



Agenda for 45th GST Council Meeting

17 September 2021

Volume – 1





**GST Council Secretariat
New Delhi**

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

5 September 2021

Notice for the 45th Meeting of the GST Council scheduled to convene on 17th September 2021

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

- **Friday, 17th September 2021:** 11:00 hours onwards

2. In addition, an **Officers' Meeting** will be held on 16th September 2021 at the same venue as per following schedule:

- **Thursday, 16th September 2021:** 11:00 hours onwards

3. The agenda item and other details for the 45th 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 45th 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 1: Confirmation of the Minutes of the GST Council Meetings

Agenda Item 1(i): Confirmation of the Minutes of the 43rd GST Council Meeting 28th May 2021

The 43rd meeting of the GST Council (hereinafter referred to as 'the Council') was held on 28th May 2021 at New Delhi under the Chairpersonship of Hon'ble Finance Minister, Smt. Nirmala Sitharaman (hereinafter referred to as the Chairperson). A list of the Hon'ble Members/Ministers of the Council who attended the meeting was at **Annexure-I**. A list of officers of the Centre, the States, the GST Council, the Goods and Services Tax Network (GSTN) who attended the meeting was at **Annexure-II**.

2. The following agenda items were listed for the discussion in the 43rd Meeting of the Council:

1. Confirmation of the Minutes of the 42nd GST Council Meeting held on 05th & 12th October, 2020
2. Deemed Ratification of Notifications and Circulars by the GST Council
3. Decisions of the GST Implementation Committee (GIC) for information of the GST Council.
4. Status report of creation of GRC Zone-wise (CBIC) and States/UTs as on 15.05.2021.
5. Performance Report of the NAA (National Anti-Profiteering Authority) for the 2nd quarter (July, 2020 to September, 2020), 3rd quarter (October 2020 to December 2020) and 4th quarter (January 2021 to March 2021) for the information of the Council.
6. Ad-hoc Exemptions Orders issued under Section 25(2) of Customs Act, 1962 to be placed before the GST Council for information.
7. Status of the Group of Ministers (GoM) on IGST Settlement
8. GSTN related issues for the consideration of the GST Council
 - i. Sanction for extension of Project REAP, LEAP and BIFA till 31st March, 2022 on T&M basis with delegation to the Chairman to reduce the Manpower, if required.
 - ii. In principle approval to expand the scope of IRP project for e-invoice registration and IRN issuance on expanding the scope with reduction of the threshold of turnover and providing for multiple IRPs, if needed,
 - iii. Proposal for approval of deputation guidelines and to request the States to provide manpower to GSTN with SGST experience.
 - iv. Intimation – the Status update on transfer of share-holding with the States and conversion of Goods and Services Tax Network (GSTN) into 100% Government owned Company.
 - v. Status of Payment by the States and Waiver of Interest on delayed receipt of Advance User Charges (AUC) from a few states and CBIC.

9A. Issues recommended by the Law Committee for the consideration of the GST Council.

- i. Rationalization of late fee imposed under section 47 of the CGST Act
 - ii. Annual Return for Financial Year 2020-21
 - iii. Proposal of amendments in the return related provisions of the CGST Act, 2017
 - iv. Proposal to exempt government departments/entities, governmental authorities/local authorities from the requirement to issue e-invoice
- 9B. Other issues pertaining to GST laws and procedures for consideration of the GST Council
 - i. Reduction in late fee for FORM GSTR-3B for months from July, 2017 to April, 2021- Amnesty to clean up pendency in return filing in GST regime
 - ii. Notifying section 112 of the Finance Act, 2021 relating to amendment in section 50 of the CGST Act
 - iii. Proposal for converting quarterly return and monthly payment (QRMP) Scheme to quarterly return and quarterly payment (QRQP) scheme
 - iv. Writ Petitions on difficulties faced by taxpayers to comply with the statutory obligations within the timelines provided under the CGST Act– Issues placed before the Council in pursuance of directions of Hon'ble High Court
- 10. Seeking concurrence for levy of COVID Cess on power and pharmaceutical sector in Sikkim.
- 11. Issues recommended by the Fitment Committee for the consideration of the GST Council.
 - i. Covid-19 related recommendations
 - ii. Other recommendations related to changes in rates on goods or issuance of clarifications related to goods
 - iii. Recommendations of the Fitment Committee on Services
 - iv. Issues placed before the Council in pursuance of directions of the Court- GST rates on assistive devices
 - v. Issues placed before the Council in pursuance of directions of the Court- Exclusion of ice cream from composition levy
- 12. Correction of Inverted Rate Structure on textiles and footwear
- 13. Applicability of Goods and Services Tax on Extra Neutral Alcohol (ENA)
- 14. GST Revenue Augmentation
- 15. Decisions/recommendations of the 14th IT Grievance Redressal Committee for the information of the Council along with an agenda for the decision of the Council
- 15A. Minutes/Detailed reasons in respect of 26 cases approved in-principal and 78 cases rejected (total 104) in the 42nd meeting of the GST Council pertaining to 13th ITGRC
- 16. Review of revenue position under Goods and Services Tax
- 17. Issues related to GST Compensation Cess
- 18. Information Agenda on constitution of two new GoMs

Preliminary discussion

3.1. The Secretary, GST Council at the outset stated that the last 42nd GST Council meeting was held on 5th and 12th October 2020 while welcoming the Members to the 43rd meeting. The Secretary, GST Council, at the outset placed on record its appreciation for the valuable contribution made by the outgoing Members and welcomed the new Members who attended the GST Council Meeting for the first time. The Secretary placed on record appreciation for the valuable contribution by Dr. Ajay Bhushan Pandey, the outgoing Secretary to the Council. He stated that today's meeting was being held in the backdrop of a second wave of COVID that has engulfed the Country and informed that during the intervening period, the GST Implementation Committee (GIC) and various other Committees have been at work in terms of pursuing the decisions taken by the Council and taking necessary steps to ameliorate the adversities of the pandemic situation.

3.2. He informed the Council that the two GoMs namely one on capacity-based taxation and special composition scheme in certain sectors like pan masala, gutkha, brick kilns, sand mining, etc. and the second one on casinos, race courses and online gaming have been constituted. He further mentioned that a separate agenda note for the same was also placed in this meeting for information. The new Members of GoMs have also been informed separately. He also mentioned that other four GoMs have also undergone a change in composition on account of change in representatives of the States in the Council.

3.3. He informed the Council that he had met the Officers of the States/ UTs on 27th May 2021 and had a very frank and fruitful discussion on various agenda items which will help further in steering the agenda of this meeting of the Council. With the permission of the Hon'ble Chairperson, the schedule of the meeting was presented by the Secretary as follows:

- | | |
|------------------------|--------------------------------|
| a. 11:00 AM to 1:00 PM | Meeting starting with Agenda 1 |
| b. 1:00 PM to 1:45 PM | Lunch break |
| c. 1:45 PM to 3:45 PM | Meeting continues |
| d. 3:45 PM to 4:00 PM | Small break |
| e. 4:00 PM onwards | Meeting continues till it ends |

3.4. He stated that Hon'ble Members have also been informed about the schedule on 25th May 2021 and that the agenda was also circulated to all the Members and hoped that everybody has got a copy of that and have gone through agenda items. He then requested the Hon'ble Chairperson to initiate the proceedings with the Council.

3.5. The Hon'ble Chairperson stated that while the Council meeting was expected to be held every quarter, this meeting could be called after nearly seven months and she explained that post October, the next quarterly meeting was due in February as per norm. However, post the budget, model code of conduct had come in force and elections were due in some States. With the Parliament session focusing on the clearing of the Finance Bill, meeting could not be conducted within that quarter and after that of the elections ensued. During the elections, meeting could have been held, however, absence of five finance ministers would have been noticed and therefore, had to wait till the result and the formation of the Government happened after which it had been agreed to meet on 28th June 2021.

3.6. The Hon'ble Chairperson welcomed all the new Members and in particular welcomed the senior most Dr. Amit Mitra who continues in the Council. She mentioned that the agenda has been sent in parts over the last ten days. The Officials have met and discussed some of the issues in great detail. She thanked Revenue Secretary for reviving the earlier practice of the Secretary meeting with the Officials of the States on the eve of the GST Council meeting which was helpful and hoped to learn

from the exchange with the Officers. She wished that the Council's discussion as always would be very productive/ constructive in the spirit of cooperative federalism and hoped to address all issues which concern the Indian economy particularly now that there was a second wave and post which a lot of decisions pertaining to revival of the economy will have to be taken collectively. The Hon'ble Chairperson asked the Revenue Secretary and Secretary of the Council to start the meeting.

Agenda Item 1: Confirmation of the Minutes of GST Council Meetings

4.1 The Secretary, GST Council stated that first agenda item pertained to confirmation of the minutes of the 42nd GST Council meeting held on the 5th and 12th October 2020. He further stated that some comments have been received from Rajasthan, Telangana and Odisha which are basically in the form of some typographical errors and some other small errors. They have been corrected and circulated in the latest agenda. Certain suggestions on the amendments to the draft minutes have been received from the State of Tamil Nadu in late evening of 27.05.2021 and accordingly the figure in para 28.6 of the draft minutes has been corrected.

5. The Council thereafter confirmed the minutes of the 42nd GST Council.

Agenda Item 2: Deemed Ratification of Notifications and Circulars by the GST Council

6.1 The Secretary to the Council asked the Commissioner, GST PW, CBIC to present the Agenda Item. The Commissioner, GST PW, CBIC informed that notifications, circulars and orders issued till 30th September, 2019 were ratified during the 42nd Meeting of the Council and now it was proposed to ratify notifications, circulars and orders issued from 30th September, 2020 to 18th May, 2021, under the GST law by the Central Government. The list of Notifications and Circulars is as available in the detailed Agenda Notes (Vol-1, page 90- 95). He informed that these notifications, circulars and orders were placed before the Officers meeting held on 27th June, 2021 as part of a presentation (attached as **Annexure-III** to the Minutes) and that the Officers had agreed to the same. He requested that the Council could agree to grant deemed ratification to the notifications, circulars and orders. The Council agreed to the suggestion.

6.2. The Hon'ble Member from Punjab raised certain concerns about submission of Notifications and Circulars for deemed ratification. He mentioned that there are certain rules where substantial changes have been made in the last eight months.

6.3. The Hon'ble Member from Tamil Nadu stated that the agenda item talks of the 'deemed ratification' and there was a legal question of whether there can be 'deemed' as opposed to 'actual' ratification.

6.4. The Secretary, GST Council informed that some of the decisions mentioned herein are implementation of the earlier GST Council decisions itself.

6.5. For this Agenda Item, the Council approved the deemed ratification of the Notifications, Circulars and Orders issued from 30th September, 2020 to 18th May, 2021, as detailed in the agenda note. The Notifications and Orders issued by the States which are parimateria with above notifications, Circulars and Orders were also deemed to have been ratified.

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

7.1. The Commissioner, GST PW, CBIC informed that the GST Implementation Committee (GIC) took certain decisions between 14-09-2020 and 01-05-2021. Due to the urgency involved and

due to prevailing Covid-19 situations, while some decisions were taken through web meeting of GIC, other decisions were taken after obtaining approval by circulation amongst the GIC Members. The details of the decisions taken are available in the detailed Agenda Notes (Vol-1, page 96-146). Thereafter, he made a presentation (attached as Annexure-III) on the decisions taken by GIC. The decisions taken were submitted to the Council for information.

7.2. The Hon'ble Minister from Punjab suggested that rather than for information, these decisions should come for ratification or approval of the Council.

7.3. The Secretary, GST Council stated that there were fifty-three decisions taken by the GIC in the intervening period and as many as thirty-eight were trade facilitative measures such as relief in return filing, capping of late fees, extension of due dates for filing, etc. Ten decisions were in the nature of enforcement measures, including the one taken in December 2020 for dealing with the cases of fake input tax credit and fake invoices, providing for physical verification of premises, system-based suspension in certain situations and requirement of payment of at least 1% tax liability to be paid in cash by certain registered persons. He further mentioned that these issues were discussed at length in five meetings of the Law Committee, which includes representatives from ten States. All these issues were discussed in the Law Committee and it was felt therein that there was an urgency about the introduction of these measures because of a detection of large number of cases of fake dealers/fake invoices. He stated that during the last 5-6 months, without getting any changes in the laws or increasing the rates, the revenues have really improved and believed that one of the reasons for the same was that these decisions could be taken in timely manner through these Committees, that have been formed by GST Council, where a large number of States are represented. These measures have been extremely beneficial in garnering the GST revenues.

7.4. He further stated that he has gone through the minutes of the previous meetings also and it has been the practice of the Council to place these decisions, that have been taken with the consent and fair discussions with the States and State representatives, for information of the Council. He felt that officers of States would have discussed with political hierarchy before conveying their decisions to the Committees. He also stated that for the well- functioning of the GST Council, it was important to empower the sub-committees to enable them to take such decisions.

7.5. The Hon'ble Member from Delhi desired that the GIC decisions should be submitted for approval and not for ratification or information. The Secretary, GST Council clarified that these decisions were approved by the sub-committees. They have been implemented also. After implementation, it would be a little out of place for the Council to approve the same and it was for that reason that these decisions have chosen to be put to the Council as matters of information. Besides, these decisions are not being taken unilaterally either by the Centre or the States but together by the Centre and the States when they sit together in a sub- committee of Officers, which has been explained earlier.

7.6. The Hon'ble Chairperson directed that the issue may be referred to the Law Committee to report on what the Law Committee feels whether any rules have been violated in bringing in GIC decisions to the Council for information. On the basis of the report of the Law Committee, she suggested that discussion may be held in the next meeting of the Council.

7.7. The Hon'ble Member from Chhattisgarh stated that he believes that an executive body cannot supersede the elected body. He further stated that there are number of precedents where post-facto approvals are taken. If an executive body has taken an action or taken step at any point in time, the approval was always sought.

7.8. The Hon'ble Member from West Bengal stated that the GIC consists of 4 States only. All states are not represented in GIC. Any major decision in GIC cannot take decisions on behalf of 31 States. Extended policies can be extended but no major decisions can be taken as it was too small a Committee.

7.9. The Secretary, GST Council stated that in the Law Committee there are 10 States viz. Maharashtra, Gujarat, West Bengal, Karnataka, Punjab, Madhya Pradesh, Odisha, Uttar Pradesh, Rajasthan and Bihar and in the GIC as very rightly mentioned by the Finance Minister of West Bengal, it was Haryana, Gujarat, Tamil Nadu and West Bengal. He further mentioned that in 2017 there was a record of what the GIC can do. He stated that the 21st Meeting of the GST Council "took note of the decisions of the GIC. It also approved that the GIC could decide on procedural issues and for substantial policy related issues, the GIC should send its recommendations to the Council which could then be decided either through video conference or by a physical meeting of the Council".

7.10. The Hon'ble Member from Goa stated that in the Law Committee and in the GIC, a total number of 14 States out of 31 States have been represented. The Hon'ble Member from Uttar Pradesh supported the reasoning given. The Hon'ble Deputy Chief Minister of Tripura explained that there has to be flexibility. The Hon'ble Member from Meghalaya stated that suggestions are welcome and suggested that the Law Committee may examine the matter. The Hon'ble Deputy Chief Minister of Haryana stated that in the 14th meeting of the Council held on 19-05-2017, the Council had authorized the GIC to take decisions. The Hon'ble Member from Arunachal stated that he was in agreement with the views expressed by the Hon'ble Members from Goa and Meghalaya. The Hon'ble Member from Karnataka supported the decision to refer to the matter to the Law Committee. The Hon'ble Member from Tamil Nadu seconded the motion with a request to expand the mandate of reference to the Law Committee to give outcome as whether approval, ratification or information.

7.11. For this Agenda item,

- i. the Council took note of the decisions taken by the GIC between 14-09-2020 and 01-05-2021, as detailed in the Agenda note; and
- ii. the Council mandated the Law committee to examine whether the powers delegated by the Council to the GIC for taking decisions in the interregnum between two Council meetings and bringing it to the Council only for information is violative of any rule.

Agenda Item 4: Status report of creation of GRC Zone-wise(CBIC) and States/UTs as on 15.05.2021

8.1 The Secretary presented the agenda for information of the Council. During the 38th GST Council meeting held on 18.12.2019, constitution of Grievance Redressal Committee at Zonal/State level consisting of both Central tax and State tax officers, representation of trade and Industry and other GST stake holders for establishing a mechanism to tackle grievances of tax payers was approved. In view of the above decision, an order regarding constitution of Grievance Redressal Committee was issued by the CBIC vide F. No. 20/10/16/2018-GST (Pt. 1) dated 24.12.2019 and the matter was followed up by the GSTC secretariat.

8.2. As reported in the Agenda, GRCs have been constituted in all except the State/Centre level Zones of Gujarat (Ahmedabad) and Haryana (Panchkula).

8.3 The Hon'ble Member from Haryana informed the Council that needful has been done in this regard and that the relevant order shall be provided to the GST Council Secretariat.

8.4 The Hon'ble Member from Gujarat also stated that the needful has been done in this regard

and that the relevant order of the constitution of the GRC will be sent to the GST Council Secretariat.

Agenda Item 5: Performance Report of the NAA (National Anti-Profiteering Authority) for the 2nd quarter (July, 2020 to September, 2020), 3rd quarter (October, 2020 to December, 2020) and 4th quarter (January, 2021 to March, 2021) for the information of the Council

9.1 The Secretary presented the agenda for information of the Council which took note of the performance of the National Anti-Profiteering Authority for the 2nd quarter (July,2020 to September,2020), 3rd quarter (October,2020 to December, 2020) and 4th quarter (January,2021 to March,2021) as tabled in terms of provisions of clause (iv) of Rule 127 of the CGST Rules 2017.

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

10.1. The Secretary introduced the Agenda Item and stated that in the 26th GST Council meeting held on 10th March, 2018, it was decided that all ad hoc exemption orders issued with the approval of Hon'ble Finance Minister as per the guidelines contained in Circular No. 09/2014-Customs dated 19th August, 2014, as was the case prior to the implementation of GST shall be placed before the GST Council for information. The details of the ad hoc exemption orders issued are as follows:

Order No	Date	Remarks	ISSUING AUTHORITY
AEO No. 01-A of 2020	10th September 2020	Request from the Ministry of External Affairs for exemption from payment of Customs Duties for procurement of 04 Special Armoured vehicles.	Commissioner Customs & EP CBIC
AEO No. 02 of 2020	05th October 2020	Request from Shri Gajendra Haldea for exemption from import duties on import of life saving drug Romidepsin for personal use.	
AEO No. 01 of 2021	09th February 2021	Request from Shri Mihir Kamatfor seeking exemption from payment of import duty for import of lifesaving drug Zolgensma, for gene replacement therapy, for personal use.	
AEO No. 02 of 2021	11th March 2021	Request from the Ministry of Home Affairs, Government of India for the equipment received on gratis basis for setting up a Cyber Lab at CAPT Bhopal from the United States of America	
AEO No. 03 of 2021	15th April 2021	2021 Request from Shri Rajdipsinh Rathodfor seeking exemption from payment of import duty for import of lifesaving drug Zolgensma, for gene replacement therapy, for personal use.	
AEO No. 04 of 2021	3 rd May 2021	Seeks to exempt IGST on imports of specified COVID-19 relief material donated from abroad, up to 30th June, 2021.	JS ,TRU CBIC

10.2 Ad hoc exemption Order No.4/2021-Customs dated 3.5.2021: Certain COVID related goods such as Remdesivir injection and its API, specified diagnostic markers, medical oxygen, oxygen concentrators and other oxygen storage and transportation equipment, and COVID-19 vaccines had already been exempted from BCD and/or Health cess for limited period, vide Customs notification No.

27/2021-Customs dated 20.04.2021, as amended, and No. 28/2021-Customs dated 24.04.2021. In view of the prevailing situation, Ad hoc exemption Order No. 4/2021-Customs dated 3.5.2021 has been issued granting exemption from IGST on those goods for COVID-19 relief imported free of cost for free distribution, till 30th June, 2021, which are covered under the above mentioned Customs notifications. This exemption Order was anticipated to ease the tax incidence on donated COVID-19 relief material meant for free distribution in the country.

10.3 He further stated that all these exemption orders were issued under sub-section (2) of section 25 of the Customs Act, 1962 (52 of 1962) but the whole of the Integrated Tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975 (51 of 1975), read with section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) was getting exempted. Hence these Ad hoc Exemption Orders issued by CBIC are placed for the information of GST Council.

10.4 The GST Council took note of Ad-hoc Exemptions Orders issued under Section 25(2) of Customs Act, 1962.

Agenda Item 7 - Status of the GoM on IGST Settlement

11.1 The Secretary introduced the Agenda Item and stated that the GoM on IGST Settlement was formed vide O.M. dated 07-12-2019. The GoM, after its meetings, submitted its recommendations to the GST Council in its 42nd meeting held on 05.10.2020 which were discussed in detail.

11.2. He added that certain States had received excess compensation which was required to be recovered. The Hon'ble Chairperson had clarified in the 42nd meeting of the Council that on the issue of mechanism for recovery of excess IGST from States, it was not presently being pressed and could be recovered gradually in view of the COVID pandemic situation.

11.3. In view of the above, since the Terms of Reference of the GoM have been fulfilled, it was proposed to formally close the GoM on IGST Settlement. Thus, a formal announcement about closure of the GoM was made in this regard.

