court of Madras .  Order dated 03.10.2 019 in Writ petition Number 11781 & 11784/ 2019	Commissioner,  Chennai North,  Principal Nodal Officer for IT Grievances,  GST – Central Tax – Chennai Zone,	Since the taxpayer is otherwise eligible for the credit but for this procedural lapse of non- filling Tran-1 within time, their representation may please be considered.	Not Covered.
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**Additional Agenda – Refund Case presented by GSTN****WP (T) No. 4061/2019- Atibir Industries Co. Ltd. Vs. UOI and Ors.**

<b>GSTIN</b>	<b>State</b>	<b>Constitution of Business</b>
20AADCA1825B1ZO	Jharkhand	Private Limited Company

**Facts of the case:**

1. The aforesaid Writ Petition No. 4061 of 2019 filed by M/s Atibir Industries (**GSTIN 20AADCA1825B1ZO**) in the High Court of Jharkhand wherein GSTN was also made as one of the Respondent. The petitioner argued that they couldn't file application for refund of unutilized ITC w.r.t. compensation cess in Form GST RFD-01 pertaining to the periods 2017-18 and 2018-19 on GST Portal due to technical difficulty. After hearing the Petitioner and Respondents, it was held in the Order dated 04.01.2021(Annexure-1of order) passed by the Hon'ble High Court that the petitioner would be entitled to avail of the opportunity to file applications for refund of compensation cess for FY 2017-18 and 2018-19. The respondents were directed to communicate the petitioner through email as to whether they would open the GSTN portal or would accept the refund applications manually within a period of 15 days.
2. Subsequently, the Departments have filed two Review Petition i.e. Civil Review Petition No. 20/2021 and Civil Review Petition No. 30/2021 in WP (T) 4061 of 2019. The Hon'ble High Court has dismissed the said Review petition vide order dated 29.07.2021(Annexure-2of order) with further direction to the concerned Respondent to consider the refund application in accordance with law.
3. Further, as per the High Court's Website Petitioner has also filed a Contempt Case (Civil No.) 340 of 2021, wherein the Hon'ble High Court vide order dated 29.07.2021 (Annexure-3 of order) allowed three weeks time to the Respondents to file show cause regarding compliance of the direction made in the writ petition being WP(T) No. 4061/2019. The contempt petition matter is listed for hearing in the week of 23rd August 2021.
4. Commissioner of State Tax (Jurisdictional office) has also decided not to file SLP before the Hon'ble Supreme Court.

**Observation:**

1. It is submitted that while filing the online refund application on the GST portal, the taxpayer has to select the category of refund and a particular tax period. For few categories of Refund including refund of ITC may be filed for multiple tax periods in a single refund application. There is a validation on GST portal that refund for a particular period under a particular category can be filed only once.
2. In the case of GSTIN 20AADCA1825B1ZO, the details of applications of refund filed by the Taxpayer for the FY 2017-18 and FY 2018-19 are given in the following table:

ARN	Date of Filing	Status	Refund Type	From Period	To Period	Claim amount
AA200619006822H	25/06/19	RSA	EXPWOP	201707	201803	1031171
AA200719000632O	02/07/19	RSA	EXPWOP	201804	201903	12973905

3. As seen from the above table, the Taxpayer/Petitioner has filed applications under the category of unutilised ITC for the FY 2017-18 and FY 2018-19. In such scenario, the system validation doesn't allow the Tax payer to file another refund claim of the same category for the same period. Whereas, the High court of Jharkhand has directed GSTN to allow Taxpayer to file refund of unutilised ITC of compensation cess for the FY 2017-18 and FY 2018-19. In the present Refund application framework, the applications will not be allowed to be filed in the system. Any change in the refund framework to allow this refund application may impact the existing refund functionality and it turn the stability of the GST system.

**Recommendation of GSTN:**

To handle extraordinary scenarios that may arise due to non-availability of a particular category or due to the presence of any system validation, the GST portal gives the option to file refund claim under the 'Any others' category. The taxpayer can state his case and request for grant of refund.

In the instant case, the Hon'ble High Court has already deliberated upon the matter and passed a detailed order directing the Respondents to open GST portal enabling the Tax payer/Petitioner to file Refund application (RFD-01) for the period 2017-18 and 2018-19. However, in the present case in order to comply with the direction of the High Court there is a need for waiver of the limitation of the filing of a refund application for a particular period under a particular category 'only once', as imposed by GST system and allowing M/s Atibir Industries to file application for refund of ITC of compensation cess under "Any Others" category.