11.4. The GST Council took the decision to discontinue the GoM on IGST Settlement.

Agenda No 8: GSTN related issues for the consideration of the GST Council

12.1 The Secretary presented the Agenda Item No 8 pertaining to the GSTN related matters (**Annexure-VI**) as follows:

- i. Sanction for extension of Projects- Returns Enhancement & Advancement Project (REAP), Lead modules' Enhancement & Advancement Programme (LEAP) and Business Intelligence and Fraud Analytics (BIFA)- till 31st March, 2022 on T&M basis with delegation to the Chairman to reduce the Manpower, if required.
- ii. In principle approval to expand the scope of IRP project for e-invoice registration and IRN issuance on expanding the scope with reduction of the threshold of turnover and providing for multiple IRPs, if needed,
- iii. To place before the GST Council, deputation guidelines approved by Hon'ble Finance Minister and to request to States to provide manpower to GSTN with SGST experiences,
- iv. Intimation – the Status update on transfer of share-holding with the States and conversion of Goods and Services Tax Network (GSTN) into 100% Government owned Company.
- v. Status of Payment by the States and Waiver of Interest on delayed receipt of Advance User Charges (AUC) from a few states and CBIC.

12.2 The Secretary requested the states to provide manpower to GSTN emphasizing that states

should provide manpower to GSTN which shall be a good learning experiencing for states and shall help improve the functioning of GSTN.

12.3 The Secretary stated that unless there was any intervention by the Members on the item numbers 8 (i), (iii), (iv) and (v) which are routine items, a presentation on (ii) can be given. Hon'ble member from West Bengal stated that no presentation on these issues was required. But he enquired about the quantum of GST fraud and as to whether it has gone up.

12.4 The Officiating CEO, GSTN stated that the expression fraud means duty short paid or ITC related frauds. The quantum of fraud cannot be easily commented but the cases detected figure can be shared. Overall, as a pattern, after the REAP project wherein a new statement GSTR-2 B has been introduced, where the credit claimed cannot be more than 5% of the eligible credit, there was improved compliance and hence the revenue figures have grown from October to March consistently. He stated that he shall provide the requisite figures to West Bengal. He also informed that GSTN was running a project BIFA where the centre and state have made very good cases consistently. Compliance has improved but the quantitative terms shall be shared separately after consulting GSTN officers.

12.5 The Secretary presented the figures of achievement in Centre regarding detection of fraud i.e. 4264 cases so far amounting to Rs 27,000 Cr. involving arrest of 410 persons. Using Technology, he stated GST officers can pinpoint the person who has caused fraud and catch him. Since they reach the correct person, hence, they have not received adverse publicity from media inspite of high number of arrests made. If permitted, GSTN can give presentation about the activities of this wing and states can also work on it if they are not doing such activity already.

12.6 The Hon'ble Member from West Bengal commented that there was good progress in REAP, LEAP and BIFA and he was very supportive of it.

12.7 The Council took note of the agenda and approved the proposals. The Hon'ble Chairperson stated that on the point touched by Hon'ble member from West Bengal, the Council will have to be informed in great detail and that a detailed presentation can be given in the next meeting which could be the material on the basis of which the Council can have a discussion on the issue if there was any input, which all would like to share.

Agenda Item 9A - Issues recommended by the Law Committee for the consideration of the GST Council

13.1. The Secretary took up the next Agenda on issues recommended by the Law Committee for the consideration of the GST Council. He started by saying that these issues were discussed in detail in the Officers' Meeting held on 27th May 2021. He thereafter asked the Commissioner, GST Policy Wing (Commissioner, GST PW), CBIC to give a brief overview of the deliberations in the Officers' Meeting regarding the recommendations made by the Law Committee on the subject.

Agenda Item No.9A (i) – Rationalization of Late Fee:

13.2. Initiating the discussion, the Commissioner, GST PW made a detailed presentation (attached as **Annexure-III**). He stated that the first Agenda Item 9A(i) was regarding rationalization of late fee imposed under Section 47 of the CGST Act. As per Section 47 of CGST Act read with relevant notifications, the late fee imposed is Rs.20 per day for filing GSTR-3B, GSTR-1 and GSTR-4, subject to a maximum of Rs. 10,000 per return. A number of representations have been received from various trade bodies and associations from all over the country highlighting the problem being faced by small taxpayers, having nil or very small tax liability, who are required to pay a high amount of late fee in a number of cases (even higher than their tax liability), due to the higher amount of capping of the late

fee. An analysis of late fee collected from taxpayers, with respect to their turnover and with respect to tax paid in cash, was presented. He stated that the Law Committee has recommended to rationalize the late fee, by having some correlation of capping of late fee with the turnover / tax liability of the taxpayers.

13.3. Commissioner, GST PW informed that the Law Committee has proposed that the late fee for delay in furnishing of FORM GSTR-3B and FORM GSTR-1 may be capped, per return, as below:

- (i) For taxpayers having nil tax liability in GSTR-3B or nil outward supplies in GSTR-1, the late fee may be capped at Rs 500 (Rs 250 CGST + Rs 250 SGST), irrespective of the Annual Aggregate Turnover (AATO).
- (ii) For other taxpayers:
 - a. For taxpayers having AATO in preceding year upto Rs 1.5 crore, late fee may be capped to a maximum of Rs 2000 (Rs 1000 CGST+Rs 1000 SGST);
 - b. For taxpayers having AATO in preceding year between Rs 1.5 crore to Rs 5 crore, late fee may be capped to a maximum of Rs 5000 (Rs 2500 CGST+Rs 2500 SGST);
 - c. For taxpayers having AATO in preceding year above Rs 5 crores, late fee may be capped to a maximum of Rs 10000 (Rs 5000 CGST+Rs 5000 SGST).

13.4. He added that the Law Committee has also proposed that the late fee under Section 47 for delay in furnishing FORM GSTR-4 may also be capped to Rs.500 (Rs.250 CGST + Rs.250 SGST) per return, if tax liability is nil in the return, and Rs.2000 (Rs.1000 CGST + Rs.1000 SGST) for other taxpayers, as their turnover was also upto Rs 1.5 crores.

13.5. As regards a proposal from West Bengal, Commissioner, GST PW stated that the Law Committee has proposed rationalization of late fee for delayed furnishing of return in FORM GSTR-7 as below:

- a. Late fee payable for delayed furnishing of FORM GSTR-7 may be reduced to Rs.50/- per day (Rs.25/- under the CGST Act plus Rs.25/- under the SGST Act)
- b. The maximum late fee for delayed furnishing of FORM GSTR-7 may be capped to a maximum of Rs.2000/- per return (Rs. 1,000/- under the CGST Act plus Rs. 1,000/- under the SGST Act)

13.6. The Commissioner, GST PW stated that as per recommendations of the Law Committee, the above proposals are to be made applicable for prospective tax periods. He also mentioned that this issue was discussed in detail in the Officers' Meeting held on 27th May 2021 and there was an agreement in the meeting on this proposal.

13.7 The Hon'ble Member from Bihar requested that late fee for delayed furnishing of GSTR-7 be reduced to Rs 20/- per day, with a capping of Rs.500/- per return.

Agenda Item No.9A(ii) – Simplification of Annual Return for Financial Year 2020-21 and related exemptions:

13.8. The next Agenda Item 9A(ii) was regarding Annual Return for Financial Year 2020- 21. The Commissioner, GST PW informed that the Annual returns FORM GSTR-9 & 9C were simplified for the Financial Years 2017-18, 2018-19 and 2019-20 by making few entries optional. Based on the recommendations of the Council, the filing of annual return in FORM GSTR-9/9A was made optional for taxpayers having aggregate annual turnover less than Rs.2 Crore for the Financial Year 2017-18, 2018-19 and 2019-20, and the threshold of aggregate annual turnover for filing of reconciliation statement in FORM GSTR-9C for the Financial Year 2018-19 and 2019-20 was increased from Rs.2

Crore to Rs.5 Crore by amending Rule80. The Commissioner, GST PW also informed that vide Section 110 of the Finance Act, 2021, sub-section (5) of Section 35 of the CGST Act is omitted to remove the mandatory requirement of getting annual accounts audited and reconciliation statement submitted by specified professional. He added that vide Section 111 of the Finance Act, 2021, Section 44 of the CGST Act is substituted to provide for filing of the annual return which may include submission of reconciliation statement on self-certification basis. It further provides that the Commissioner may exempt a class of taxpayers from the requirement of filing the annual return. These amendments made through Finance Act 2021 will come into effect from a date to be notified by the Government. He also informed that the said amendments have been viewed very positively by trade, as it will reduce time and cost for them in getting certification of CAs and therefore, it would be desirable to notify the said amendment in provisions of the Act at the earliest, so that there was no requirement of CA certification in Annual return for FY 2020-21 itself. Accordingly, the following proposals were submitted to the Council:

- I. Section 110 and 111 of the Finance Act 2021 may be notified at the earliest (on 01.08.2021) by the Centre. The States will be required to amend the said provision in the respective SGST Acts retrospectively with effect from the same date (01.08.2021).
- II. Rule 80 of the CGST Rules, 2017 to be amended as detailed in Annexure A to the Agenda Item No 9A(ii) Notes (Vol 2/pages 173-174)
- III. The existing Forms GSTR 9 and GSTR 9C (notified for FY 2019-20) may be notified for Annual Return for FY 2020-21, with minimal changes required to implement the said amendment and to incorporate some tax rates in some tables. The tables, which were optional in FY 2019-20, to be continued as optional as detailed in Annexure B and C to the Agenda Item No 9A(ii) Notes (Vol 2/pages 175-190).
- IV. For FY 2021-22, a single revised Form for Annual Return may be designed by merging GSTR 9 and GSTR 9C, for facilitating the taxpayers and improving compliance.
- V. The exemption from filing annual return for FY 2020-21 may be continued as in FY 2019-20, as below:
 - i. The filing of annual return in FORM GSTR-9 to be optional for taxpayers having AATO upto Rs 2 Crore;
 - ii. The filing of annual return in FORM GSTR-9A by composition dealers to be optional;
 - iii. The threshold of AATO for filing of reconciliation statement in FORM GSTR-9C for FY 2020-21 to be kept as Rs 5 Crore.

13.9 The Commissioner, GST PW stated that this issue was discussed in detail in the Officers' Meeting held on 27th May 2021 and there was an agreement on this proposal.

13.10. Hon'ble Minister from Haryana stated that reconciliation return duly certified by CA should be insisted from taxpayers having aggregate turnover above Rs. 50 crore. To this, the Commissioner, GST PW submitted that there are ample powers in the Act for the Commissioner to get the accounts of a taxpayer audited by a Chartered Accountant under section 66 of the CGST Act. The Hon'ble Minister stated that section 66 of CGST Act 2017 was for special audit and was applicable only if there are valuation and ITC related issues. The Commissioner, GST PW stated that the suggestion of Hon'ble Minister of Haryana would be examined separately.

Agenda Item No.9A(iii) – Proposal of Amendments in the Return related provisions of the CGST Act, 2017:

13.11. The next Agenda Item 9A(iii) was regarding proposal of amendments in the return related

provisions of the CGST Act, 2017. The Commissioner, GST PW stated that the original design of return involved an elaborate process of filing of GSTR-1, 2 & 3 in a sequence which also envisaged inter-linking with back and forth flow of invoices and 2-way communication, as detailed in the existing return related sections viz. Section 37 to 43 of the CGST Act, 2017. He added that in the 42nd meeting of the GST Council, it was recommended that the present system of GSTR-1/3B return filing to be continued and the GST laws may be amended to make the GSTR-1/3B return filing system as the default return filing system. Accordingly, the Law Committee deliberated on the matter and has recommended amendments to return related provisions of Section 37, Section 38, Section 39, Section 41, Section 42, Section 43, Section 43A and consequential amendments in Section 16, Section 29, Section 34, Section 47, Section 49, Section 50, Section 52 and Section 54 of CGST Act, as detailed in Annexure A to the Agenda Item No 9A(iii) Notes (Vol 2/pages 195-210). He also informed that the above amendments have also been deliberated by GIC, which has also recommended the same on merit. Besides, there was an agreement on this proposal in Officers' meeting held on 27th May 2021.

Agenda Item No.9A(iv) – Proposal to exempt government departments and local bodies from the requirement to issue e-invoice:

13.12 The next Agenda Item 9A(iv) was based on a reference received from the Government of West Bengal to exempt Government Departments and local authorities from the requirement of issuance of e-invoice for reducing compliance burden of the said entities. The impact of proposed exemption was analysed for a sample month of December, 2020 and was presented in the Agenda to the Council. Considering that contribution of Government Departments and local authorities to value of B2B supplies as well as ITC flow was a miniscule percentage i.e. 1.2% of value of total B2B supplies and 0.59% of total ITC flow respectively, the proposal to grant exemption to Government Departments and local authorities from requirement of issuance of e-invoice was submitted for consideration to the Council. This proposal was recommended by the Law Committee and was also agreed upon in the Officers' meeting held on 27th May 2021. One view was that whether an exception should be carved out for the Government departments, whereas other taxpayers are required to comply with the same provision.

13.13 The Secretary stated that as private sector taxpayers (with aggregate annual turnover above Rs.50 cr as on date) are required to generate e-invoices, it may not be proper to exempt the Government departments from requirement of issuance of e-invoice. The Hon'ble Minister from West Bengal justified it by saying that Government is a service entity and should not be equated on par with business entities. The Hon'ble Chairperson said that Government should comply first, before insisting on small taxpayers to comply. The Hon'ble Minister from West Bengal stated that Government is not a profit making entity and therefore, one could justify such exemption from e-invoice for the Government departments.

Agenda Item 9B - Other issues pertaining to GST laws and procedures for consideration of the GST Council

13.14. The Secretary asked the Commissioner, GST PW to place the agenda before the Council. The Commissioner, GST PW stated that these agendas were also discussed in detail in the Officers' Meeting held on 27th May 2021.

Agenda 9B(i) –Late fee Amnesty Scheme:

13.15 The first Agenda Item 9B(i) was regarding conditional reduction in late fee for delayed filing of FORM GSTR-3B for months from July, 2017 to April, 2021 as an Amnesty scheme for taxpayers to provide relief from huge burden of late fee. The Commissioner, GST PW stated that a number of

taxpayers, especially small taxpayers, could not file their GSTR- 3B returns earlier, especially during COVID times, due to lack of knowledge, lack of funds and other difficulties faced, and are now facing problems in filing these pending GSTR-3B returns due to high accumulation of late fee. It was proposed that a Late Fee Amnesty Scheme may be considered for reduction of late fees for GSTR-3B returns for tax periods from July, 2017 to April, 2021:

- i. late fee to be capped to a maximum of Rs.500/- (Rs.250/- each for CGST & SGST) per return for taxpayers, who did not have any tax liability for the said tax period; and
- ii. late fee to be capped to a maximum of Rs 1000/- (Rs. 500/- each for CGST & SGST) per return, for other taxpayers;

Such reduction / capping in late fee to be kept conditional, and to apply only if the returns are filed during the period from 01.06.2021 to 31.08.2021.

13.16 Commissioner, GST PW informed that there was an agreement on this proposal in Officers' meeting held on 27th May 2021.

Agenda 9B(ii) –Notifying section 112 of the Finance Act, 2021 relating to retrospective amendment in section 50 of the CGST Act:

13.17. The next Agenda Item 9B(ii) was regarding notifying Section 112 of the Finance Act, 2021 relating to retrospective amendment to Section 50(1) of the CGST Act 2017. The Commissioner, GST PW stated that Section 50(1) of the CGST Act 2017 has been amended retrospectively w.e.f. 1.7.2017 vide Section 112 of the Finance Act 2021, based on recommendation of GST Council in its 39th Meeting, for levying of interest on net cash liability. Section 50(1) was earlier amended prospectively and notified w.e.f 1.9.2020 to provide for interest on net cash basis through Finance (No.2) Act 2019. Commissioner GST PW stated that early notification of this retrospective amendment will help in removal of ambiguity and legal disputes on the issue and close pending cases, thus benefitting taxpayers. Since States will also be required to amend Section 50(1) retrospectively w.e.f. 1.7.2017 in their respective SGST Acts, therefore, there will be no ambiguity in the matter. Accordingly, it was proposed that Section 112 of the Finance Act 2021, may be notified at the earliest (on 01.06.2021) by the Centre. Commissioner GST PW informed that there was an agreement on this proposal in Officers' meeting held on 27th May 2021.

13.18. Further, he submitted that the Council may like to decide a date, by which time the corresponding amendments in SGST Acts, relating to the amendments done through the Finance Act, 2021, may be carried out by all the States. During the discussion, the Hon'ble Members from Tamil Nadu, Haryana, Assam, Karnataka, Maharashtra and Meghalaya expressed various dates. The Secretary stated that by the first week of October 2021, all State Assemblies may have had at least one session. Accordingly, the Hon'ble Chairperson proposed that 1st October 2021 may be decided as the date by which time the corresponding amendments in SGST Acts, relating to various amendments done through the Finance Act, 2021, may be carried out by all the States.

Agenda 9B(iii) –Proposal for converting Quarterly return and Monthly payment (QRMP) Scheme to Quarterly return and Quarterly payment (QRQP) Scheme:

13.19 The next Agenda Item 9B(iii) was regarding proposal for converting quarterly return and monthly payment (QRMP) Scheme to quarterly return and quarterly payment (QRQP) scheme. The Commissioner, GST PW stated that the GST Council in its 42nd meeting had recommended a Quarterly Return and Monthly Payment (QRMP) Scheme for registered persons having turnover up to Rs. 5 Crore, which has been implemented with effect from 01.01.2021. The QRMP scheme was available to approximately 89% of the total tax base. As per feedback, there was a feeling in the taxpayers feel that

the requirement of monthly assessment and payment of tax was akin to compliance for filing of return on monthly basis, and therefore, the scheme was not providing them the actual benefit of reduced compliance burden. He informed that though the scheme provides an option of payment of monthly tax through a system-generated challan, thus obviating the need for self-assessment of tax liability on actual basis during first two months of the quarter, but a number of taxpayers are still opting for payment of monthly tax on self-assessment basis. The revenue data for the period January-March 2021 was presented to the Council, showing the total GST collections from taxpayers who are in QRMP scheme, as per which less than 4% of the total GST revenue collected during January and February 2021 was collected from the taxpayers under QRMP scheme. Commissioner, GST PW mentioned that if the QRMP scheme was converted into Quarterly Return Quarterly Payment (QRQP) scheme, by requiring payment of tax also on quarterly basis, then it will provide substantial relief to the smaller taxpayers, and will only cause deferment of revenue of 4-5% during first two months of the quarter to the third month of the quarter. It was proposed to the Council that the present QRMP scheme may, therefore, be converted to QRQP scheme and tax may also be collected on quarterly basis through quarterly return. In this regard, in-principal approval of the GST Council was sought. Commissioner GST PW proposed that further modalities for the implementation of QRQP scheme may be worked out by the Law Committee, based on in-principle approval of the Council.

13.20 The Secretary mentioned that that about 90% of the taxpayers in GST are small taxpayers with turnover of upto Rs 5 crore and their contribution to the revenue was also very small, and therefore, converting QRMP to QRQP will benefit such smaller taxpayers. The Hon'ble Member from West Bengal stated that they are in agreement with the said proposal and that they would recommend QRQP scheme, as it will benefit small taxpayers. Hon'ble Member from Delhi stated that it was too early to review QRMP scheme, as this scheme has worked for only three months. The data provided at present was not sufficient to draw any meaningful conclusions and it would be better to allow QRMP scheme to settle before any change was made to the same. He mentioned that in Delhi, the monthly revenue from QRMP taxpayers was 10%, as against 4% for All India. He also added that it would be difficult to return to monthly tax payment, once it was shifted to quarterly payment. The Hon'ble Member from Kerala stated that small traders contribute 20% of revenue in their state and therefore, and hence they would like to continue QRMP scheme. The Hon'ble Member from Maharashtra stated that he agrees in-principle that there was a need for easing the compliances for smaller taxpayers, however, the details of such scheme need to be worked out by the officers. The Hon'ble Member from Himachal Pradesh stated that in Himachal Pradesh, revenue from small taxpayers was 15% and that such conversion to QRQP would defer large amount of revenue to the end of the quarter. The Hon'ble Member from Karnataka stated that though he agrees in-principle with the proposed QRQP scheme, he suggested that the present QRMP may be reviewed at a later stage. He also suggested that this proposed threshold limit of Rs 5 crore may not be increased at a later stage. The Hon'ble Member from Tamil Nadu suggested that GSTN may provide data on what would be the impact on flow in liquidity if QRQP was opted. The Hon'ble Member from Odisha mentioned that QRMP may be continued at present, as it was too early to make change. The Hon'ble Member from Chhattisgarh stated that QRQP would affect flow of funds to States and also stated that the Law Committee should first examine the said scheme. The Hon'ble Member from Jharkhand stated that they would support the views of Chhattisgarh and prefer to continue with QRMP.

13.21 Finally, the Secretary mentioned that taking the sense of the House, the issue may be referred to the Law Committee, which could examine the issues in greater detail and then bring it back to the Council for consideration.

Agenda 9B(iv) –Difficulties faced by taxpayers to comply with timelines under GST due to COVID related restrictions – Matter arising out of directions of Hon'ble Delhi High Court:

13.22. The next Agenda Item 9B(iv) was regarding the issue placed before the Council in pursuance of the directions of the Hon'ble High Court in the matter W.P.(C) No. 5177/2021, in the case of Anil Kumar Goel & Ors Vs UIO & Ors. The Commissioner, GST PW stated that this Agenda was in pursuance of the directions of Hon'ble High Court of Delhi, as communicated by Ld ASG vide email dated 26-05-2021 [submitted as Annexure-A to Agenda Item No.9B(iv) notes (Vol-5, page No.15 & 16)]. The Hon'ble High Court of Delhi has desired that the suggestions made by the Counsels and Amicus Curiae [submitted as Annexure-B and Annexure-C to Agenda Item No.9B(iv) notes (Vol-5, page No.17-18 and 19-20)], may be placed before the Council for consideration. It was informed that the next hearing of Hon'ble Court was on 1st June 2021.

13.23. The issue was discussed in detail in the Officers' meeting held on 27-05-2021. Officers deliberated on the situation of the COVID pandemic, status of the restrictions/ lockdown imposed in various states, the COVID related relief measures already provided under GST to taxpayers through various notifications issued on 01.05.2021 and need for further COVID related relief measures, if any, relating to statutory and regulatory compliances in GST, including extension of due dates. Suggestions/ requests received from various stakeholders, including through Hon'ble High Court of Delhi, were also deliberated. After detailed discussions and deliberation, the following additional COVID related relief measures were suggested by Officers in the meeting and are placed before the Council for approval:

A. For Normal Taxpayers:

- a) For registered persons having aggregate turnover above Rs. 5 Crore: Similar relaxation, as provided for March and April, 2021, may be provided for May 2021 also:
 - (i) Interest @ 9% for first 15 days after the due date of filing return in FORM GSTR-3B for May, 2021
 - (ii) Waiver of late fee for delay in furnishing FORM GSTR-3B for May, 2021 for 15 days from the due date.
- b) For registered persons having aggregate turnover upto Rs. 5 Crore
 - (i) For May, 2021, the following relaxations, as provided earlier for March and April 2021, may be provided:
 - For May, 2021 (for the taxpayers opting to file monthly returns), NIL rate of interest for first 15 days from the due date of furnishing FORM GSTR-3B and @9% thereafter till further 15 days
 - Waiver of late fee for delay in furnishing FORM GSTR-3B for May 2021 (for taxpayers filing monthly returns) for 30 days from the due date.
 - Waiver of interest for 15 days for taxpayers filing delayed PMT-06 Challan (for payment of tax liability) and waiver of interest by 9% interest thereafter for 15 days further, from due date of filing PMT-06 challan for May, 2021 for QRMP taxpayers filing quarterly returns.
 - (ii) In addition, further relaxations in rate of interest and late fee for March and April, 2021 may be provided as below:
 - Reduction in interest: NIL rate of interest for first 15 days from the due date of FORM GSTR-3B or for filing delayed PMT-06 Challan (for payment of tax liability), and 9%

thereafter for further 45 days and 30 days for March, 2021 and April 2021 respectively, and 18% thereafter (for normal taxpayers, including those under QRMP scheme).

- Waiver of late fee for delay in furnishing FORM GSTR-3B for the tax period March 2021/ QE March 2021 and April 2021 for 60 days and 45 days respectively, from the due date of furnishing FORM GSTR-3B.

B. For registered persons who have opted to pay tax under the Composition scheme

- a) FORM CMP-08: NIL rate of interest for first 15 days from the due date of payment of self-assessed tax and 9% thereafter for further 45 days and 18% thereafter, for the quarter ending 31st March, 2021.
- b) FORM GSTR-04: At present, the due date of furnishing FORM GSTR-4 for FY 2020-21 is extended to 31st May, 2021. It may be further extended to 31st July, 2021.

C. For all Registered persons:

- a) FORM ITC-04: The due date of furnishing FORM ITC-04 for QE March, 2021 was 25th April. It is proposed that the same may be extended till 30th June, 2021.
- b) FORM GSTR-1/ IFF: Due date of furnishing GSTR-1/ IFF for the month of May 2021 may be extended by 15 days.
- c) Restriction on ITC availment under Rule 36 (4) may be applied commutatively for the months April to June 2021 in the return for June, 2021.
- d) EVC: FORM GSTR-3B and FORM GSTR-1 can be filed using electronic verification code (EVC) instead of digital signature certificate (DSC) by a person registered under the provisions of the Companies Act, 2013 from 27th April, 2021 to 31st August, 2021.

D. Relaxations under section 168A of the CGST Act:

- a) Any time limit for completion or compliance of any action, by any authority or by any person, under the GST Act, which falls during the period from 15th April, 2021 to 29th June, 2021 (with suitable exemptions as in the notification) extended upto 30th June 2021, as far as the same is not covered by order of Hon'ble Supreme Court dated 27.04.2021, which has extended timelines till further order, for appeals and quasi-judicial proceedings.
- b) Deemed registration: Due to difficulties faced by officers to conduct physical verifications during second wave of COVID, the time limit for various compliances for grant of registration under rule 9 of the CGST Rules, 2017, which falls during the period from the 1st May, 2021 to 30th June, 2021, be extended to 15th July, 2021.
- c) Refund orders: Officers to be allowed time for issuance of the refund orders upto fifteen days after the receipt of reply to the

notice from the registered person or 30th June, 2021, whichever is later.

The same were presented to the Council by the Commissioner, GST PW, CBIC and was agreed upon by the Council.

13.24 On the 'issues recommended by the Law Committee for the consideration of the Council' the Council approved agenda item Nos.9A (i), (ii), (iii) & (iv) as detailed below:

(i) The late fee for delay in furnishing of FORM GSTR-3B, FORM GSTR1, FORM GSTR-4 and FORM GSTR-7 to be reduced/ capped, per return, as proposed in agenda note and detailed in agenda 9A(i) above.

All the above proposals to be made applicable for prospective tax periods i.e. for the tax period of June 2021 and onwards. For FORM GSTR-4, the same would be applicable from FY 2021-22.

(ii) Regarding Simplification of Annual Return for Financial Year 2020-21:

- A. Section 110 and 111 of the Finance Act 2021, relating to amendment in section 35 and 44 of the CGST Act may be notified at the earliest (on 1.8.2021) by the Centre. The States will be required to make corresponding amendments in their respective SGST Acts retrospectively with effect from the same date.
- B. Rule 80 of the CGST Rules, 2017 to be amended as detailed in Annexure A to the Agenda Item No 9A(ii).
- C. The existing Forms GSTR 9 and GSTR 9C (notified for FY 2019-20) to be notified for Annual Return for FY 2020-21, with minimal changes required to implement the said amendment and to incorporate some tax rates in some tables. The tables which were optional to be continued as optional as detailed in Annexure B and C to the Agenda Item No 9A(ii).
- D. For FY 2021-22, a single revised Form for Annual Return to be designed by merging GSTR 9 and GSTR 9C, for facilitating the taxpayers and improving compliance.
- E. The exemption from filing annual return for FY 2020-21 may be continued as in FY 2019-20, as below:
 - i. The filing of annual return in FORM GSTR-9 to be optional for taxpayers having AATO upto Rs.2 Crore;
 - ii. The filing of annual return in FORM GSTR-9A by composition dealersto be optional;
 - iii. The threshold of AATO for filing of reconciliation statement in FORM GSTR-9C for FY 2020-21 to be kept as Rs.5 Crore.

(iii) Proposed amendments in CGST Act 2017: The GST Council recommended amendments to the provisions of Section 16, Section 29, Section 34, Section 37, Section 38, Section 39, Section 41, Section 42, Section 43, Section 43A, Section 47, Section 49, Section 50, Section 52 and Section 54, of CGST Act as detailed in Annexure A to the Agenda Item No 9A(iii). Final draft to be finalised in consultation with Union Ministry of Law and Justice. Corresponding amendments would also be required in respective SGST Acts.

(iv) Exempt Government Departments and local bodies from the

requirement to issue e-invoice: Government Departments and local authorities may be exempted from the requirement of issuance of e-invoice.

13.25 On the ‘**other issues pertaining to GST laws and procedures submitted for consideration of the Council**’, the Council recommended as below:

- (i) **Amnesty Scheme to provide relief to taxpayers regarding late fee for pending returns.** To provide relief to the taxpayers, late fee for non-furnishing FORM GSTR-3B for the tax periods from July, 2017 to April, 2021 may be reduced / waived as under:
 - a) late fee capped to a maximum of Rs 500/- (Rs. 250/- each for CGST & SGST) per return for taxpayers, who did not have any tax liability for the said tax periods;
 - b) late fee capped to a maximum of Rs 1000/- (Rs. 500/- each for CGST & SGST) per return for other taxpayers;The reduced rate of late fee would be conditional and would apply if GSTR-3B returns for these tax periods are furnished between 01.06.2021 to 31.08.2021.
- (ii) **Notifying date for Section 112 of the Finance Act 2021 and date for other Sections of the Finance Act 2021:**
 - A. Section 112 of Finance Act 2021, relating to retrospective amendment of Section 50(1) to be notified at the earliest by the Centre. 01.06.2021 may be appointed as the date from which the provision of section 112 of the Finance Act, 2021 would come into force.
 - B. All the states may carry out the corresponding amendments in SGST Acts, relating to various amendments done through the Finance Act, 2021, by 1st October 2021.
- (iii) **Proposal to convert QRMP to QRQP:** As regards the proposal to convert the present quarterly return and monthly payment (QRMP) scheme to quarterly return and quarterly payment (QRQP) scheme, it was recommended that the Law Committee may examine the issue in greater detail and then bring it back to the Council.
- (iv) **Difficulties faced by taxpayers to comply with timelines under GST due to COVID related restrictions:** In view of the prevalent Covid situation in the country, the Council recommended to provide further COVID related relief to the taxpayers.

Agenda No 10: Seeking concurrence for levy of Covid cess on power and pharmaceutical sector in Sikkim

14.1 The Secretary requested the Hon’ble Member from Sikkim to present the issue of Covid Cess.

14.2 The Hon’ble Member from Sikkim stated that Sikkim was one of the tiniest State of India with very limited capability to raise resources internally. Pandemic has also affected the revenue of the State from its own taxes and non-tax revenues. The expenditure, however, has continued to increase particularly due to the Pandemic. He explained that manufacturing, mainly pharma companies and hydro electricity generation, together accounts for nearly half of the total Gross State Domestic Product of the State.

Sikkim proposed that a COVID Cess at the rate of—

- (a) **1 per cent of the turnover of pharma sector (excluding the unorganized sector);**
and
- (b) **Rs. 0.1 per unit of power generated**

be imposed for a period until March, 2024. It was explained that this would generate revenue of Rs. 100 crore per annum and Rs. 250 crore to Rs. 300 crore over the entire period. It was argued that this cess was nominal, comes with a sunset clause and was unlikely to affect either the consumers or the industry significantly.

14.3 The Hon'ble Member from Goa supported the proposal of Sikkim and referred to Article 279A (4)(f) introduced vide 101st Constitutional Amendment Act. He further stated that state of Kerala had imposed a cess of 1% for two years during Kerala floods to raise the funds for rehabilitation work. He said that small states like Goa do not have many resources to raise funds and are dependent on tourism which has taken a hit during pandemic. He stated that irrespective of the size of the State, they should be allowed to charge the cess in situations like the one prevailing. He suggested that for two to three years, the states should be allowed to charge 1% cess on certain goods, which would help meet requirements of States to handle the expenditure related to vaccination as well.

14.4 The Hon'ble Member from Arunachal Pradesh also supported the Covid Cess and stated that like Sikkim and Goa, they are also fighting Covid and have limited resources as tourism has stopped due to lockdown. To be able to counter the impending third wave of Covid, the state should be allowed to generate revenue through imposition of cess.

14.5 The Hon'ble Member from Kerala supported the agenda and acknowledged that cess was very helpful to them in gathering resources to fight the Kerala floods.

14.6 The Hon'ble Chairperson stated that in case of Kerala, a GoM was formed to look into issues relating to imposition of Cess. Similarly, in the request of Sikkim also, a GoM may be constituted to submit its recommendations for the consideration of the Council. The GoM can hopefully submit its suggestions in two weeks, which can be circulated to all the States and a call can be taken from there. The Council agreed to the proposal of constituting a GoM.

Agenda no 11: Issues recommended by the Fitment Committee for the consideration of the GST Council

15.1 The Secretary asked Shri G D Lohani, J.S, TRU to place the agenda before the Council. J.S, TRU briefed the Council on the recommendations made by the Fitment committee, to be taken up for decision by the Council. He thereafter made a presentation (**Annexure-IV**) listing the recommendations made by the Fitment committee on issues related to COVID relief agenda No 11(i). In continuation he also made presentation on Agenda items 11(ii) (Fitment recommendation on goods), 11(iii) (Fitment recommendation on services), 11(iv) and 11(v) (issues arising from the directions of Hon'ble Supreme Court and Delhi High Court respectively) GST on assistive devices and request relating to inclusion of ice cream under composition scheme.

15.2 The Secretary drew the attention of the Council to the fact that the exemptions have been granted to goods which are being brought free and are distributed free. He drew attention to the proposal that the same relief should be given to such items if they are paid for by philanthropists, Corporates or anyone else, and if they are distributed free. The Fitment committee proposed that this relief should be granted. He further stated that Fitment Committee was of the view that such exemption should be applicable even if the supplies were received by Centre, or a State or any NGO or hospital. Some States suggested that the earlier notification that has been issued was wider and the same scope

could be adopted for this exemption too. It was felt that State's intervention was desirable for ensuring distribution to the needy. It would also help the Customs in clearance of these goods without payment of duties and taxes.

15.3 As regards Oxygen concentrators, JS (TRU) stated that initially, if an oxygen concentrator was commercially imported or procured from domestic sources, there would be 12% GST, whereas if the same was brought as personal imports or sent as a gift from abroad, it would have attracted 28% IGST. This was changed to apply GST at uniform rate of 12%, irrespective of whether it was purchased within the country, from abroad or sent as a gift. The High Court has changed it so as to subject the oxygen concentrator coming as gift to an individual from a relative abroad to 0% GST, while when an individual purchases the same from abroad; it now attracts 28% IGST. Commercial imports and domestic supplies of Oxygen concentrators remain at 12% GST slab. The Fitment committee has suggested that the rate be made uniform at 5% for all cases, whether it was purchased inside the country, from abroad, or sent as a gift from outside the country. Further, he stated that an order has also come from the High Court on the Black Fungus drug. As regards, medicine, it was mentioned that Fitment committee discussed the issue in detail. Fitment was of the view that while there was a need for subjecting medicine to concessional rate of 5% (where GST on COVID related medicine was 12%) it was desirable that such reduction was done on specific recommendation of Ministry of Health, more so as the COVID protocol was ever changing.

15.4 The Hon'ble Member from Delhi stated that he was grateful to the Hon'ble Chairperson for the ad hoc changes which have been made in the tax structure. He further stated that Oxygen cylinders should be included in the list in Agenda 11(i), along with Oxygen Concentrators/generator and pulse oximeter. He proposed that the suggestion made to reduce tax on donations which were purchased from abroad and donated in India should be made retrospective from 3rd May, as many donations had been made in the peak COVID period and they should be covered by the benefit of the notification. He also submitted that the items on which the Fitment Committee has proposed the tax to be reduced to 5% can further be made exempted, as it was an ad-hoc exemption arrangement for some time and it is not substantial concerns related to ITC.

15.5 The Hon'ble Member from West Bengal, further suggested that the ad hoc exemptions should be extended to the degree possible, as he suggested that date of July 31, 2021 may be a very short period, and the pandemic may continue subsequent to that. He stated that in Agenda 11(i)(B)(a), Fitment Committee has suggested that vaccines should continue at 5%. He referred to the request of the West Bengal CM to make vaccines exempt from tax. He also referred to the reply of the Union Finance Minister, which had explained that under the current law, exemption from GST would make ITC ineligible, and thus prices of vaccines would increase. He suggested that zero rating may be considered for vaccines, with a time boundary, which may require an amendment to Section 16 of the IGST Act. He stated that the four items in Part B, medical grade oxygen, oxygen concentrators, pulse oximeter, and COVID testing kits may also be considered for zero rating. In respect of other items in Part B, namely PPE kits, N95 masks, ventilators, hand sanitizers and temperature check equipment he stated that these were being taxed at high rates. He stated that for ambulance and portable hospitals, zero rating was not required. He referred to recommendations of the Fitment on other non-COVID items, which he was in agreement with. He however stated that he would wish to limit the discussion to COVID related items for the time being. He proposed an alternate suggestion to zero rating, if the Council felt that it was unable to adopt zero rating.

15.6 The Hon'ble Member from Punjab referred to the concessions given by way of exemptions, some of which are terminating on 30th June, some on 31st July and some on 31st August. He said that he failed to understand the rationale for the different dates given to such exemptions as well as the

relatively short period of time given for such exemptions. He suggested that such concessions could be uniformly extended till the 31st March, 2022. He stated that the Fitment Committee has been very conservative, and referred to the recommendation of the committee on Remdesivir, which the committee has stated had been removed from the WHO recommended list and thus been denied benefits. Hon'ble Member was of the opinion that the Council could exempt every drug for COVID treatment, based on the recommendation of the Union Ministry of Health. He stated that the COVID vaccine has not been exempted from tax, as the Fitment committee argued that the tax burden was borne by the Government. This was only partially true, but a lot of private hospital and corporate entities were also sourcing vaccines. This does not look very good even as optics. He suggested that everything that was required for testing, treatment and prevention of the disease can be exempted. These concessions will also help them prepare for the next wave and he stated that this would allow to ramp up their health infrastructure. He seconded the opinion of the Member from West Bengal to zero rate the COVID related items, or to apply a nominal rate of tax with full ITC benefits. He further stated that a blanket exemption could be given on the recommendation of the Ministry of Health.

15.7 The Hon'ble Member from Karnataka said that he welcomed the IGST exemptions given. He stated that the scope of proposed exemption (goods imported on payment basis for donation) should be the same as the present scope (free imports for free distribution), that was free imports and free distribution, for state government, corporates and any entity, where donor purchases and gives for free distribution, with state government certificate. He agreed with the Hon'ble Member from West Bengal, for extension of time beyond July. He further said that other things like PPE kits and thermometers may be included in the exemption, along with Remdesivir and Black Fungus medicines. He also added items such as lifesaving ventilators also need to be looked into. He endorsed the suggestion of the Hon'ble member from Punjab, and stated that the help of the Health Ministry may be sought in deciding list of items. He stated that the GST Council can help the patients by exempting a large number of medicines and equipment. He stated that the list of exemptions should be more inclusive and more easily implementable. He reiterated the need to extend the exemptions beyond July, 2021.

15.8 The Hon'ble Member from Bihar welcomed the reductions in GST rate from 12% to 5%, particularly on pulse oximeter and oxygen concentrator. He also suggested that GST on hand sanitizer and thermometers may also be levied at 5%. He also sought reduction in tax rate for an LPG based project for crematorium in Darbhanga for which equipment are to be received from Haryana as a donation and requested for reduction from 18 to 5%. He also requested that the GST levy on the ropeway in Rajgir district should be reduced as the State Tourism Development Corporation was an arm of the State government, and there was religious significance of the spot as well. It also has value as a tourism destination.

15.9 The Hon'ble Member from Meghalaya stated that there needs to be a balance between reducing GST on devices and preserving revenues. He further stated that there was huge reduction in items mentioned in list in para 3.7A which include medical grade oxygen and oxygen concentrators, devices which are being utilized the most. He stated that a balance has been struck. He mentioned that the rates on testing kits had been reduced, which was a welcome move. He stated that if the rate on hand sanitizers was reduced, there would be demands for reduction in the tax rates of other related goods such as soaps, which can lead to a chain reaction of demands. He stated that exemption of products may only lead to an increase in the price of product, and it would also further burden the central resources, which are very precious at this time. He suggested that a balanced approach must be followed, and there was a need to be practical.

15.10 The Hon'ble Member from Kerala supported the idea of zero rating. He further stated that this was an extraordinary situation, and that a separate model needs to be adopted to counter COVID.

He stated that for vaccines, drugs related to COVID and on related equipment, GST should be zero rated. The laboratory kits, including thermometer may also be brought to zero rating, and this can only be done for a short period, such as three months.

15.11 The Hon'ble Member for Maharashtra said that the state was prepared to vaccinate all citizens. He said that it was important for all COVID related equipment should be given as much of tax relief as was possible. This would reduce the burden on people. Medical grade oxygen, oxygen concentrator and pulse oximeter and COVID testing kits are used by a large number of people. Reduction of rates on these items was appropriate, and that he supported the tax concessions given. He requested that the new rates on COVID testing kits and oxygen concentrator should be given till 31st December. He also said that hand sanitizers should also be taxed at 5%.

15.12 The Hon'ble Member from Chhattisgarh said that on one hand it was proposed that the States should be allowed to impose a cess of 1%, as the States need revenue, and on the other the zero rate structure was not proposed to be accepted, rather a tax of 5% was to be levied. He asked to whom was this money collected going to go to. He said that the State government would be paying the GST, half of which will go to Central Government, and some would be devolved to the State Governments. He stated that as far as the Government sector was concerned, he could not see why the 5% needed to be levied. He stated that as far as the private sector was concerned, in the humanitarian context, whether the Council should be taxing a consumer for whom the product may be a matter of life and death. The arguments against zero rating COVID related equipment was that there was no provision in the law which allowed for such zero rating, and that it was provided only in IGST. Part VII of the IGST act mentions zero rating and section 16, which mentions zero rated taxes, a provision of the IGST act, was being imposed on the CGST Act. He referred to Section 9 of the CGST, the section for levy and collection and said that the section says that tax be imposed at "such rates, as may be notified by the GST Council, not exceeding 20%" and further said that there was no mention that it could not be 0%, and that the section clearly states that it can be upto 20%. Section 17(2) of the CGST Act states "Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as was attributable to the said taxable supplies including zero-rated supplies." He stated that the CGST Act, and in its wisdom, the Parliament visualized a situation where zero rated supply would be there, and that there was provision in the GST act, very clearly for zero rated taxed. He referred to Chapter XI, Refunds, Section 54(3), which stipulates that "Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilized input tax credit at the end of any tax period: Provided that no refund of unutilised input tax credit shall be allowed in cases other than— (i) zero rated supplies made without payment of tax". There was clear provision of zero rated tax, and that the procedure was clearly delineated in the Act, and as the Parliament envisaged a situation for zero rated tax, this was the time when it needed to be adopted, even if for a limited time period. The Council should adopt a zero rated tax on cover goods, what those goods are could be worked out.