In view of the aforesaid facts and circumstances a decision is being sought in this matter on further action required to be taken by GSTN.

 Goods And Services Tax Network


## Summary of Court Cases presented before/to be presented before ITGRC

Sl. No.	ITGRC Meeting	TRAN-1	TRAN-2	Migration	Total
1	1 <sup>st</sup> ITGRC Meeting	19	0	0	19
2	2 <sup>nd</sup> ITGRC Meeting	78	0	0	78
3	3 <sup>rd</sup> ITGRC Meeting	16	0	0	16
4	4 <sup>th</sup> ITGRC Meeting	53	0	0	53
5	5 <sup>th</sup> ITGRC Meeting	21	0	0	21
6	6 <sup>th</sup> ITGRC Meeting	88	0	0	88
7	7 <sup>th</sup> ITGRC Meeting	13	0	0	13
8	8 <sup>th</sup> ITGRC Meeting	45	2	0	47
9	9 <sup>th</sup> ITGRC Meeting	23	0	0	23
10	10 <sup>th</sup> ITGRC Meeting	12	1	0	13
11	11 <sup>th</sup> ITGRC Meeting	15	3	0	18
12	12 <sup>th</sup> ITGRC Meeting	14	0	0	14
13	13 <sup>th</sup> ITGRC Meeting	54	2	1	57
14	14 <sup>th</sup> ITGRC Meeting	19	2	1	22
15	15 <sup>th</sup> ITGRC Meeting (In Progress)	10	1	-	11
<b>Total</b>		<b>480</b>	<b>11</b>	<b>2</b>	<b>493</b>

## Summary of Court Cases presented before 15<sup>th</sup> ITGRC



### TRAN-1/TRAN-2 Cases reported as having Technical Glitch

Sub Category	Sub Category Description	Cases received as Court Cases
A-1	Processed with Error	2 (S. No 1 – 2 of Annexure 2)
	Sub Total	2

### TRAN-1/TRAN-2/ reported as **not** having Technical Glitch

Sub Category	Sub Category Description	Cases received as Court Cases
B-1	Cases in which as per GST system log, there was no evidences of error during submission/filing of TRAN1.	5 (S. No 3 to 7 of Annexure 2)
B-2	Trans-1 Fresh/Revision Attempted with No error or No valid error reported.	1 (S.No. 8 of Annexure 2)
B-3	Cases in which TRAN 1 have been filed successfully as per logs with no valid error reported.	1 (S. No 9 of Annexure 2)
B-4	TRAN-1 filed but credit not received	1 (Sl. No. 10 Annexure 2)
B-6	Tran-1 Filed, Eligible for Tran-2.Trans-2 Fresh/Revision Attempted with No error or No valid error reported	1 (Sl. No. 1, TRAN-2, Annexure-2)
	Sub Total	9

## TRAN-1 (Court Cases) Category A1: Processed with error



**CWP 4547/2021- M/s AAR AAR Technoplast Pvt. Ltd, Faridabad Vs UOI & Ors.**

**(Sl. No. 1 Annexure-2, TRAN-1)**

**Issue:** The Petitioner submitted TRAN-1 on 26.08.2017 and “Processed with error” was displayed on the GST Portal. ITC involved: Rs. 4,78,364/-

**Status:-** Pending in Punjab & Haryana High court and to be listed after the decision of SLP (C) Nos.7425-7428 of 2020. No effective order is available on the court’s website in this matter.

**Technical Analysis:-**As per GST System logs, the Petitioner first time opened TRAN-1 and filed. Revision was also tried and the Petitioner tried to save data as well.

During first attempt and revision, while doing save/submit attempt, error was reported on the GST Portal.

PE (Process with error) was reported for invalid registration for VAT/CENVAT/SVAT no. AADCA2129GXM002/AADCA2129GXM001/AADCA2129GSD004.

GSTIN/ Provisional ID	State	Constitution of Business
06AADCA2129G1Z5	Haryana	Private Limited Company

## TRAN-1 (Court Cases) Category A1: Processed with error



M/S U.K. Paints India Private Limited GSTIN mentioned in M/s. Tarun Enterprises Pvt. Ltd. v. UOI & Ors. (Sl. No. 2, TRAN-1, Annexure-2)

**Issue:** Due to glitch in the GST system the TRAN-1 form could not be filed and during the filing of the details in the form, he was automatically logged out, resulting in non-filing of the form.