15.13 The Hon'ble Member from Uttar Pradesh stated that if zero rating was allowed, it would cause loss to the State governments, and further that it would create a bad precedent. All governments work on the basis of tax receipts, and that whatever tax was imposed, it should not be zero. He stated that he was in agreement with the recommendations made by the Fitment committee and the concessions given by the Union government. He submitted that the concessions should be extended three months beyond the 31st July, 2021 end date for them.

15.14 The Hon'ble Member from Odisha stated that the Country was going through the tough phase of the COVID pandemic, and that it was a war like situation. All resources should be focused on

winning this war against COVID. He referred to the letter written by the Hon'ble Chief Minister of Odisha regarding the exemption of tax on GST on procurement of vaccine, and that 0% percent should be charged on the procurement of vaccines. The States have been asked to procure vaccines out of their own resources to cover the vaccination of the 18-45 years' age group of the population. Therefore, a huge amount was needed. If zero rate was charged on vaccine, the rates would come down. He requested the Hon'ble Chairperson to take steps to reduce the tax related to medical supplies, including vaccines and other medicines. He stated that the reduction of tax was needed urgently as the Country was going through a pandemic. He stated that Odisha was fighting a double battle against COVID and also the Cyclone Yaas. He stated that this was the reason the Hon'ble Chief Minister had written a letter requesting taxes being 0% GST on vaccines.

15.15 The Hon'ble Member from Madhya Pradesh thanked the Union Government for the assistance provided during the COVID 19 pandemic. He thanked the Council for the proposal to reduce the GST rate on medical grade oxygen from 12% to 5%, which would allow increased production of oxygen in the States and would make States self-sufficient in terms of oxygen. He suggested that the concessions given on tax should be extended to 30th September uniformly. He stated that Madhya Pradesh was in concurrence with the other suggestions of the Fitment committee. He reiterated the request made by Madhya Pradesh to reduce the GST on biodegradable carry bags to be reduced from current 18% in order to increase use, which would provide a boost to the Swachh Bharat mission and reduce environmental damage.

15.16 The Hon'ble Member from Assam requested that the GST concession period be extended by a month due to the late COVID second wave in the North Eastern states. She further stated that to curb this situation, an extension period of at least one month was needed. She further requested for a reduction in the rate of GST on hand sanitizer, which would also send a positive message to the people, and encourage hand sanitizer use.

15.17 The Hon'ble Member from Goa appreciated the work done by the Fitment committee. He stated that going for zero rating may be fallacious as it would require a change in the law and would not be possible immediately, and that something immediate was needed. He stated that rate of tax on items such as Oxygen concentrators have been slashed from 77% to 12%. He stated that similarly tax on other items has been reduced as well. Every State needs revenue, and was starved for funds. He said that if more and more tax concessions are given, the new industries and entrepreneurs which have developed due to COVID would become habituated to not paying taxes. Governments needed funds from taxation to run. He concurred with Hon'ble Member from Meghalaya on the need for a balanced approach, as revenues were needed from someplace, and that impractical proposals would not help. He stated that everyone needs to be on the same page to fight the pandemic. The message from the Council should be that the Council stands with the common man to face this situation.

15.18 The Hon'ble Member from Arunachal Pradesh stated that he also felt that the Council should take a balanced view. He stated that he agreed to the recommendation of the Fitment committee, but he requested that the period of the ad hoc concessions should be extended.

15.19 The Hon'ble Member from Rajasthan stated that there was a lockdown in place, and that commercial institutions and industries have been shut during this period. He stated that in these circumstances if someone was providing oxygen, medicines or COVID relief material, they should not be taxed. There were exemptions given under Income Tax to charitable institutions. During this period, it was critical to ensure that patients were provided with vaccines, medicines and oxygen. He agreed with the Hon'ble Member from Bengal and Punjab that there should be zero rating of relief material and vaccines.

15.20 The Hon'ble Member from Jharkhand stated while it was good that tax on oxygen concentrator, medical oxygen, pulse oximeter and COVID testing kits has been reduced from 12% to 5%, he felt that zero rating should be considered from these items as suggested by Punjab and West Bengal. He stated that if zero percent was not possible due to legal hurdles, 0.1% tax should be considered.

15.21 The Hon'ble Member from Gujarat stated that the issue being discussed was not only related to income, but was also one of humanity and serving patients. This pandemic was exceptional and unprecedented in the last 100 years. He stated that the issue should be seen in 3-4 parts. First, where the Governments are spending, and where the patients don't have to spend, we have to consider such positions. He thanked the Hon'ble PM and the Hon'ble Minister for Health for the provision of free vaccines where the Central Government was bearing the costs, and the State Governments have not needed to incur any expenses. It was separate issue that if a State attempts to purchase vaccines by private tender, the States would have to pay for that. But till now, the vaccination received by crores of citizens has been borne by the Union Government. He stated that in Gujarat as well, vaccination has been done by using the vaccines provided by the Central Government. In these cases, the tax does not need to be paid by citizens or the State governments, so this was one issue. On the other hand, if the State government purchases vaccines from a private tender using their own funds, the Council should consider reducing the rate of GST in that case, to 1% or 0.5% or some other rate. He stated that the way crores of people have received treatment for Corona, with most patients receiving treatment free of cost, in government hospitals, and the State Governments have borne this cost. He suggested that the expenses for injections being used, such as Remdesivir or Black Fungus injection or medical oxygen, borne by the State governments was a major expense. He gave the example of how Gujarat needed 1100-1200 metric ton oxygen during the peak of the pandemic. Even now 500-600 metric ton oxygen was being supplied. He stated that oxygen was the most critical component of the treatment. He suggested that there could be reduction of tax on these items. Such a reduction can also be considered for Ambulances as well, seeing that there has been a need to procure ambulances in large numbers. He said that the states may need to make more expenditures to prepare for a possible third wave so the States would need the resources. He reiterated that private/foreign vaccine would cost around 2000 rupees per individual for two doses, so the taxation on this vaccine would need to be discussed in the Council. He stated for humanity and citizens of the country, income can be sacrificed for a short period of time. He stated that in the interest of the Nation and welfare of the people, whatever decision will be taken by the Council on this matter, Gujarat will support it.

15.22 The Hon'ble Member from Tripura stated that he appreciated the view of the Member from Meghalaya, as there are challenges to both life and livelihood. He stated that he agreed with the Member from Uttar Pradesh that zero percent could create a bad precedent financially. He said that Member from Meghalaya pointed out rightly that reducing the rate on hand sanitizers would open a Pandora's box, with a cascading effect of demands. He stated that the recommendations of the Fitment committee were very judicious and with a lot of pragmatism of saving lives as well as augmenting revenue. He stated revenue was required to function, especially as the spending has gone up, particularly social sector spending. He welcomed the proposal of the Fitment committee.

15.23 The Hon'ble Member from Haryana stated that the date of the ending of the exemptions should be extended to end of July, 2021 or end of August, 2021 as the second wave has very high numbers. He thanked the Hon'ble Chairperson for expeditiously giving exemptions for imports under both heads, for personal and for private purposes. He stated that exemptions should be looked at for Indian purchases as well. He said that the medicines required are changing from time to time, and that getting the Council to notify medicines would take longer time, and that a blanket list should be created for every COVID related goods which comes under a notification of the Ministry of health and family

welfare. All such medicines should be automatically converted to 5% slab. Essential equipment which are needed for COVID or for creating facilities related to COVID should have a slab below 5%, similar to suggestions made by other Members.

15.24 The Hon'ble Member from Manipur stated that most States, particularly small States face the need to have money, at the same time, he said that the materials needed to fight COVID 19 must be available at cheap rates, for the common people as well as the State Governments. He welcomed the proposed reductions and stated that ventilator and hand sanitizers are important for fighting COVID, and that the rate recommended for both these items was on the higher side. He stated that he would like to see that the rates on both these items was brought down to 5%, so that they can be used extensively. He stated that on the proposal by Sikkim that items such as pharmaceutical sector should not be touched, as that was the area which would make available all medicines to fight COVID. He stated that if we impose COVID cess on these sectors, it would defeat the goal of making available COVID 19 related items cheaply. He stated that if we are to levy this cess, it should be on items unrelated to COVID 19. He reiterated that the GST on ventilators and hand sanitizers should be modified.

15.25 The Hon'ble Member from Uttarakhand stated that he was in favour of zero rating COVID medicines and equipment.

15.26 The Hon'ble Member from Tamil Nadu stated that India stands unique in the centralization of taxation powers, direct and indirect. He referred to the promise of GST in buoyancy of taxes and the growth of GDP, with the risks being the loss of autonomy of the States. Some of the risks have materialized and many benefits have not. He stated that there was some lack of clarifications on the structural aspects. A lot of data was contained in the GSTN which was not being provided to the States. He said that the Finance commission has not considered ratio of taxes originated in the allocation of the divisible pool, and that there was an increasing trend away from the high GDP States to the low GDP states. He stated that some small States have asked for special consideration due to their small size, and it could not be such that they are considered as small States in some cases, and treated as equal in other cases. He stated that in the case of zero rating, there was a divide between those States which rely less on Central revenue share, which want a zero-rating regime, and those States where 70 to 90 percent come from Central revenue, who want the revenues of the Centre to be protected. He stated that this was a classic case of conflict of interest, and that this was another reason to question one State one vote model. He stated that his written speech may be treated as read.

15.27 The Hon'ble Chairperson stated that the speech of the Member from Tamil Nadu, being first time member, may be circulated. She stated that the GST council meeting is sacrosanct and that the Council discusses important matters in an open and free manner. She stated that all the Council Members can speak to the media after the meeting. However, keeping the spirit of the Council, she appealed to the Council Members to maintain the confidentiality during the course of the meeting. Otherwise, it would lead to a situation when Members would be cautious and guarded in their interventions.

15.28 The Secretary stated that in reference to the statements of the Hon'ble Member from Delhi, oxygen cylinders have already been included in the ad hoc exemption, and will be included in the new exemptions which are a part 11(i)A of the agenda. He proposed exemption on goods imported on purchase for donation would cover cases where donation was made to Central Government, State Government or to any relief agency on the recommendation of State nodal authority. As regards vaccines, he stated that the vaccines are either purchased by the Centre, the States or by private hospitals. When they are purchased by the Centre or the State, the Centre or the State pays tax on them, and the tax comes back to the Centre and State. Even in calculation, almost an equal amount was

coming back to the Centre and the State. In reference to private hospital, the end price was not fixed, so that the benefit was not being passed onto the consumer, and that it would lead to more profits for the hospital. He said that ventilators are purchased by institutions and not individual. In cases where they are purchased by government hospitals, the same logic as that of vaccines applies, and where they are purchased by private hospitals, the benefit will not be passed on to the final patient. Further, he stated that as soon as concessions are given for hand sanitizers, similar demands will be raised for goods like soaps, and that opens a Pandora's box. He stated that similarly RTPCR machines and genome sequencing kits are used by institutions, and whatever was used by institutions, reduction has not been recommended by the Fitment Committee, which has representations from 9 states. He said that for vaccines imported from abroad, and which will be distributed free of cost to the people, these are already included in the ad hoc exemption and they would attract no duty. He requested the Chair to suggest a view on the extension for concessions given, as unanimously all Members were suggesting such extension. He suggested that the concessions be extended till August 31, 2021, and that power to extend it further, based on the prevailing conditions may be delegated to the Hon'ble Union Finance Minister, which will be brought to the Council meeting after that.

15.29 Before this include what was said by the chair on maintain confidentiality. The Hon'ble Member from West Bengal stated that the confidentiality element of the Council must be continued, as it would allow for free discussions. He stated that the matter needs to be decided based on humanitarian ground. He suggested that the mechanism adopted for merchant exporters may be extended here, where a tax of 0.1% may be levied. This can be done with the indication that this was only being done for the special situation faced due to the pandemic. The 0.1% given to merchant exporters did not require a change in the statutes, even though he felt that zero rating may be the right approach to take.

15.30 Upon resumption of meeting, after a short break, the Secretary stated that the Hon'ble Member from West Bengal had requested to clarify the decisions regarding this Agenda. Accordingly, the Secretary stated that regarding the Agenda Item No.11(i), people who want to purchase and want to give free to the people of India through the State or through the Centre or through the agencies which would be agreed to by States and so communicated to the Customs, they would be allowed all the exemptions. Whatever items were earlier allowed under the ad hoc exemption, the same would also be available under this particular exemption.

15.31 On the oxygen concentrator specifically, a view was taken, subject to the Hon'ble Supreme Court decision, to bring down the rate 12 % to 5% whether it was purchased domestically or purchased from outside the country or whether it was gifted by someone. As far as drugs are concerned, a view has been taken that medical grade oxygen, oxygen concentrator, pulse oximeter and COVID test kits will be taxable at reduced rate from 12% to 5%. The applicable rate was mentioned till 31st July but now all these benefits shall be available till 31st August with the delegation to the Union Finance Minister that at any stage, if further extension was required and the GST Council meeting was not scheduled soon, she may extend that date.

15.32 Regarding the item No. 11(ii), there is a tablet 'Diethylcarbamazine' which is used for Lymphatic Filariasis and it is distributed through WHO; its rate shall be brought down from 12% to 5%. Re-import of goods sent abroad for repair attract IGST on the value addition only. However, Tribunal has interpreted that IGST does not apply to such value. Proposal was to clarify this. The concessional rate of 12% shall be applicable on laterals and parts of sprinkles and drip irrigation systems which fall under the heading 8424. However, other items which do not fall under the heading 8424, would attract the IGST rates which is applicable to the particular commodity. As far as toy balloons are concerned, their classification falls under 9503 and the GST exemption notification would be amended accordingly.

15.33 Agenda item No.11(iii) on services- the decision was to clarify that supply of services to an educational institution including Anganwadis by way of catering including mid-day meals sponsored by the Centre, State or UTs was exempted from GST. The service provided by National Board of Education or similar central or State Board for entrance examination to educational institution and inputs relating are exempted. On the construction of house, the special circumstances have been explained in detail under which the ITC would be admissible; the MRO facility which was given for the airlines, similar facility was proposed to be given for the ship repair; the guarantee of loan by State or Centre does not attract IGST; it was also being clarified that the annuity paid as deferred payment for construction of roads/highways was not exempted from GST as the tolls or annuity in lieu of tolls are. Similarly, regarding the supply of composite service of milling and fortification of wheat flour under PDS and the services which are taken by the wheat flour mills, it was being clarified that it would be exempt if the value addition by way of goods was less than 25%, otherwise they would be taxed at 5% if provided to a registered person, including a person registered for TDS purposes. There are certain other issues for clarification like GST on construction of rope when provided to Government entities.

15.34 There are certain things which have not been agreed by the Fitment committee, IRDA asking for exemptions by providing services to intermediaries which was not agreed as much as they are being allowed to the insurance companies. It has not been agreed to exempt the service provided by Recruitment Agencies to Indian emigrants. So, there were some items of similar nature. The Council accepted all the recommendations made by the Fitment Committee on services as listed in Agenda Item No. 11(iii). Regarding the item 11 (iv) which was the High Court directions for zero rating of oxygen concentrator. There are two Court judgments one was on the Oxygen concentrator which are already explained and on assistive devices on which Hon'ble court said that it should be brought down to zero. On assistive devices it has been agreed to retain GST at 5%. Further, items No.11 (v) was on the ice cream for the composition scheme, which was mentioned by JS (TRU) in his presentation, it has been suggested that rather than just examining the ice cream, the Fitment committee would actually examine all such commodities where the value addition was very large and give a consolidated recommendation. So, these are the decisions that have been taken for items in agenda No.11.

15.35 The Hon'ble Member from West Bengal Stated that there was nothing on the tax rates on ventilator, hand sanitizer and temperature checking devices. He stated that he made a proposal for zero rating and modified that by saying that it may be considered at 0.1%. He stated that he would humbly like to register his dissent as even the tax rate of 0.1 % proposed by him was not being considered.

15.36 The Secretary reiterated that if the benefit was given to the ventilators, it was the intermediary who was given the concession and it does not reach the final consumer. Suppose, a private hospital takes the ventilator and a concession was given to it, it was not necessary that the benefit will be passed on to the patient, as it will be very difficult for the hospital to calculate the proportionate benefit. On the other hand, if ventilators are purchased by the State government or the central government, the taxes are paid by the State government and central government and the taxes also come back to the State government and central government.

15.37 The Hon'ble Member from West Bengal stated that his humble dissension was on the principle that the council must look at either zero rating or 0.1%. On which item the said zero rating or 0.1% shall be applicable can be discussed. Also, there will be a kind of public pressure on the COVID control items, so, they will be forced to pass on the benefit.

15.38 The Hon'ble Member from Punjab disagreed with this logic that by reduction of the tax, the manufacturer or the dealers or the hospital would stand to benefit. There was an Anti- Profiteering Authority and the benefit of the tax must be passed on to the consumer, otherwise, there could be

prosecution. Further, in the last few years, the concessions have been given to the restaurants, hotels, so on and so forth and they are being passed on to the consumers.

15.39 The Hon'ble Member from Delhi stated that there are small hospitals and if they are benefitted, it shall be good as they are partners in fight against COVID. And since it was for a small time and therefore, either zero rating or nil tax can be considered as 5% was high considering the COVID pandemic situation.

15.40 The Hon'ble Member from Chhattisgarh stated that he was not in agreement with the points raised by the Secretary. If GST was taken, it was very clear that as per the Finance Commission, 42% goes back to the State, still 29% of the State revenue was being transferred to the Central Government. It was another issue whether or not to give, those are the humanitarian grounds.

15.41 The Secretary explained that even considering that two-thirds of the vaccines are being provided by the State and one-third by the Centre. Let us take vaccine value as Rs. 100, then the tax would be Rs. 5, this was being paid by the Centre out of which a little more than three and a half goes to the State. On two-third which mean Rs. 200 for the vaccine, Rs. 10 was paid by the States, out of which Rs.3 goes to the Centre and Rs.7 go back to the State. So, seven plus three and a half, 10.5 to the States and 4.5 to the Centre. It was almost a zero- sum game. There may be some difference between State A, State B and State C and similarly, the things that are purchased in the health sector, there are a lot of things that are purchased by the Centre which are also being provided to the States and to the Central Government institutions for which the taxes are completely paid by the Centre.

15.42 The Hon'ble Member from Kerala stated that in this pandemic situation, maximum benefits should be extended to the people by both the Centre and the State. The Secretary discussed about the hospital and ventilators that, if they purchased the ventilators, benefits will not be passed on to the common people but oxygen concentrators, oximeters, COVID testing kit, other laboratory materials are being purchased by people for personal use also. So, if the cost was coming down, it will be very good and this benefit was not for an unlimited period but for the next three months only. He further suggested for zero rating 0.1% or 1%.

15.43 The Hon'ble Member from Rajasthan stated that if the reduced rates on COVID related items are not considered their dissent may be noted.

15.44 The Hon'ble Chairperson responded that the Central government has supplied vaccines to states free of cost for people above 60 years. The Central government was supplying free vaccine to people above 45+ through Government hospitals. She stated that it may be noted that both the Centre and States are making all out efforts continuously to provide relief to the people in COVID pandemic times.

15.45 The Hon'ble Member from Tamil Nadu stated that at this point anyway, we are all constrained in our ability to source material. He stated that the discussion for reduction was not between 28% and 0% but only between 5% and 0% /1% which was relatively small number in the scheme of the government of India or even for that matter, the government of the States.

15.46 The Secretary stated that the zero rating was available only in a few exceptional circumstances as has been discussed in the officers meeting also. If the zero rating was expanded today, there are certain implications for the future. This was the reason for the suggestion of the Fitment Committee which has about nine or ten States and the States had in their own wisdom supported that view.

15.47 The Hon'ble Chairperson invited the MoS to say a few words. Further, she suggested that a

Group of Ministers(GoM) be formed on this issue. This was a very important issue on which lot of members have written, some Chief Ministers have written letters to the Prime Minister, some senior members are speaking about it in detail after they have applied their mind. Group of Ministers (GoM) can come back quickly within 10 days with its recommendation. The Council will take a call accordingly on the rates and also on the items on which that would be applied whether it was 0 or 0.1 percent, let the group of ministers take a call. She hoped that based on suggestions of the GOM, there will be a decision to which all will agree.

15.48 The Hon'ble MOS stated that PPE kits, masks and ventilators are being manufactured in the country and have been given to the States under the PM CARES Fund. The vaccines have been distributed free of cost by the Centre for benefit of the country. He elaborated the COVID relief measure and that Centre and State should be together in this fight against the pandemic.

15.49 The Secretary stated that the GoM can be formed immediately and pending the recommendations of the GoM and a decision on it, the reduction of rates as recommended by the Fitment Committee can be implemented. However, if deeper cuts in tax rates are required, the same can be considered after the GoM submits its report.

15.50 The Hon'ble Member from Gujarat suggested that till the time, the GoM submits its report; the rate reduction as proposed by the Fitment Committee can be implemented so the benefit of the reduced rates can be given to the people and the relevant notifications should be issued immediately.

15.51 The Hon'ble Member from West Bengal stated that the tax reduction benefit should be implemented in integrated manner only after the GoM submits the report. Otherwise, his dissent sticks.

15.52 The Hon'ble Member from Punjab suggested that GoM may meet immediately and submit its report on Tuesday.

15.53 The Hon'ble Member from West Bengal stated that even with a GoM, the result cannot be predicted. He very earnestly requests that if it cannot be made zero rated because it requires an ordinance, at least the Council may consider 0.1%. He further stated that 18% on hand sanitizer was very high and also on N95 mask and ventilators. He stated that if tax relief was given, it will be passed on due to competitive market forces.

15.54 The Hon'ble Member from Goa stated that there have been instances in the past when the benefit of reduced rates was not passed on like in the case of restaurants when rates were reduced from 18% to 5% with no ITC. There was no guarantee that if the rates are reduced to 0.1% or zero, the benefit will be passed on to the end consumer, that is, the patient. Further, in case of sanitizers, if rates are reduced, soaps will also be affected. It will lead to a cascading effect on what has been decided earlier in the GST council. So, the Council may go by the recommendations of the Fitment committee. Also, the matter can be decided by the GoM.

15.55 The Hon'ble Member from Chattisgarh stated that GoM can give their opinion to the Council and the decision should be taken.

15.56 The Hon'ble Member from UP stated that in the present circumstances, formation of GoM was the most appropriate way to find a way out. It has been the tradition of this GST Council that the decisions have been taken with the common consensus. Therefore, considering all the circumstances, the decision of formation of GoM was appropriate and that the report can be submitted in 1 week instead of 10 days.

15.57 The Hon'ble Member from Meghalaya agreed with the proposal of setting up a GoM. He agreed with Gujarat to implement the reduction of tax rates now. Also the GoM was being empowered

to give suggestions on how further to help the people in the future. That would send a positive message that we have taken the first step and as the Council moves forward, the GoM will come out with better suggestions, let the GoM improve on the suggestions that has been decided today.

15.58 The Hon'ble Member from West Bengal stated that he has reluctantly accepted the decision of formation of GoM but he cannot walk further to accept the proposal to implement the reduction in tax rates immediately.

15.59 The Hon'ble Member from Himachal Pradesh stated he completely agrees with the views of the Secretary, Member from Gujarat and Meghalaya.

15.60 The Hon'ble Chairperson stated that going by the sense of the House, she can say that the Council will implement what the Fitment committee and the Secretary have brought on board today, except the GST rate on individual items as mentioned in the table in part B of Agenda 11(i), and also say that, the GoM will look into the whole thing and come back within 10 days but she wanted to give weight to the principle which the Council have held very sacred that talk with everybody and go along with everybody's views. She stated that she would rather go with forming a GoM and let the GoM come with its recommendations before the 8th of June and move on from there. The suggestion of West Bengal, Kerala, Tamil Nadu and Punjab regarding zero rating or 0.1%, would be considered by the GoM. She suggested that a GoM route was the course which can give some positive outcome and the formation of the GoM may be done at the earliest.

15.61 The Hon'ble Member from Bihar stated that on the Agenda 11(i)(A), there was a consensus and it can be passed.

15.62 The Secretary clarified that this (GoM) was only for items in Agenda 11 (i)(B) and not for 11(i)(A). All other items in agenda 11, as proposed in the agenda note and as agreed and recommended by Council would be valid and implemented.

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

15.63 The Secretary requested JS(TRU), Convener, Fitment Committee to apprise the Council about the issue. The Convener, Fitment Committee made a presentation on the issue. He stated that this agenda note was regarding the applicable GST rate on the supplies relating to disability aids and equipment used by persons with disability, consequent to the Order dated 26-10-2020 of Hon'ble Supreme Court of India in the matter of Nipun Malhotra Vs. Union of India [Writ Petition (Civil) No.725 of 2017]. The gist of the issue covered under this Agenda Item was as follows:

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

15.65 On receipt of some representations from trade and individuals the issue of taxation of the goods used by the persons with disability was discussed in the 14th GST Council held on 18th and 19th May, 2017 wherein it was discussed that the said items may not be exempted because in that case these items will not be eligible for ITC. Subsequently, the request to exempt GST on assistive devices has considered by the Council in its meetings held on 11th June, 2017, 22nd December, 2018, and 20th

September, 2019 and it has been decided not to change the tax rate on such devices so as to enable refund of accumulated input tax credit to the manufacturers. Therefore, it was a conscious decision of the GST Council to keep these items in 5% GST bracket.

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

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

15.68 Hon'ble Supreme Court in its Order dated 26.10.2020 in the present case has made GST Council as a necessary party in the matter. The Court has further directed the petitioner to file a representation to the GST Council seeking the abolishment of the levy of 5% GST on the goods used by the persons with disability.

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

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

15.71 The Council looked into the Hon'ble Court order dated 26.10.2020 and the petitioners'

representation dated 25.11.2020. It was also noticed that the issue was discussed in GST Council in its meetings held on 11th June, 2017, 22nd December, 2018, and 20th September, 2019 and it had been decided not to change the tax rate on such devices to enable refund of accumulated input tax credit to the manufacturers. In view of Hon'ble Supreme Courts directions, the issue was placed before the Council and the Council approved the continuation of present rate structure i.e. 5% on assistive devices.

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

15.72 The Secretary requested JS(TRU) to apprise the Council about the issue. The Convener, Fitment Committee stated that this agenda note was regarding the direction of Hon'ble High Court of Delhi in the matter of Writ Petition No. 5252/2019, M/s Del Small Ice Cream Manufacturers Welfare's Association Vs. Union of India wherein petitioner had challenged exclusion of Ice Cream from the ambit of composition levy under section 10 of the CGST Act. Hon'ble Court after consideration of issue has directed that matter be placed before Council for a re-look by the Council. The gist of the issue covered under this Agenda Item was as follows:

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

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

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

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

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

15.77 The Hon'ble Delhi High court has passed following directions in the present WP vide order dated 09.02.2021: -

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

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

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

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

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

15.80 In case of ice cream, approximate costing calculations show that for every ice-cream manufactured of value Rs 100, Rs 54 worth of milk and cream was used which was exempt from GST which was the primary input. A detailed analysis was done by Fitment Committee as placed in the Agenda Item shows that total tax paid on inputs worth Rs 100 was Rs 4.17 which was less than 5% of the value of inputs. Hence, ice cream dealer was required to pay significant portion of his liability in cash (ITC being low).

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

15.82. The Fitment Committee examined the issue and was prima facie of the view that exclusion of Ice Cream has been well debated in the Council. Inclusion of Ice Cream under composition scheme will have significant revenue implications as it has high value addition. Council had decided this exclusion taking relevant factors into account. Even, aerated water exclusion has been made, while it was earlier covered, w.e.f. Oct 2019 on the grounds of revenue implication. The Committee observed that even in pre-GST regime it was excluded from composition in a number of states. Under GST regime, the exclusion has been limited only to ice cream, Aerated drinks, Pan Masala and Tobacco. It also felt that there was a need for a detailed study of coverage (inclusions and exclusions) from composition scheme, particularly as regards sectors where there was significant value addition and consumption.

15.83 The Council looked into the Hon’ble Delhi High Court order dated 09.02.2021 and discussed the issue. It was noticed by the Council that for every ice-cream manufacturer milk and cream are the primary inputs (more than 50%) which are exempted from GST. Analysis of Fitment Committee also shows that total tax paid on all inputs was less than 5% of the value of inputs in ice cream

manufacturing industry. Hence, ice cream Manufacturer/dealers are required to pay significant portion of their liability in cash as ITC was very low. It was also noticed that the exclusion of Ice Cream from composition levy has significant revenue implications and the issue has been well debated in earlier Council Meetings. In view of Hon'ble High Court directions, the issue was placed before the council and the Council has approved the continuation of exclusion of ice cream from composition levy. Considering the observations of Hon'ble Court, it was also decided that Fitment Committee shall conduct a detailed study of parameters of coverage of composition scheme, particularly as regards sectors where there was significant value addition and consumption and submit the study report before GST Council Meeting.

Agenda Item No.12: Correction of Inverted Rate Structure on textiles and footwear

16.1 The Secretary requested JS (TRU) to make a presentation (**Annexure-IV**) regarding the inverted rate structure on textiles and footwear.

16.2 JS (TRU) stated that the inverted duty structure whereby the inputs attract higher rate of duty as compared to the final product, creates distortion in terms of ITC overflows, which in turn causes hardship to domestic manufacturer vis-a-vis imports. Further, domestic manufacturers get refund accumulated ITC on inputs goods only. Refund of accumulated ITC on input services and capital goods are not allowed. Inversion in GST rate has impacted investment decisions, led to litigations, and created a need for giving refunds, which in itself entails efforts on parts of taxpayers. The refund was estimated to be Rs 25,000 cr. on this account and was likely to increase every year. Detailed presentations were made on this issue in the 39th and the 40th meeting, wherein four items representing the basket of the inverted rate structure items (involving higher inversion and refund) were discussed. Out of the four items, the Council has already taken decisions on mobile phones and its parts, and rate of these items were revised from 12 to 18 percent to correct inversion in rates. On the other items, the Council has taken a view that on these items, while in principle, correction of inversion was required but now was not the right time because of the prevailing situation.

16.3. Recommendations have been received from Textile Ministry that there was a need for correcting the inverted rate structure in textiles if the potential of the sector has to be realised in India, growth has to be achieved and the industry has to be enabled to become a big player in the international market. Explaining the evolution of GST rate in textiles, it was mentioned that the inputs, namely, fibres and yarns were initially placed at 18%. Subsequently, yarn was shifted to 12% to correct inversion to an extent. However, fabrics and ready-made garments/made-up continue at 5%. (RMG/ made-ups of value upto Rs 1000). Input services (other than job-work) and capital goods are mostly at 18%. Dyeing service was at 12%. Hence, the inversion in rates. Recommendations have also been received from an IMG consisting of Textiles Ministry, NitiAyog and Dept. of Commerce to immediately correct the inversion. He also mentioned the other distortions and consequences of inverted rates in textiles, including its implication to investment decisions.

16.4 On footwear, it was mentioned that 5% rate covers more than 70% of the segment. This causes an inversion whereby refund involvement in a year was Rs 2000 Crore. In footwear, the inputs and chemicals and adhesive are at 18% so also the soles, natural or synthetic rubber, elastic polymer, all are at 18%. Only some kind of leather are at 5%, industrial textile was at 12%, input services and capital goods also attract GST of 18%. Overall industry data and inputs figure reveals that there was an inversion of about at least 6% in footwear which means that rate actually should be at around 11-12 % to correct the inversion at minimum.

16.5 JS (TRU) informed the Council that the recommendation of Fitment Committee after due examination was that dual rate for same commodity may not be appropriate and therefore, ideally there

should be single rate of footwear which was 18% but, if it was not possible to take those items which are at 5% to 18% because of various other considerations, then the footwear which are having retail sale price upto Rs 1000 per pair could be taken to 12%, so that inversion in footwear was corrected. He also briefly mentioned the other items which are suffering inversion in GST rates.

16.6 The Secretary stated that this matter has been discussed by the Council earlier also. He sought the guidance of the Council and stated that the same along with the issue of compensation cess was also discussed in the officers meeting and as of now, the compensation Cess was available till June, 2022.

16.7 The Hon'ble Member from West Bengal stated that he has received representations from across the country, from associations from Gujarat & Maharashtra as also from the national association which relates to garments, ready-mades and cotton in particular. He agreed with the proposal that there was a need to correct the inverted duty structure. But as per the representations from the apex bodies of the garment manufacturers who had in fact earlier asked for correction in inverted duty structure from Gujarat as well as Maharashtra, have now requested not to change the inverted duty structure in the middle of Covid pandemic. He stated in principle, he was in agreement that the inverted duty structure was to be corrected but not at this time. As was well known, the job loss was now 5.6 Crore or more, 14.4% job loss among those who were already working are not new people looking for jobs. He requested that all inverted duty structure corrections on all these items may be held back though he has only received representations from the garment and apparel manufacturers and cottons like dhotis and all kinds of chadars and mundus from the South, etc. He stated that the Council should not act on it right now in the middle of the Covid crisis. He further stated that the position of the Council regarding the Covid related issues may be given. In the earlier GST meetings, wherever possible the decisions were taken in the GST Council. He requested the Chair to inform them of the decision regarding Covid issues based on the multiple positions taken by the members in the House.

16.8 The Hon'ble Chairperson explained that the attempt to bring the agenda for correction in inversion was done each time consciously without taking a position on it because it was felt that it should be left to the Council to take a call as to when they want to do anything on correction. She stated that the agenda was brought to the Council last time too when Council met physically in Delhi and even at that time, a call was taken by the Council that it may not have been the appropriate time except agreeing to correct rate structure on the mobile phones. In principle, the Council was in favor of correcting inversion in rates at an opportune time. The issue of inverted rate structure has been raised by the members time and again, therefore this agenda has been placed before the Council for taking a view. She observed that Dr. Amit Mitra has raised a very valid point that this may not be the right time.

16.9 The Hon'ble Member from Punjab stated that the Fitment Committee very rightly recognized that there was no rationale for differential tax rates today on the basis of value as far as footwear was concerned and this also creates opportunities for tax evasion. So, Punjab was of the view that there was a need to align tax rates uniformly for all footwear and, if 70% of the footwear was of the value of 5% today, why not align rates uniformly, may be at 12% and do a classification-based value. Punjab does not support changes in tax rates in bits and pieces. The time has come and maybe in the next three to six months, there was a need to go in for a comprehensive review of GST rates and exemptions and at that stage, rate on footwear may also be aligned and as Hon'ble member from West Bengal said this is not at all the time to hike tax rates when people are hardly buying footwear to get out of their homes. Some amount of prior consultation should take place in this regard. He mentioned that he has heard about an agitation somewhere in Gujarat and as far as possible tax must be collected at the early stage of the chain from large manufacturers of fiber and yarn so that downstream industry finds little incentive to evade taxes. He stated that he does not see much rationale to treat natural fibers and yarn differently

from others. He further stated that, what is relevant is the tax rates on fabrics and garments. He further urged that the entire chain be kept at a uniform rate to avoid this type of tax evasion. He suggested doing a comprehensive review of all the rates, all the exemptions and maybe giving the Council three to six months to do so. He stressed upon the stake holder consultation at least in textiles, or otherwise, there may be an agitation.

16.10 The Hon'ble Member from U.P. stated that this issue has already come to the meeting before also many a times and the Council has deferred it many times. He submitted that the decision on the agenda should be made in this meeting. He stated that the proposal that has come from the Fitment Committee is justified even if this is made applicable from a later date, its execution or implementation should be done from January, 2022 or from a thereafter date.

16.11 The Hon'ble Member from Kerala supported the argument and stated that it was not a proper time to increase the rates now because naturally the price increase will affect the customers. Also, due to this economic recession, this agenda needs to be deferred further.

16.12 The Hon'ble Member from Gujarat also stated that this was not the right time because of Corona due to which the condition of the markets, the factories, producers and business was not good. In view of that, no changes should be made now. When good times will prevail then it should be considered. Textile, which was a huge industry of Gujarat, gives employment to lakhs of people, so no decision should be taken on this right now. He proposed that the present tax slab should be continued.

16.13 The Hon'ble Member from Odisha stated that in textiles there are two sectors-one was power loom and another one was handloom and the effect on each of these sectors should be explained and whether handloom was adversely affected with this decision, be made known. If handloom sector was not impacted, they do not have any issue in this regard. Otherwise, their repeated demand was that the existing tax rate of 5% of handlooms should be reduced.

16.14 The Hon'ble Chairperson appreciated the concerns of the Members of the Council. The view that emerged as also getting the sense of the Council she thought it appropriate to postpone the decision on the agenda. However, regarding the specific question raised by Odisha that textile has to be looked at in two compartments- the handloom and power loom, she fully agreed to the point and assured the department shall get the details and share it with all Hon'ble members so that the Council has better information whenever they have to take a call on the issue.

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

17.1 The Secretary to the Council stated that the issue of applicability of GST on Extra Neutral Alcohol (ENA) has already been discussed in the earlier GST Council Meetings and various Supreme Court Judgments and the advice of learned Attorney General has also been discussed but no decision has been taken. He then invited JS (TRU) to make a presentation (Annexure-IV) on this issue for seeking the guidance of the council in the matter.

17.2 JS (TRU) stated that while denatured alcohol was taxable at 18% GST, however, there have been divergent views regarding GST on ENA used for manufacturing of alcoholic liquor for human consumption. This matter was listed before the GST Council earlier. This issue has been raised because ENA or rectified spirit as it is sold, is not directly consumed by human beings but it is used as an input for manufacturing. So the issue arises that whether the taxing entry in state covers ENA. In earlier discussions the GST Council took a decision to maintain status quo. In between legal opinion of Learned Attorney General was also sought and the opinion so received was placed before the Council. The arguments to keep ENA outside GST were based on (i) the decision of the Hon'ble Supreme Court in case of Bihar Distillery, and (ii) in the previous regime, the States were collecting VAT on ENA.

However, learned Attorney General clearly opined that ENA is an input for the manufacture of alcoholic beverages for human consumption. It is an industrial item and therefore, it would be covered under GST and it was also highlighted in his opinion that the Bihar Distillery judgment has been overruled by other larger benches of the Supreme Court. Essentially, the opinion of Learned Attorney General was based on these judgments of Supreme Court in the case of Deccan Sugar & Abkari Company Ltd, the Supreme Court categorically held that State can levy excise duty only on potable liquor fit for human consumption and as rectified spirit does not fall under that category, the State legislature cannot impose any excise duty on rectified spirit or ENA. The Ld. AG also relied on the judgment in the case of Synthetic Chemicals Vs. State of UP wherein it was held that by common standards, ethyl alcohol (which had 95 per cent strength) was an industrial alcohol and was not fit for human consumption. This was placed before the GST Council in its 26th Meeting and then again in the 37th meeting.

17.3 JS(TRU) further submitted that there has been lack of clarity as a result of which divergent practices are now being followed by the manufacturers/suppliers and this was leading to a situation where some distillers are paying GST on it, some are paying VAT on it whereas others are paying State excise duty. There are also instances where distillers are neither paying VAT nor State excise duty. In some cases, they have gone to Courts to take advantage of the situation as the issue does not have clarity. These kinds of divergent practices have implications on the Revenue. Since Supreme Court clearly held that it was an industrial input and not an item used for human consumption and hence was not covered by the State list for taxation. Therefore, this needs to be resolved quickly based on the clear pronouncement of Supreme Court. Therefore, the matter was placed before the Council to take a view on this so that confusion, which was pending for last 3 years in status quo mode without having been finalized, can be resolved.

17.4 The Hon'ble Member from Andhra Pradesh stated that this issue has been in discussion since the 20th GST Council Meeting and Andhra Pradesh has been involved in the discussions from the beginning. ENA is generally of two types. One is denatured and other is un-denatured. So, there was clear distinction between denatured and un-denatured. Denatured was where some sort of chemical was added in various forms so that it was not fit for human consumption and only fit for chemical use. Un-denatured is the ENA which is used for human consumption. Here, now with regard to the jurisdiction and power to tax between GST and States, two issues have been taken. One was the 3-bench judgment of Supreme Court where it says the State can levy excise duty only on potable liquor fit for human consumption and as rectified spirit does not fall under the category of State list, it cannot impose any excise duty. Second was the opinion of the learned Attorney General that the judgment of court in Bihar Distillery doesn't denude the Centre & State of the powers to levy GST on ENA that is used to manufacture alcoholic liquor for human consumption. Here, actually the genesis and the origin point of Bihar Distillery case was as per opinion of Learned Attorney General in paragraph 4. It was of different nature and doesn't truly reflect on the jurisdiction of taxation. It was only about a particular case where particular Distillery manufacturing ethanol -whether the State government had complete jurisdiction over them or not but not specifically on taxation aspect. Herein, while referring to the opinion of the learned Attorney General in Para 5 of his opinion, he says that the 3 Judge bench was constituted where State can levy excise duty only on potable liquor fit for human consumption and as rectified spirit, etc. If we refer to the final paragraph of the Attorney General's opinion, it says alcoholic liquor for human consumption. There was big difference. One was fit for human consumption and one was alcoholic liquor for human consumption. Therefore, looking at the entries of 7th Schedule, list II, Entry No. 51 clearly says Alcoholic Liquor for Human consumption. Whereas entry No. 25 of GST says either alcohol or other spirits denatured of any strength. So, here clearly in the GST Entry No 25, it says the power to tax lies on the ethyl alcohol and other spirits denatured of any strength. Therefore, there was

very clear difference between fit for human consumption and alcoholic liquor for human consumption. Where sometimes when they actually look at by error or otherwise the important word “fit” has actually been left over and the criteria used for jurisdiction over the taxation authority was actually either in the constitution or in the GST list, it was basically usage. So, when originally it was intended to give power to the States to tax alcohol for human consumption, then it was not correctly represented in the opinion of the Learned Attorney General. At the same time, the authority of the State to tax after the GST’s implementation has drastically come down. Further, in many States, excise was one area where States have some sort of leverage and some sort of authority and power to tax to suit the need of the state requirement. This has been very clearly mentioned in the 15th Finance Commission recently that whereas the resources to the Union was about 62.7% & the States is 37.3%, the expenditure of the Union is 37.6% & the States 62.4%. This was almost exactly opposite to the resources & expenditure. Similarly, looking at the share of States taxes by devolution approx. after cesses and surcharges has been sizably increased the Centre’s gross tax revenue has increased because cess and surcharge increased from 2.3% in 1980-81 to almost 15% in 2019-20. While the State’s share has gone up from 28% in 2012-13 to 32%, devolution and cesses surcharges rose from 9% in 2012-13 to 17% by 2019-20. In 2012-13, cesses and surcharges were to the tune of Rs 91,700 Crore which in 2019-20 RE, was as high as Rs. 3,37,433 Crore. Here again, big one was petroleum. Whereas in April, 2017, cess& surcharge on petrol was Rs 21.48, it increased to Rs 32 and similarly on diesel from Rs 17.33 to Rs 31.83. Because of the surcharge on Income Tax, corporation tax and also on petroleum products, the amount of money that was coming to the State has reduced. The surcharges out of the cesses & surcharge from IT companies, IT others & special additional duties of Excise on Motor spirits, it was almost on 2020-21 RE, which was about 1.60 Lac Crores that was almost the size of the entire compensation cess. In such a situation, it becomes imperative for the states to put before the GST Council the request & opinion to consider this particular issue of anything to do with the alcohol for human consumption to be completely within the authorities of the State because of the limited options in the State. One was VAT on petroleum & one was Excise. Moreover, excise policy is extremely state specific. Dual taxation on any product such as alcohol for human consumption not only brings the price of the product up, it also creates a lot of confusion which needs to be put an end to this. It is from almost 20th GST Council meeting, the issue has been under discussion. As entry No. 25, the GST Council has the authority for Ethyl Alcohol & Spirits de-natured. Here, we are talking about de-natured alcohol& the same thing is listed in the Constitution, in IInd list, 7th Schedule, Item No. 51 which is for human consumption. The Learned Attorney General has opined that word ‘fit’ makes the entire difference. Therefore, the state of Andhra Pradesh puts before the Hon’ble Members of the Council to completely let only the States to have the authority for taxation on alcohol for human consumption.