**Status :-** Disposed off vide order dated 27.05.2021. Court's direction: Respondents directed to either re-open the online portal so as to enable the Petitioners to file TRAN-1 Form electronically, or to accept the same manually on or before 30th June, 2021. The Respondents shall process the Petitioners' claims in accordance with law once the TRAN-1 Form is filed.

**Technical Analysis:--** The Petitioner first time opened TRAN-1 and thereafter revised it. During first attempt and revision error was reported on GST Portal.

PE (Process with error) was reported for invalid registration for VAT/CENVAT/SVAT no. 09267900686/09268900686C/09AAACU0057C1ZR and 09267900686/09268900686C.

GSTIN/ Provisional ID	State	Constitution of Business
09AAACU0057C1ZR	Uttar Pradesh	Private Limited Company

## Summary of Nodal Cases presented before ITGRC



Sl. No.	ITGRC Meeting	TRAN-1	TRAN-2	TRAN-3	Total
1	1 <sup>st</sup> ITGRC Meeting	151	0	0	151
2	2 <sup>nd</sup> ITGRC Meeting	262	0	0	262
3	3 <sup>rd</sup> ITGRC Meeting	252	0	0	252
4	4 <sup>th</sup> ITGRC Meeting	408	0	0	408
5	5 <sup>th</sup> ITGRC Meeting	203	0	0	203
6	6 <sup>th</sup> ITGRC Meeting	593	1	0	594
7	7 <sup>th</sup> ITGRC Meeting	236	0	0	236
8	8 <sup>th</sup> ITGRC Meeting	442	2	0	444
9	9 <sup>th</sup> ITGRC Meeting	66	164	18	248
10	10 <sup>th</sup> ITGRC Meeting	6	44	0	50
11	11 <sup>th</sup> ITGRC Meeting	246	11	0	257
12	12 <sup>th</sup> ITGRC Meeting	102	2	0	104
13	13 <sup>th</sup> ITGRC Meeting	43	4	0	47
14	14 <sup>th</sup> ITGRC Meeting	40	3	0	43
15	15 <sup>th</sup> ITGRC Meeting (Being Presented)	3	1	0	4
<b>Total</b>		<b>3053</b>	<b>232</b>	<b>18</b>	<b>3303</b>

## Summary of Nodal Cases being presented before 15th ITGR



### TRAN-1/TRAN-2 Cases reported as having Technical Glitch

Sub Category	Sub Category Description	Cases received through Nodal Officers
A-1	Processed with Error.	01 (S. No. 1 of Annexure-1)
	Total	1

### TRAN-1/TRAN-2/ reported as **not** having Technical Glitch

Sub Category	Sub Category Description	Cases received through Nodal Officers
B-1	Cases in which as per GST system log, there was no evidences of error during submission/filing of TRAN1.	02 (S. No. 2 & 3 of Annexure-1)
B-7	TRAN-1 not filed, hence TRAN-2 not attempted.	01 (S. No. 4 of Annexure-1)
	Total	03

## TRAN-1 (Nodal) Category A1: Processed with error



**M/S KEVIN PROCESS TECHNOLOGIES PVT LTD, GSTIN - 24AAACK8850D1ZQ  
(Sl. No. 1, TRAN-1, Annexure-1)**

**Issue:** The taxpayer had filed TRAN-1 on 26.08.2017 and later filed revised TRAN-1 in the first week of December 2017. In the revised TRAN-1, the said taxpayer claimed ITC of VAT amounting to Rs. 30,32,317/- but while processing, submission could not be done due to technical glitch.

**Technical Analysis:--** As per GST System log, user first time opened form and filed. ARN generated for first attempt. Revision was also attempted by taxpayer and try to save. During revision save/submit attempt, error reported PE (Process with error) for invalid registration for VAT/CENVAT/SVAT no. AABC5576GST084/ADKPS6062KST001/AAACF1190PST0001/AAFFM7067CST001/AOBPK7848BST001.

GSTIN/ Provisional ID	State	Constitution of Business
24AAACK8850D1ZQ	Gujarat	Private Limited Company



### Category-wise count of Orders passed in court cases

Sr.No	Court Order/WPs	Category A (TRAN-1)	Category B (TRAN-1)	Total
1	Direction to allow filing of TRAN-1/TRAN-2 manually/electronically	1	1	2
2	No specific order passed	1	7	8
3	Direction to Respondents/Nodal Officer to pass appropriate orders	-	1	1
	Total	2	9	11



# THANK YOU!!

 Goods And Services Tax Network