17.5 The Hon’ble Member from Odisha submitted that this matter was not discussed earlier in the Council. Only Andhra Pradesh had put their grievances on the issue and it was deferred. He stated that it is a state specific subject and the Council cannot impose GST on it because at the time of discussion and understanding on GST in the beginning, it was settled between the States and the Union that the petroleum products & alcoholic products will be retained by the State. He further submitted that State was not a party in the Supreme Court decision. One case can’t be adopted in other case and in this case, the decision was passed ex- parte. Most states are not party to the decision, so it was not binding and as Andhra Pradesh said that on entry number 25 i.e. denatured spirit, they don’t have any objection. Denatured spirit is under GST and ENA is only material for making Alcohol. He stated that ENA is a raw material for making alcohol but no second product can be made from ENA. As one can make any product from denatured spirit so Odisha doesn’t have any objection if GST was imposed on denatured spirit. The states have power to impose tax on alcohol and petroleum only. He submitted before the Council that status quo be maintained and issue can be discussed further. He suggested filing review petition before the Supreme Court as it was an ex-parte order. He submitted before the Council that

status quo may be maintained on levy of VAT by the State on ENA when sold for production of alcoholic liquor for human consumption only.

17.6 The Hon'ble Member from Arunachal Pradesh stated that Arunachal Pradesh has an area of more than 83000 square kms. It was sparsely populated. He stated that every village has to be taken care of irrespective of the number of houses in it. There was no PMGSY especially in small villages and they have to take care with provisions of roads, schools and hospitals. So, the State has a lot of difficulty in managing them with whatever their finances are. Being a part of this welfare government, they have to take care of all the areas along with people who live in our frontier areas. Their government has decided that in border area, a modern village will be built as people do not have a permanent residence in that area. So, they want to build modern villages under the project in that area which was adjacent to the international border. He stated that this type of project requires a lot of financial resources. He stated that whatever comes under central scheme was earmarked for a specific scheme. Further, their forest revenue has also reduced a lot due to the judgment of the Supreme Court. Their main finance comes from power sector, geology mining and water supply. Only a small amount of finance comes from their tax revenue. He stated that whatever little tax revenue that comes to them from ENA will go into GST, then Arunachal Pradesh will face even more difficulty in terms of finances. It was requested that ENA be allowed to remain under the control of States.

17.7 The Hon'ble Member from Rajasthan stated that this decision was taken in the 20th meeting of GST and then in the 37th meeting that status quo be maintained until the final decision of the council was made. He stated that it has been the opinion of Rajasthan in the past that if production of potable liquor was for sale, excise and VAT should be levied and if the production was for industrial use, then GST can be applied on it and on that, the industry will also get the benefit of ITC. He stated that their request was that VAT was very important for revenue as the economic condition of the states was not good and there has been a tremendous loss of revenue. He stated that there was 18% loss of revenue in Rajasthan and requested that the Council should allow it and keep the excise and VAT applicable on selling the ENA potable liquor. He stated that Rajasthan does not have any problem to implement GST on this item for industrial use.

17.8 The Hon'ble Member from Goa stated that this issue about ENA was hanging on for quite some time from earlier council meetings. There was always going to be resistance from the States on this issue because they will lose revenue. He stated that one has to take a decision considering the Supreme Court Ruling as well as the opinion of the Learned Attorney General in this matter. He suggested for constitution of a GoM for this matter and after due deliberations by the GoM along with their recommendations, this matter should come to the council within a limit time to have finality. Otherwise, this issue will continue to remain because there was the case of ENA which was not for human consumption and one which leads to human consumption because it was converted into different types of whisky and other alcoholic drinks.

17.9 The Hon'ble Member from Kerala stated that this was a serious issue. He stated that the ENA was generally used for making Liquor. Generally, denatured alcohol only was covered under GST while the two items alcohol & petroleum are the only ones left with the States. Therefore, irrespective of technical details or whatever things legal experts are saying, Council has to look into real issue faced by the States. He further said that as far as Kerala was concerned they are getting the revenue from this and if this new change was implemented, it will affect all the states very seriously. He stated that Kerala was getting 95% ENA from other states and then ENA was diluted to make liquor. So, the revenue of the States will be affected in a big way. He further stated that if the Council was forming a GoM and it adversely affects the rights of the state, then also it will be difficult. He emphasized that harmonious relationship between Centre and the States was important. He strongly recommended that the earlier

position on ENA should continue and it should be dealt under states subject.

17.10 The Hon'ble Member from Uttar Pradesh submitted that ENA has more than 95 percent of its content as alcohol and of these more than ninety percent was used for making liquor. The states have very limited resources anyway, given the limited sources of income. The nature of this was such that it was mostly used for making liquor. Since the GST came into existence, five things were excluded from it and alcohol was one of the excluded items. He submitted that in view of the limited source of income of the states, it should be kept with the state itself. It should be kept out of GST because as its nature was that 95 percent content was alcoholic and it comes under the category of alcohol and it should remain with the states. He submitted that the demand of the whole house was that it should be kept in the domain of the States without going into more legal issues, it should be kept in the State's domain and GST should not be applicable on it.

17.11 The Hon'ble Member from West Bengal, referring to his letter dated 09.03.2018 stated that ENA was used for alcohol and small portion of it was used for industrial purpose. So, the industrial purpose ENA comes under GST and the potable liquor whose raw material comes from ENA must remain with States. He submitted that the Council has gone into depth of the matter and he thinks that there was no dispute on this as evident from the sense of the house that this must remain with the State as one of its sources of Revenue.

17.12 The Hon'ble Member from Telangana stated that he fully agrees with Andhra Pradesh Minister on the issue. He stated that only two subjects are left with states after GST that was excise on alcohol & Petroleum. He stated that the devolution to the states was coming down year on year. He submitted to defer this as this was the state subject and in practice also ENA was diluted normally before it can be used for human consumption. He sincerely requested that as almost all the Ministers /States are requesting the Hon'ble Chairperson that this subject be kept with the States.

17.13 The Hon'ble Member from Punjab stated that what was more relevant than what Hon'ble Court has said and opinion of Hon'ble Attorney General was that how the Council wishes to define this term. He stated that GST Constitutional bill was introduced in 2014 and Council had to take into account the popular understanding of the issue and the true scope of ENA. He stated that the Central Government surely believes that it was not excisable and left the entry blank in the Central Excise Tariff and States were levying VAT or Excise. He stated that in the interest of time and gravity of the issue, he agrees with the rest of the states that ENA should be kept out of GST.

17.14 The Hon'ble Member from Madhya Pradesh stated that if GST was levied then the producers will not get input tax credit. Secondly, the alcohol will become more expensive under GST because VAT will also be levied by the states on manufactured liquor. He stated that present excise duty structure in Madhya Pradesh on alcohol was already high and with the increase, the problem of illicit liquor will increase and suggested that there should be no GST on ENA.

17.15 The Hon'ble Member from Tamil Nadu stated that that they are net importers of ENA and therefore, they lose if it was kept outside GST. However, in solidarity with fellow states and for state's rights, they would prefer that it was kept out of GST and left to states.

17.16 The Hon'ble Member from Karnataka stated that he concurs with other states that ENA should be with the States since the entry tax will not be applicable and therefore alcohol prices will soar up. Further it will affect the net sales and income of the state. He therefore supported that let ENA be with the States.

17.17 The Hon'ble Member from Chhattisgarh also stated that it supports that ENA be kept out of GST.

17.18 The Hon'ble Chairperson stated that in view of the comments of the States on the issue, this agenda may be deferred.

Agenda Item 14: GST Revenue Augmentation

18.1 The Secretary informed the Council that this item was discussed and the Hon'ble Member from Punjab had mentioned that we should come back with the consolidated position in the next 3 to 6 months. Accordingly, he suggested that the Fitment Committee could be expanded to have more members to be part of it because this matter will need quite a lot of work to do. The recommendation of the Fitment Committee can keep coming to the GST Council for taking decisions.

18.2 The Hon'ble Member from Punjab suggested that there should be one meeting to discuss this matter post July, 2022 and not just revenue augmentation should be the part of this but the post 2022, how would states like Punjab grapple with their deficits and how they will move forward. He stated that there was a need to put mind and experience of all members for which the Council can call a special meeting just on this issue.

18.3 The Hon'ble Chairperson agreed with Punjab that this was an issue not just for Punjab but for all the members and stressed upon that there was a need to understand how we are going to pan out the finances post July, 2022. She suggested, like it was done for the compensation issue last time, sometime within the next quarter, there can be a Council meeting on this one agenda. She further stated that we can have one agenda meeting on July, 2022 and after, where revenue can be discussed and how we plan to take it further. She responded to Punjab that she will definitely have one completely dedicated session for it at the earliest.

Agenda Item 15: Decisions/recommendations of the 14th meeting of IT Grievance Redressal Committee for the information of the Council along with an agenda for the decision of the Council

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

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

19.3 Recommendations of the ITGRC

- (i) The ITGRC had recommended the 5 court cases of TRAN-1 falling under category A1 and 1 case of TRAN-2 falling under category A1. The migration case of M/s Guru Shoes components and non-technical issue case of M/s Veliath Steel Industries had also been recommended. In absence of any technical glitch the ITGRC had not recommended 14 cases of TRAN-1 falling under categories B1/B3, and 1 case of TRAN-2 falling under the category B. For the nodal officers' cases, the committee had recommended that 16 cases falling under category A1 out of 43 cases merit acceptance and remaining 27 cases falling under category B1, B2, B3, B4, B8 were not recommended as no technical glitch was noticed by the GSTN in these cases on technical analysis. The Committee approved on merit 24 cases of TRAN- 1/TRAN-2 including the 6 court cases, 1 migration case, 1 non-technical case and 16 nodal officers' cases subject to placing before the GST council. The ITGRC was of the view that they meet the requirements for considering the cases and fall in the four walls, however, as the due date of 31.08.2020 was

already over, the same be placed before the GST council for their view and recommendations. It was observed that the nodal officers had received these 16 cases falling in category A before 31.8.2020.

- (ii) The ITGRC had recommended that the past cases once decided by the ITGRC and approved by the GST Council shall not be reopened.

19.4 GSTN requested for clarity as to whether the cases still pending with nodal officers are to be taken up by GSTN for processing as the last date for submitting the declaration electronically has lapsed on 31.08.2020. GSTN also requested for clarity whether the nodal officer should stop accepting fresh application from taxpayer in TRAN-1 and TRAN-2 cases. GSTN has informed vide mail dated 19.5.2021 that 4 cases have been received by it from nodal officers as per Annexure C to the Agenda Item. The date of receipt of these cases by the nodal officers was prior to 31.8.2020.

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

19.5 The recommendations of ITGRC as per Minutes of the 14th ITGRC Meeting in Annexure A were placed for information of the Council along with request for its decision/ directions regarding cases recommended by ITGRC and also in respect of the clarity sought by ITGRC as mentioned above.

19.6 The Council took note of the decisions/recommendations of the 14th Meeting of the ITGRC and (a) approved the 24 cases recommended by the ITGRC. Further, (b) Council noted that the due date was over on 31.08.20 and it was presumed that by this time which was nine months from the due date, the nodal officers would have sent all the cases and the option can therefore be closed and the 4 cases still remaining with GSTN as indicated above can be taken up.

Agenda Item 15 A: Minutes/Detailed reasons in respect of 26 cases approved in principle and 78 cases rejected (total 104) in the 42nd meeting of the GST council pertaining to 13th ITGRC

20.1 The Secretary stated that the 13th meeting of the ITGRC was held on 01.09.2020 to resolve grievances of the taxpayers arising out of technical problems in filing TRAN-1, TRAN-2 and migration cases. In the meeting, out of the 104 cases presented by GSTN, 26 cases were falling under category A where technical glitches were found and they were recommended and 78 cases falling under category B where technical glitches were not found were rejected by the ITGRC. Accordingly, in the Agenda for the 42nd GST Council meeting, it was mentioned that there were 26 cases which have been recommended by the 13th ITGRC meeting and the same along with other issues were placed before GST Council for recommendation. The GST Council gave in-principle approval for opening up the portal for these 26 cases. The Minutes along with the list of the recommended 26 cases and 78 not-recommended cases along with the detailed reasoning was placed before the GST Council as Annexure-A, 1,2 and 3 to the Agenda Item.

20.2 The Council took note of the decisions/recommendations of the 13th Meeting of the ITGRC.

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

21.1 The Secretary introduced the Agenda Item and asked the Joint Secretary, DoR to give a presentation (Annexure-V). The Joint Secretary, DoR submitted monthly gross GST collections from October 2020 to April 2021 and stated that the GST revenues have seen a positive trend in last few months and reached ₹1.4 lakh crore by April 2021. He also submitted the figures of IGST collected, refunded and settled / apportioned during the FY (2020-21). He also submitted the figures of Compensation Cess collected since implementation of GST w.e.f. 01.07.2017 till April 2021 and the

compensation released. He submitted the State-wise details of gap between the protected revenue and the post settlement gross SGST revenue (including ad-hoc settlement) for FY 2020-21 as compared to FY 2019-20. He also submitted the trend in return filing in FORM GSTR-3B till due date and till date for return periods upto April, 2020. He concluded by saying that as the effect of COVID pandemic subsides and the economic activity normalizes, some impact on GST revenues might be seen in the coming months.

21.2 The GST Council took note of revenue position under the Goods and Services Tax.

Agenda Item 17-Issues related to GST Compensation Cess

22.1 The Secretary introduced the Agenda Item and asked the Joint Secretary, DoR to give a presentation. Joint Secretary, DoR stated that consequent to the discussions in the 42nd meeting of the Council held on 5th & 12th October 2020, for the FY 2020-21, the Government of India raised Rs.1.1 lakh crore of debt and passed it on as loan to the States on a back-to-back basis with an average interest rate of 4.85%.

22.2. It was submitted to the Council that if a view was taken to extend the same arrangement as last FY 2021-22 on the same principles for the current financial year 2021-22 also, the estimated amount calculated based on the normative growth of 7% on the revenues of FY 2019-20, that would have to be borrowed and passed on to the States as loan on a back-to-back basis would be Rs.1,58,267 crores as shown in the detailed Agenda Notes.

22.3. It was further explained that if the projected monthly gross GST Revenue collection during FY 2021-22 was taken as Rs. 1.1 lakh crore, the actual gap would be about Rs. 1.5 lakh crores and if the projected monthly gross GST Revenue collection during FY 2021-22 was Rs. 1.15 lakh crore, the actual gap would be about Rs. 1.25 lakh crore.

22.4. It may be recalled that the GST Council in its 42nd meeting approved the proposal to extend the levy of compensation cess beyond June 2022 till the entire shortfall is covered. It was further submitted to the Council that the compensation cess amount collected during the FY 2021-22 would be released in accordance with the provisions of the GST (Compensation to States) Act 2017. The decision on the borrowing, the exact amount and the timing would be taken based on the above principles in consultation with the Reserve Bank of India, Department of Economic Affairs, Department of Expenditure and the States.

22.5. The Hon'ble Member from Madhya Pradesh requested that just like last year, compensation may be transferred through back-to-back loan arrangement. He also requested that it was not proper to assume growth rate of revenues to be more than 6%.

22.6. Hon'ble Member from West Bengal stated that they did a study and found that for the period April 2020-January 2021, the revenue collection growth had been -3%. The assumption of Government of India was 7% growth but because of COVID pandemic, the growth rate in revenue fell down to -3% and hence, the difference is 10%. As per the calculations done by West Bengal, the compensation needed for the States for the period April 2020 to January 2021 is Rs 63,489 crore. He requested that they would be very eased if the amount of compensation to the State is given as a grant. Secondly, as against the Central Government's calculated borrowing of Rs 1,58,267 crores, they have done their calculations and found that the gap to be funded through borrowing in 2021-22 will be Rs 2,13,000 crores. The detailed calculations done by them would be sent to the Secretary to the Council. The Hon'ble Chairperson requested the Hon'ble Member from West Bengal to send their paper with the detailed calculations.

22.7. Hon'ble Member from Rajasthan stated that for the period from April 2020 to May 2021, in Rajasthan, a fall of 80% was observed in collections of State Excise, Stamp Duty, Registration fee, SGST etc. In FY 2020-21, the GST compensation of Rs 4,604 crore was shown as a loan which should have been shown as a grant and has requested that this figure should be shown as a grant. He also requested that for the FY 2021-22, a compensation of Rs 4635 was owed to the State of Rajasthan. He also requested that the levy of compensation cess may be extended for five more years beyond July 2022.

22.8. Hon'ble Member from Karnataka requested that the Hon'ble Chairperson may like to continue the same format as last year. He stated that the dues for Karnataka are around Rs 11,000 crore and they should be made good during the current year. He stated that the issue of compensation entitlement to States, which will end in 2022, needs to be discussed in detail. He also requested that the loan may be treated as a grant and the change of account heads as a special case needs to be taken up and addressed with State AG so that their State finances will not be affected because it being considered as a public debt.

22.9. The Hon'ble Member from Tamil Nadu stated that the second wave of COVID was on them and they have a very correlated pro-cyclical risk and its worth thinking bit more deeply on managing this risk. The States require more compensation. He was sure that the Hon'ble Chairperson would do that at the right time.

22.10. The Hon'ble Member from Kerala stated that the growth rate was assumed to be 7% but practically, there was a negative growth. He requested for a further five-year period extension for levy of cess. He also requested that the arrears of compensation to Kerala State of an amount of Rs 4,077 cr. may be paid to them immediately.

22.11. The Hon'ble Member from Punjab reminded that while disbursing the borrowings of Rs.1.1 lakh crores given as back to back loan to the States, it was agreed by the Centre (as given in Option-1 of Agenda Item No.9A of 42nd meeting of the Council) that the interest on the borrowing would be paid from the compensation cess until the end of the transition period and the principle and the interest would also be paid from the proceeds of the compensation cess by extending the cess beyond the transition period of upto July 2022 for such period as may be required. He stated that for the sake of comparison the total amount would come close to Rs 2.2 lakh crore as against Rs 1 lakh crore estimated by the Government of India.

22.12. The Hon'ble Member from Goa stated that under Special Borrowing Scheme, Goa had got only Rs 840 crores and requested for disbursement of the balance pending amount of around Rs 840 crores. Just like the request of Sikkim would go to a GoM for decision, he reiterated that there would be avenues where smaller States like Goa may be permitted.

22.13. The Hon'ble Member from Chhattisgarh stated that there was a gap between the protected revenue for 2020-21 and the actual revenue. The system that worked went against the assurance given to all the States that there would be a 14% protected revenue assurance. For the FY 2021-22, Chhattisgarh's shortfall would be Rs 3779.86 crores. He requested that the borrowings should be to that extent since the borrowings would not be a loan on Government of India and it would be serviced by the extended cess fund account. This must be protected and the States must be assured that they would get their protected revenue from 2021 onwards. Extension of the cess levy beyond five years is a given and as Hon'ble Chairperson had allowed, it would be discussed in the next meeting.

22.14. The Hon'ble Member from Jharkhand requested for the compensation as per the promised 14% protected revenue figures. For FY 2020-21, due to shortfall resulting from COVID, Rs 1,516

crores is owed to State of Jharkhand and this may be immediately paid to Jharkhand. He supported the views of the Hon'ble Member from West Bengal and stated that it would be proper to transfer the compensation amount as a grant and not as a loan. He also suggested that the compensation to States may be extended for further five years (from 2022 to 2027)

22.15. The Hon'ble Member from Telangana requested the Hon'ble Chairperson to increase the limit under FRBM Act for the States from 3% to 5% in FY 2021-22 as it was done in the last year. He also requested the Hon'ble Chairperson to settle the pending IGST amount by releasing Rs 218 crores to Telangana State. He also requested that this FY 2021-22, full compensation to States may be extended.

22.16. The Hon'ble Member from Gujarat stated that just as the Council decided to give the compensation, he requested that another decision may be taken to increase compensation amount for this FY 2021-22 to Gujarat. He also requested for devising a mechanism through RBI or otherwise so that all States can get a loan for the next five years and the compensation may also continue.

22.17. The Hon'ble Member from Odisha informed that they had received a loan of Rs 3,822 crores through back-to-back arrangement last year. Rs 3,580 crores of compensation was still outstanding for Odisha. He requested Hon'ble Chairperson to continue this back-to-back loan arrangement in the ensuing FY.

22.18. The Joint Secretary, DoR clarified that 7% was not the estimated growth rate but was a normative growth rate that was assumed. As far as arrears were concerned, it was discussed in the past that they will have to be liquidated from cess which had been extended beyond 2022.

22.19. The Secretary stated that the downfall in GST revenue this year may not be as much as last year. He anticipated that more than 7% increase over last year might be achieved as was presented by JS, DoR. He explained that borrowings of States is covered under Article 293 of the Constitution and they also have to consult the RBI and his colleagues in Ministry of Finance. He would request the Expenditure Secretary to separately write to the States giving the exact amount they would be eligible for. He would look for consent from the Hon'ble Members before they go ahead in case RBI and others agree on the said borrowing program. He concluded by saying that he would initiate negotiations on Rs 1.58 lakh crores with his colleagues and also with RBI for a back-to-back borrowing.

Agenda Item 18 – Information Agenda on constitution of two new GoMs

23.1 The Secretary introduced the Agenda Item and stated that it was decided in the 42nd meeting of the GST Council that certain issues that were discussed earlier should be referred to GoM constituted for the purpose. One set of issues pertains to special composition scheme and capacity-based levy in certain evasion prone sectors along with other revenue augmentation measures like reverse charge on mentha oil. The second set of issues pertains to valuation of services provided in casinos, race courses and online gaming centres and issues related to these sectors. Accordingly, two GoMs were constituted vide OM dated 24.05.2021 outlining the constitution and the Terms of Reference of these GoMs. This agenda was placed for the information and perusal of the GST Council.

23.2. The Hon'ble Member from Uttar Pradesh stated that the OM No. S-31011/12/2021- DIR(NC)-DOR dated 24-05-2021 for constitution of the GoM on 'capacity based taxation and special composition scheme in certain sectors on GST' stated that the GoM shall submit its recommendations to the Council within six months. He requested that the term may be reduced to three months for quicker decision making. The Hon'ble Chairperson agreed to this request.

22.3. The Hon'ble Member from Telangana requested that the State of Telangana may be made a

member in the GoM on 'Casinos, Race Courses and Online Gaming' since they had a race course issue. The Hon'ble Chairperson agreed to this request.

22.4. The GST Council took note of the constitution of the GoM on capacity based taxation and special composition scheme in certain sectors on GST and the GoM on Casinos, Race Courses and Online Gaming. The Hon'ble Chairperson agreed to the request of UP for reducing the time period for the GoM on 'capacity based taxation and special composition scheme in certain sectors on GST' to three months. The Hon'ble Chairperson agreed to the request of Telangana to make Telangana also a member of the GoM on 'Casinos, Race Courses and Online Gaming'.

23. The Meeting ended with a vote of thanks to the Chair.

Annexure-1**List of Hon'ble Ministers who have attended the 43rd GST Council Meeting on 28th May 2021**

S.No.	Centre/State	Name of Hon'ble Minister	Charge
1	Govt of India	Smt. Nirmala Sitharaman	Union Finance Minister
2	Govt of India	Shri Anurag Singh Thakur	Minister of State (Finance)
3	Andhra Pradesh	Shri Buggana Rajendranath	Finance Minister
4	Arunachal Pradesh	Shri Chowna Mein	Deputy Chief Minister
5	Assam	Smt. Ajanta Neog	Finance Minister
6	Bihar	Shri Tarkishore Prasad	Deputy Chief Minister
7	Chattisgarh	Shri T S Singh Deo	Minister for Commercial Tax
8	Delhi	Shri Manish Sisodia	Deputy Chief Minister
9	Goa	Shri Mauvin Godinho	Minister for Transport and Panchayat Raj, Housing, Protocol and Legislative Affairs
10	Gujarat	Shri Nitinbhai Patel	Deputy Chief Minister
11	Haryana	Shri Dushyant Chautala	Deputy Chief Minister
12	Himachal Pradesh	Shri Bikram Singh	Minister for Industries
13	Jammu & Kashmir	Shri Rajeev Rai Bhatnagar	Advisor to Lieutenant Governor
14	Jharkhand	Dr. Rameshwar Oraon	Minister for Planning cum Finance, Commercial Taxes, Food, Public Distribution & Consumer Affairs.
15	Karnataka	Shri Basavaraj Bommai	Minister for Home Affairs, Law & Parliamentary Affairs
16	Kerala	Shri K.N. Balagopal	Minister for Finance
17	Madhya Pradesh	Shri Jagdish Devda	Minister for Finance & Planning, Commercial Tax and Statistics
18	Maharashtra	Shri Ajit Pawar	Deputy Chief Minister
19	Manipur	Shri Yumnam Joykumar Singh	Deputy Chief Minister

20	Meghalaya	Shri Conrad K. Sangma	Chief Minister
21	Mizoram	Shri Lalchamliana	Minister for Taxation, Home, Disaster Management & Rehabilitation
22	Nagaland	Shri Metsubo Jamir	Minister for Rural Development
23	Odisha	Shri Niranjan Pujari	Minister, Finance & Excise
24	Punjab	Shri Manpreet Singh Badal	Finance Minister
25	Rajasthan	Shri Shanti Kumar Dhariwal	Minister for Local Self Government, Urban Development & Housing, Law and Legal Affairs and Parliamentary Affairs,
26	Sikkim	Shri B.S. Panth	Minister for Tourism & Industries
27	Tamil Nadu	Dr. Palanivel Thiaga Rajan	Minister for Finance and Human Resource Management
28	Telangana	Shri T. Harish Rao	Finance Minister
29	Tripura	Shri Jishnu Dev Varma	Deputy Chief Minister
30	Uttar Pradesh	Shri Suresh Kumar Khanna	Minister for Finance, Parliamentary Affairs, Medical Education
31	Uttarakhand	Shri Subodh Uniyal	Minister for Agriculture, Agricultural Marketing, Agricultural Processing, Agricultural Education, Garden and Fruit Industries, Silk Development
32	West Bengal	Dr. Amit Mitra	Finance Minister

Annexure-2

List of Officials who have attended 43rd GST Council Meeting on 28.05.2021			
Sl No	State/Centre	Name of the Officer	Charge
1	Govt. of India	Shri Tarun Bajaj	Revenue Secretary
2	Govt. of India	Dr. Krishnamurthy Subramanian	Chief Economic Advisor
3	Govt. of India	Shri M. Ajit Kumar	Chairman, CBIC
4	Govt. of India	Shri Sandeep M. Bhatnagar	Member (Customs), CBIC
5	Govt. of India	Shri Om Prakash Dadhich	Member(Investigaton), CBIC
6	Govt. of India	Shri Vivek Johri	Member (GST & Tax Policy),CBIC
7	Govt of India	Shri Ritvik Pandey	Joint Secretary, DoR
8	GSTN	Shri Manish Kumar Sinha	Officiating CEO & Executive Vice President
9	Govt. of India	Shri G.D. Lohani	Joint Secretary, TRU , DoR
10	Govt. of India	Shri Sanjay Mangal	Commissioner, GST Policy Wing , CBIC
11	GST Council	Shri S.K. Rahman	Joint Secretary
12	GST Council	Smt. Ashima Bansal	Joint Secretary
13	Govt. of India	Shri S S Nakul	PS to Finance Minister
14	Govt. of India	Shri Binod Kumar	PS to MoS (Finance)
15	Govt. of India	Shri Debashis Chakraborty	OSD to Revenue Secretary
16	GST Council	Shri Kshitendra Verma	Director
17	Govt. of India	Shri Amaresh Kumar	Addl. Comm., GST Policy Wing
18	Govt. of India	Shri Pramod Kumar	Director, TRU
19	GST Council	Shri Arjun Meena	Joint Commissioner
20	Govt of India	Shri Rakesh Dahiya	OSD, TRU-II, CBIC
21	Govt of India	Shri Gaurav Singh	Deputy Secretary (TRU)

22	Govt. of India	Shri Rahul Raja	OSD to Chairman, CBIC
23	Govt of India	Dr. Vikash Shukla	Media Advisor to Revenue Secretary
24	Govt of India	Shri J.S. Kandhari	Deputy Secretary, TRU-1
25	Govt of India	Shri Dibyalok	OSD, TRU
26	Govt of India	Shri Shashikant Mehta	TO, TRU
27	Govt of India	Ms. Neha Yadav	Deputy Commissioner, GST Policy Wing
28	Govt of India	Shri Rajiv Ranjan	Under Secretary, TRU-1
29	GST Council	Shri Krishna Koundinya	Under Secretary
30	GST Council	Shri Naveen Agrawal	Under Secretary
31	GST Council	Shri Karan Choudhary	Under Secretary
32	GST Council	Shri Joginder Singh Mor	Under Secretary
33	GST Council	Shri Adesh Nayak	Superintendednt
34	GST Council	Shri Abhishek Kumar	Superintendednt
35	GST Council	Shri Manoj Kumar	Superintendednt
36	GST Council	Shri Krishan Kumar Verma	Superintendednt
37	GST Council	Shri Rakesh Joshi	Inspector
38	GST Council	Shri Vijay Malik	Inspector
39	Andhra Pradesh	Dr Rajath Bhargava	Special Chief Secretary, Revenue Department
40	Andhra Pradesh	Shri Peeyush Kumar	Chief Commissioner of State Tax
41	Andhra Pradesh	Shri D. Venkateswara Rao	OSD to Special Chief Secretary, Revenue
42	Andhra Pradesh	Shri K. Ravishankar	Commissioner State Tax GST (FAC)
43	Andhra Pradesh	Shri J. V. M Sarma	Joint Commissioner State Tax, GST
44	Arunachal Pradesh	Shri Kanki Darang	Commissioner
45	Arunachal Pradesh	Shri Tapas Dutta	SNO (GST)

46	Assam	Shri Rakesh Agarwala	Principal Commissioner of State Tax
47	Assam	Md. Shakeel Saadullah	Additional Commissioner of State Tax
48	Bihar	Dr Pratima	Commissioner cum Secretary ,Commercial Taxes
49	Bihar	Shri Arun Kumar Mishra	Special Secretary, Commercial Taxes
50	Chandigarh	Shri Mandip Singh Brar	Excise & Taxation Commissioner
51	Chandigarh	Shri Rakesh Kumar Popli	Additional Excise & Taxation Commissioner,
52	Chhattisgarh	Gaurav Dwivedi	Principal Secretary, Commercial Tax
53	Chhattisgarh	Ms. Ranu Sahu	Commissioner of State Tax
54	Delhi	Shri Sandeep Kumar	Secretary, Finance
55	Delhi	Shri Ankur Garg	Commissioner, GST
56	Delhi	Shri Anand Kumar Tiwari	Additional Commissioner, GST
57	Goa	Shri Hemant Kumar	Commissioner, State Tax
58	Goa	Shru Sarita Gadgil	Additional Commissioner of State Tax-I
59	Goa	Shri Ashok Rane	Additional Commissioner of State Tax-II
60	Gujarat	Shri Pankaj Joshi	Additional Chief Secretary, Finance
61	Gujarat	Shri J. P. Gupta	Chief Commissioner, State Tax
62	Gujarat	Shri Milind Torawane	Secretary (Economic Affairs), Finance Department
63	Gujarat	Shri Dilip Thaker	Deputy Secretary(Tax),Finance Department,
64	Gujarat	Shri Riddhesh Raval	Deputy Commissioner, State Tax
65	Haryana	Shri Anurag Rastogi	Additional Chief Secretary, Excise & Taxation
66	Haryana	Shri Shekhar Vidhyarthi	Excise & Taxation Commissioner
67	Haryana	Siddarth Jain	Additional Excise & Taxation Commissioner
68	Haryana	Shri Rajeev Chaudhary	Joint Excise and Taxation Commissioner
69	Himachal Pradesh	Sh. Rohan Chand Thakur	Commissioner of State Taxes and Excise

70	Himachal Pradesh	Shri Rakesh Sharma,	Addl. Commissioner of State Taxes and Excise
71	Jammu and Kashmir	Dr. Arun Kumar Mehta	Financial Commissioner
72	Jammu and Kashmir	Showkat Aijaz Bhat	Commissioner, State Taxes
73	Jammu and Kashmir	Shri Waseem Raja	Assistant Commissioner, State Taxes
74	Jharkhand	Ms Vandana Dadel	Principal Secretary, Commercial Tax
75	Jharkhand	Ms Akanksha Ranjan	Commissioner, Commercial Tax
76	Jharkhand	Shri Santosh Kumar Vats	Special Secretary, Commercial Tax
77	Jharkhand	Shri Brajesh Kumar	State Taxes Officer
78	Karnataka	Shri Srikar M.S.	Commissioner of Commercial Taxes
79	Kerala	Shri Rajesh Kumar Singh	Additional Chief Secretary (Finance)
80	Kerala	Shri Bishwanath Sinha	Principal Secretary, Taxes
81	Kerala	Shri Anand Singh	Commissioner, State Tax
82	Kerala	Dr. Karthikeyan	Special Commissioner, State Tax
83	Kerala	Shri Abraham Renn	Additional Commissioner, State Tax
84	Madhya Pradesh	Ms Deepali Rastogi	Principal Secretary, Commercial Tax
85	Madhya Pradesh	Shri Raghwendra Kumar Singh	Commissioner, Commercial Tax
86	Madhya Pradesh	Shri R.K. Sharma	Joint Commissioner, Commercial Tax
87	Maharashtra	Shri Manoj Saunik	Additional Chief Secretary, Finance
88	Maharashtra	Shri Rajgopal Devara	Principal Secretary, Financial Reforms
89	Maharashtra	Shri Rajiv Mittal	Commissioner of State Tax
90	Maharashtra	Ms. Vishakha Borse,	Joint Commissioner of State Tax
91	Maharashtra	Shri Kiran Shinde	Deputy Commissioner of State Tax
92	Manipur	Shri Yumnam Indrakumar Singh	Assistant Commissioner of Taxes
93	Meghalaya	Smt S. A. Synrem	Commissioner & Secretary, Excise, Registration, Taxation & Stamps

94	Meghalaya	Shri Arunkumar Khembavi	Commissioner , SGST
95	Mizoram	Shri Vanlal Chhuanga	Commissioner and Secretary
96	Mizoram	Shri Kailiana Ralte	Commissioner of State Tax
97	Mizoram	Shri Hrangthanmawia	Assistant Commissioner of Taxes
98	Nagaland	Shri Kesonyu Yhome	Secretaray Finance & Commissioner of State Taxes
99	Nagaland	Shri Y Mhathung Murry	Special Commissioner of State Taxes
100	Nagaland	Shri Wochamo Odyuo	Additional Commissioner of State Taxes
101	Odisha	Shri Ashok K. K. Meena	Principal Secretary, Finance
102	Odisha	Shri Sushil Kumar Lohani	Commissioner, Commercial Taxes & GST
103	Odisha	Shri N.K.Rautray	Special Secretary, Finance
104	Puducherry	Shri. Shurbir Singh	Commissioner-cum-Secretary to Govt. (Finance)
105	Puducherry	Shri. L. Kumar	Commissioner (ST), Commercial Taxes Department
106	Punjab	Shri V. K. Garg	Advisor (Financial Resources) to Chief Minister
107	Punjab	Shri A. Venu Prashad	Additional Chief Secretary(Taxation)
108	Punjab	Shri Nilkanth S. Avhad	Commissioner of State Taxes
109	Punjab	Shri Ravneet Khurana	Additional Commissioner (Audit)
110	Rajasthan	Shri Akhil Arora	Principal Secretary(Finance)
111	Rajasthan	Shri T. Ravikanth	Secretary, Finance(Revenue)
112	Rajasthan	Shri Ravi Jain	Chief Commissioner, State Tax
113	Rajasthan	Shri Ketan Sharma	Special Commissioner (GST)
114	Sikkim	Shri V.B. Pathak	Additional Chief Secretary, Finance & Planning
115	Sikkim	Shri J.D. Bhutia	Commissioner, Commercial Taxes & GST
116	Tamil Nadu	Shri S.Krishnan	Additional Chief Secretary to Government
117	Telangana	Shri Somesh Kumar	Chief Secretary

118	Telangana	Smt Neetu Prasad	Commissioner of Commercial Taxes
119	Telangana	Shri N. Sai Kishore	Additional Commissioner (ST) (Legal)
120	Telangana	Smt Rupa Sowmya	Deputy Commissioner (ST) (Policy)
121	Telangana	Smt V.D.N. Sravanthi	Deputy Commissioner (ST) (Statistics)
122	Tripura	Shri J.K. Sinha	Principal Secretary, Finance
123	Tripura	Sri Apurba Roy	Secretary, Finance
124	Tripura	Dr. Vishal Kumar	Chief Commissioner of State Tax
125	Tripura	Dr. Sudip Bhowmik	Deputy Commissioner of State Tax
126	Tripura	Shri Ashish Barman	Nodal Officer GST
127	Tripura	Sri Badal Baidya	Assistant Commissioner of State Tax
128	Uttarakhand	Dr. Ahmed Iqbal	Commissioner, State Tax
129	Uttarakhand	Shri Anil Singh	Additional Commissioner, State Tax
130	Uttarakhand	Dr Sunita Pandey	Joint Commissioner, State Tax
131	Uttarakhand	Shri Ajay Kumar	Joint Commissioner, State Tax
132	Uttarakhand	Shri S S Tiruwa	Deputy Commissioner, State Tax
133	Uttar Pradesh	Shri Sanjeev Mittal	Additional Chief Secretary, State Tax
134	Uttar Pradesh	Smt Ministhy S.	Commissioner, Commercial Tax
135	Uttar Pradesh	Shri Brijesh Kumar Tripathi	Additional Commissioner(GST), Commercial Tax HQ
136	Uttar Pradesh	Shri Sunil Kumar Raj	Additional Commissioner(Vidhi) , Commercial Tax HQ
137	Uttar Pradesh	Shri Ashok Kumar Singh	Joint Commissioner, Commercial Tax HQ
138	Uttar Pradesh	Shri Manoj Tiwari	Joint Commissioner (Statistics), Commercial Tax HQ
139	Uttar Pradesh	Shri Vivek Singh	Joint Commissioner(GST), Commercial Tax HQ
140	West Bengal	Shri Manoj Pant	Principal Secretary, Finance
141	West Bengal	Shri Smarakai Mahapatra	Secretary, Finance

142	West Bengal	Shri Khalid Aizaz Anwar	Commissioner of State Tax
143	West Bengal	Rajib S. Sengupta	Senior Joint Commissioner of State Tax



Deemed Ratification of Notifications and Circulars

Agenda 2: Deemed Ratification of Notifications, Circulars, Orders etc. [Vol 1- Pg. 90-95]

Act/Rules	Notification/Circular/Order Nos.	Description/Remarks
CGST Act/CGST Rules	Thirty Eight (38) Central Tax Notifications issued (from No. 73/2020 to 95/ 2020) and 1/2021 to 15/2021) & 1 Central Tax (Rate) Notification No. 5/2020 dated 16.10.2020 issued	3 amendments to CGST Rules carried out in 2020, 4 amendments to CGST Rules carried out in 2021, implementation of various decisions of GST Council/GIC and COVID relief measures, etc.
UTGST Act	Two (2) Union Territory Tax Notifications issued (01/2021 – UT dated 01.05.2021 & 05/2020 - UT(Rate)dated 16.10.2020)	For implementation of various COVID relief measures & Rate notification to exempt satellite launch services provided by ISRO, Antrix Co. Ltd and NSIL as recommended by GST Council
IGST Act	Three (3) Integrated Tax Notifications issued (06/2020 - Integrated Tax dated 15.10.2020, 01/2021 - Integrated Tax dated 01.05.2021 & 05/2020 - Integrated Tax (Rate) dated 16.10.2020)	To notify the number of HSN digits required on tax invoice & implementation of various COVID relief measures: Rate Notification to exempt satellite launch services provided by ISRO, Antrix Co. Ltd and NSIL as recommended by GST Council
Circulars	Seven (7) Circulars issued (from Circular No. 142/12/2020 dated 09.10.2020 to Circular No. 148/04/2021 dated 18.05.2021)	Clarification of issues relating to application of rule 36(4), Quarterly Return Monthly Payment Scheme, Waiver from recording of UIN on the invoices during COVID period, SOP for implementation of suspension of registrations under sub-rule (2A) of rule 21A, clarification on issues related to issuance of B2C invoices with dynamic QR code, refund related issues, SOP for implementation of extension of time limit to apply for revocation of cancellation of registration.

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

Agenda 3: Decisions of the GST Implementation Committee (GIC) for information of the GST Council (1/2)[Vol 1- Pg. 96-146]

- ❖ GST Implementation Committee (GIC) took various decisions during the period from 14.09.2020 to 01.05.2021.
- ❖ The important **decisions facilitating trade and industry or providing relaxations to taxpayers** are :
 - i. Notifying rules for Quarterly Return and Monthly Payment (QRMP) Scheme
 - ii. Amnesty scheme for GSTR-4 and GSTR-10 returns
 - iii. Extension of time limit under section 31 (7) for goods exported on consignment basis
 - iv. Second and third phase of Roll out of e-invoicing for the taxpayers having aggregate turnover exceeding Rs.100 crore from 1st January 2021 and exceeding Rs. 50 crore from 1st April 2021
 - v. Extension of the due date for filing of Annual Return for the FY 2019-20 from 31.12.2020 to 28.02.2021 and subsequently to 31.03.21.
 - vi. The proposal for excluding the time period between filing of refund application to issuance of Deficiency Memo for computation of 2 year time limit for filing refund under sub-section (1) of section 54.
 - vii. Relief Measures to taxpayers for various compliances in GST due to restrictions imposed in various states for containment of COVID
 - viii. GST exemption on transport of goods by air, previously valid till 30.09.2020, extended till 30.09.2021
 - ix. Extension of Duty Exemption on the imports made by the holders of Advance Authorization holders (AA) / EPCG licenses and EOU's from 31.03.2021 to 31.02.2022
 - x. To reduce IGST on oxygen concentrator imported for personal use upto 30th June 2021, from 28% to 12% to bring the rate at par with commercial imports of oxygen concentrators.

Agenda 3: Decisions of the GST Implementation Committee (GIC) for information of the GST Council (2/2) [Vol 1- Pg. 96-146]

- ❖ The important **decisions relating to compliances under GST** are :
 - i. Mandatory furnishing of HSN Code at 8-digit level in invoice and Form GSTR-1 for 32 scheduled chemicals of Chemical Weapon Convention.
 - ii. Implementation of Phase 2 of Aadhaar Authentication in Registration under GST. Aadhaar authentication for registration would be applicable for all the new applicants seeking registration through FORM REG01 (regular & composition taxpayers), except government departments, local authorities, Statutory Body and PSUs.
 - iii. Measures taken to curb the menace of fake invoices and fake dealers:
 - Amendments in CGST Rules, 2017 in provisions related to registration, provisions related to suspension & cancellation of registration and restrictions in availment / utilization of ITC [Rule 8, 9, 21, 21A, 22, 36, 59 and insertion of a new rule 86B].
 - Further, e-way bill validity has been restricted w.e.f. 01.01.2021 to one day for distances up to 200 Kms (from 100 kms per day earlier).

Summary of discussions on Agendas 9A and 9B in Officers' Meeting held on 27th May 2021

Agenda No	Issue	Status during Officers Meeting
9A(i)	Rationalization of Late Fee	Agreed..
9A(ii)	Simplification of Annual Return for Financial Year 2020-21 and related exemptions	Agreed
9A(iii)	Proposal of Amendments in the Return related provisions of the CGST Act, 2017	Agreed
9A(iv)	Proposal to exempt government departments and local bodies from the requirement to issue e-invoice	Broadly agreed. However, one view was that whether an exception should be carved out for the government in the name of reducing compliance, whereas other taxpayers are required to comply with the same provision.

Agenda No	Issue	Status during Officers Meeting
9B(i)	Late fee Amnesty Scheme	Agreed
9B(ii)	Notifying section 112 of the Finance Act, 2021 relating to retrospective amendment in section 50 of the CGST Act	Agreed
9B(iii)	Proposal for converting Quarterly return and Monthly payment (QRMP) Scheme to Quarterly return and Quarterly payment (QRQP) Scheme	<p>Concerns raised in the Officers' Meeting:</p> <ol style="list-style-type: none"> 1. Deferment of revenue for states by two months 2. Let the system for QRMP scheme be stabilized, as it is only one quarter old. 3. There may a misuse of this facility by unscrupulous elements to pass on credit through IFF on monthly basis, and not pay any tax subsequently.
9B(iv)	Directions of Hon'ble High Court of Delhi for placing the suggestions of Counsel and Amicus before GST Council for consideration for COVID related relief measures	The suggestions of Counsel and Amicus were discussed in the Officers' Meeting and the COVID related relief measures agreed/ suggested during the meeting are in Slide No. 25-27.

Recommendations of the Law Committee

Agenda 9A(i): Rationalization of Late Fee (1/2)

[Vol 2- Pg. 168-170]

Issue

- ❖ Problem faced by smaller taxpayers due to high amount of late fee for delayed filing of returns, sometimes even higher than tax liability.
- ❖ The late fee presently is Rs 20 per day (Rs 10 CGST + Rs 10 SGST) for returns with nil liability/ nil outward supply and Rs 50 per day (Rs 25 CGST + Rs 25 SGST) for others, with a capping of Rs 10,000 per return (Rs 5000 CGST + Rs 5000 SGST).
- ❖ There is a need to rationalize the late fee structure, specially for capping of late fee, by having some correlation with the turnover/ tax liability of the taxpayers.
- ❖ West Bengal raised issue of need for rationalization of late fee for delayed furnishing of return in FORM GSTR-7 by registered persons (mainly government departments) required to deduct tax at source under section 51.

Proposal:

- ❖ Late fee for delay in furnishing of FORM GSTR-3B and FORM GSTR-1 may be capped, per return, as below:
 - (i) For taxpayers having nil tax liability in GSTR-3B or nil outward supplies in GSTR-1, to be capped at Rs 500 (Rs 250 CGST + Rs 250 SGST), irrespective of the Annual Aggregate Turnover (AATO).

Agenda 9A(i): Rationalization of Late Fee (2/2)

[Vol 2- Pg. 168-170]

- (ii) For other taxpayers:
 - a. For taxpayers having AATO in preceding year upto Rs 1.5 crore, capping at a maximum of Rs 2000 (1000 CGST+1000 SGST);
 - b. For taxpayers having AATO in preceding year between Rs 1.5 crore to Rs 5 crore, capping at a maximum of Rs 5000 (2500 CGST+2500 SGST);
 - c. For taxpayers having AATO in preceding year above Rs 5 crores, capping at a maximum of Rs 10000 (5000 CGST+5000 SGST).
- ❖ For FORM GSTR-4, late fee to be capped to Rs 500 (Rs 250 CGST + Rs 250 SGST), if tax liability is nil in the return, and Rs 2000 (Rs 1000 CGST + Rs 1000 SGST) for other taxpayers, as their turnover is also upto Rs 1.5 crores.
- ❖ The late fee for delayed furnishing of FORM GSTR-7 to be rationalized as below:
 - a. Late fee to be reduced to Rs.50 per day (Rs. 25 CGST + Rs 25 SGST)
 - b. Capping at a maximum of Rs 2000 per return (Rs. 1000 CGST + Rs 1000 SGST)
- The Law Committee has recommended the above proposal to be made applicable for prospective tax periods.
- The proposal will benefit a large number of smaller taxpayers.
- ✓ There was an agreement on this proposal in Officers meeting held on 27th May 2021.

Agenda 9A(ii): Annual Return for Financial Year 2020-21

(1/2)

[Vol 2- Pg. 171-190]

Issue:

- ❖ Through Sections 110 and 111 of the Finance Act 2021, provisions of section 35 and 44 of CGST Act are proposed to be amended, as per recommendations of GST Council in its 39th Meeting.
- ❖ As per the proposed amendments, the provisions for certification of Reconciliation Statement in FORM GSTR-9C, along with Annual Return, by chartered accountants has been done away with, replacing it with self-certification by the taxpayer.
- ❖ The said proposed amendments have been viewed very positively by trade, as it will reduce cost for them in getting certification of CAs.
- ❖ Due date for the annual return for FY 2020-21 is 31.12.2021.
- ❖ If the said provisions are notified only after all the states/ UTs get these amendments approved in their legislative assemblies, then the last date of filing annual return for FY 2020-21 may be over and the said amendment will not be applicable for Annual return for FY 2020-21.

Proposal:

- ❖ It is proposed that Section 110 and 111 of the Finance Act may be notified at the earliest (on 1.8.2021) by the Centre. The states will be required to notify the said amendments retrospectively with effect from the same date.
- ❖ This will facilitate a large number of taxpayers from this year itself.

Agenda 9A(ii): Annual Return for Financial Year 2020-21 (2/2)

[Vol 2- Pg. 171-190]

- ❖ The existing Forms GSTR 9 and GSTR 9C (notified for FY 2019-20) to be notified for Annual Return for FY 2020-21, with minimal changes required to implement the said amendment and to incorporate some tax rates in some tables..
- ❖ Rule 80 of the CGST Rules, 2017 to be amended to this effect.
- ❖ For FY 2021-22, a single revised Form for Annual Return to be designed by merging GSTR 9 and GSTR 9C, for facilitating the taxpayers and improving compliance.
- ❖ The exemption from filing annual return for FY 2020-21 may be continued as in FY 2019-20, as below:
 - i. The filing of annual return in FORM GSTR-9 to be optional for taxpayers having AATO upto Rs 2 Crore;
 - ii. The filing of annual return in FORM GSTR-9A by composition dealers to be optional;
 - iii. The threshold of AATO for filing of reconciliation statement in FORM GSTR-9C for FY 2020-21 to be kept as Rs 5 Crore.
- The proposal has been deliberated and recommended by the Law Committee.
- ✓ There was an agreement on this proposal in Officers meeting held on 27th May 2021.

Agenda 9A(iii): Proposal of Amendments in the Return related provisions of the CGST Act, 2017
[Vol 2- Pg. 191-210]

Issue:

- ❖ In 42nd meeting, GST Council recommended that the present system of GSTR-1/3B return filing to be continued and the GST laws may be amended to make the GSTR-1/3B return filing system as the default return filing system.
- ❖ Law Committee has, therefore, deliberated the issue in a number of meetings.
- ❖ The Law Committee recommended amendments to return related provisions of section 37, section 38, section 39, section 41, section 42, section 43, section 43A and consequential amendments in section 16, section 29, section 34, section 47, section 49, section 52 and section 54 of CGST/ SGST Act.

Proposal:

- The above return related and consequential law amendments, recommended by the Law Committee, have also been deliberated by GIC and have been recommended on merit.
- The same are placed before the Council for approval.
- ✓ There was an agreement on this proposal in Officers meeting held on 27th May 2021.

Agenda 9A(iv): Proposal to exempt government departments and local bodies from the requirement to issue e-invoice
[Vol 3- Pg. 10-12]

Issue:

- ❖ Reference received from Government of West Bengal to exempt Government departments and local authorities from the requirement of issuance of e-invoice for **reducing compliance burden of the said entities**.
- ❖ The impact of proposed exemption has been analysed for a sample month of December, 2020:
 - Out of total GSTINs required to issue e-invoice, number of GSTINs for government departments and local authorities constitute only 0.31%.
 - Value of B2B Supply made by such government departments and local authorities is only 1.2% of all B2B supplies.
 - ITC passed through B2B invoices by such government departments and local authorities is only 0.59% of total ITC flow.

Proposal:

- ❖ It is proposed to exempt government departments and local authorities from the requirement of issuance of e-invoice.
- ❖ Law Committee has recommended the same.

Other Proposals related to GST Law and Procedures

Agenda 9B(i): Late fee Amnesty Scheme

[Vol 2 Pg. 211-213]

Issue:

- ❖ Problem being faced by small taxpayers in filing pending GSTR-3B returns due to high accumulation of late fee on delayed filing, preventing them from filing returns.

Proposal:

- ❖ The Late Fee Amnesty Scheme may be considered for reduction of late fees for **GSTR-3B returns** for tax periods from **July, 2017 to April, 2021**: -
 - late fee to be capped to a maximum of **Rs 500/- (Rs. 250/- each for CGST & SGST) per return** for taxpayers, who did not have any tax liability for the said tax period; and
 - late fee to be capped to a maximum of **Rs 1000/- (Rs. 500/- each for CGST & SGST) per return** for other taxpayers;
- ❖ Such reduction/ capping in late fee to be kept **conditional**, and to apply only if the returns are filed during the period **from 01.06.2021 to 31.08.2021**.
- ❖ The proposal will benefit a large number of small taxpayers.
- ✓ There was an agreement on this proposal in Officers meeting held on 27th May 2021.

Agenda 9B(ii): Notifying section 112 of the Finance Act, 2021 relating to retrospective amendment in section 50 of the CGST Act

[Vol 2- Pg. 213]

Issue:

- ❖ Section 50 of CGST Act has been proposed to be amended **retrospectively** w.e.f. 1.7.2017 vide section 112 of the Finance Act 2021, based on recommendation of GST Council in its 39th Meeting, for levying of **interest on net cash liability**.
- ❖ Section 50 was earlier amended prospectively and notified w.e.f 1.9.2020 to provide for interest on net cash basis through Finance (No. 2) Act 2019.
- ❖ Early notification of this retrospective amendment will help in removal of ambiguity and legal disputes on the issue and close pending cases, **thus benefitting taxpayers**.

Proposal:

- ❖ Section 112 of Finance Act, proposing retrospective amendment of Section 50, proposed to be **notified at the earliest (on 01.06.2021)** by the Centre.
- ❖ The States will also be required to notify the said amendment in section 50 retrospectively w.e.f. 1.7.2017 in their SGST Acts and therefore, there will be no ambiguity in the matter.
- ✓ **There was an agreement on this proposal in Officers meeting held on 27th May 2021.**
- ❖ Further, a **date may be decided by the Council**, by which time the **corresponding amendments in SGST Acts relating to other amendments done through the Finance Act, 2021**, may be carried out by all the States.

Agenda 9B(iii): Proposal for converting Quarterly return and Monthly payment (QRMP) Scheme to Quarterly return and Quarterly payment (QRQP) Scheme (1/2)

[Vol 2- Pg. 214-216]

Issue:

- ❖ GST Council in its 42nd meeting had recommended a Quarterly Return and Monthly Payment (QRMP) Scheme for registered persons having turnover up to Rs. 5 Crore, which has been implemented with effect from 01.01.2021.
- ❖ The QRMP scheme is available to approximately 89 % of the total tax base.
 - Though there are 90,92,954 taxpayers eligible for QRMP scheme, only 35,53,400 taxpayers have opted for QRMP scheme. Therefore, **only 39% of eligible taxpayers have opted for QRMP scheme**.
 - As per trend observed during the period upto 10th May, 2021, a larger number of taxpayers are **opting out** of the QRMP scheme, in comparison to those who are opting in for the QRMP scheme.
- ❖ As per feedback, the taxpayers feel that the requirement of monthly payment of tax is akin to compliance for filing of return on monthly basis, and therefore, the scheme is not providing them the actual benefit of reduced compliance burden.
- ❖ **It is felt that if the requirement of monthly payment of tax liability during M1 and M2 of the quarter is done away with and instead, if the tax liability for the quarter is made payable through quarterly return itself, then it may address the concern of return-like compliance burden for monthly payment of tax liability during M1 and M2.**

Agenda 9B(iii): Proposal for converting quarterly return and monthly payment (QRMP) Scheme to quarterly return and quarterly payment (QRQP) scheme (2/2) [Vol 2- Pg. 214-216]

❖ Perusal of revenue data for January-March 2021 indicates that :

- The total GST collections from taxpayers, who were in QRMP scheme, during the first quarter of its operation, viz. January-March, 2021 is Rs. 14,712 Crores.
- During these three months, the total GST collection was Rs. 3,78,429 Crores
- Accordingly, on an average, the taxpayers who are under QRMP scheme are contributing about 4% of total revenue.
- It is also seen that during the first two months, i.e. January and February 2021, the revenue recovered from QRMP taxpayers was only to the extent of Rs 3919 Crores and 3868 Crores respectively only, even less than 4% of the total revenue collected for the said months.
- Therefore, converting QRMP scheme to QRQP, will only defer the collection of less than 4% of tax to the third month of the quarter. However, it will provide substantial relief to small taxpayers.

Proposal

- It is proposed that the present QRMP scheme be converted to QRQP scheme and tax be also collected on quarterly basis through quarterly return.
- In-principal approval of the GST Council is sought. Further modalities for its implementation to be worked out by the Law Committee, based on in-principal approval of the Council.

Issue arising from Directions of Hon'ble High Court

Agenda 9B(iv): Difficulties faced by taxpayers to comply with timelines under GST due to COVID related restrictions- Matter arising out of directions of Hon'ble Delhi High Court (1/4)[Vol 5-Pg. 11-20]

Issue:

- ❖ This Agenda note is in pursuance of the observations of Hon'ble High Court of Delhi on 25.05.2021 during the hearing of the W.P.(C) NO. 5177/2021, in the case of Anil Kumar Goel and Ors. Vs UOI and Ors.
- ❖ In view of the challenges faced by taxpayers during the second wave of COVID-19, the Government has issued Notifications no. 08/2021 to 14/2021-Central Tax, all dated 1st May, 2021, providing various relief measures for taxpayers under GST.
- ❖ The Hon'ble High Court in its order dated 25.05.2021 has directed that the suggestions of the counsels and amicus regarding timelines and other relief measures for taxpayers, be placed before the GST Council for consideration.
- ❖ Hon'ble Court has fixed the next hearing on 01.06.2021.
- ❖ The suggestions of the counsels and amicus are given in Annexure-B and Annexure-C of Agenda Note respectively.
- ❖ These suggestions were discussed in Officers Meeting on 27.05.2021 and the COVID relief measures agreed/ suggested in Officers meeting are in next slides.

Agenda 9B(iv): Difficulties faced by taxpayers to comply with timelines under GST due to COVID related restrictions- Matter arising out of observations of Hon'ble Delhi High Court (2/4) [Vol 5-Pg. 11-20]

Measures agreed/ suggested in Officers Meeting on 27.05.2021:

❖ **For Normal Taxpayers:**

- For registered persons having aggregate turnover above Rs. 5 Crore

Similar relaxation, as provided for March and April, 2021, may be provided for May 2021 also:

- Interest @ 9% for first 15 days after the due date of filing return in FORM GSTR-3B for May, 2021
- Waiver of late fee for delay in furnishing FORM GSTR-3B for May, 2021 for 15 days from the due date

- For registered persons having aggregate turnover upto Rs. 5 Crore

(a) For May, 2021, the following relaxations, as provided earlier for March and April 2021, may be provided:

- For May, 2021 (for the taxpayers opting to file monthly returns), NIL rate of interest for first 15 days from the due date of furnishing FORM GSTR-3B and @9% thereafter till further 15 days
- Waiver of late fee for delay in furnishing FORM GSTR-3B for May 2021 (for taxpayers filing monthly returns) for 30 days from the due date.
- Waiver of interest for 15 days for taxpayers filing delayed PMT-06 Challan (for payment of tax liability) and waiver of interest by 9% interest thereafter for 15 days further, from due date of filing PMT-06 challan for May, 2021 for QRMP taxpayers filing quarterly returns.

Agenda 9B(iv): Difficulties faced by taxpayers to comply with timelines under GST due to COVID related restrictions- Matter arising out of observations of Hon'ble Delhi High Court (3/4) [Vol 5-Pg. 11-20]

- (b) In addition, further relaxations in rate of interest and late fee for March and April, 2021 may be provided as below:
 - **Reduction in interest:** NIL rate of interest for first 15 days from the due date of FORM GSTR-3B or for filing delayed PMT-06 Challan (for payment of tax liability), and 9% thereafter for further 45 days and 30 days for March 2021 and April 2021 respectively, and 18% thereafter (for normal taxpayers, including those under QRMP scheme).
 - **Waiver of late fee** for delay in furnishing FORM GSTR-3B for the tax period March 2021/ QE March 2021 and April 2021 for 60 days and 45 days respectively, from the due date of furnishing FORM GSTR-3B.
- For registered persons who have opted to pay tax under the Composition scheme
 - **FORM CMP-08:** NIL rate of interest for first 15 days from the due date of payment of self-assessed tax and 9% thereafter for further 45 days and 18% thereafter, for the quarter ending 31st March, 2021.
 - **FORM GSTR-04:** At present, the due date of furnishing FORM GSTR-4 for FY 2020-21 is extended to 31st May, 2021. It may be further extended to 31st July, 2021.
- ❖ For all Registered persons :
 - **FORM ITC-04:** The due date of furnishing FORM ITC-04 for QE March, 2021 was 25th April. It is proposed that the same may be extended till 30th June, 2021.
 - **FORM GSTR-1/ IFF:** Due date of furnishing GSTR-1/ IFF for the month of May 2021 may be extended by 15 days.

Agenda 9B(iv): Difficulties faced by taxpayers to comply with timelines under GST due to COVID related restrictions- Matter arising out of observations of Hon'ble Delhi High Court (4/4) [Vol 5-Pg. 11-20]

- **Restriction on ITC availment under Rule 36 (4) may be applied commutatively** for the months April to June 2021 in the return for June, 2021.
- **EVC:** FORM GSTR-3B and FORM GSTR-1 can be filed using electronic verification code (EVC) instead of digital signature certificate (DSC) by a person registered under the provisions of the Companies Act, 2013 from 27th April, 2021 to 31st August, 2021.
- ❖ Relaxations under section 168A of the CGST Act :
 - **Any time limit** for completion or compliance of any action, by any authority or by any person, under the GST Act, which falls during the period from 15th April, 2021 to 29th June, 2021 (with suitable exemptions as in the notification) extended upto 30th June 2021, as far as the same is not covered by order of Hon'ble Supreme Court dated 27.04.2021, which has extended timelines till further order, for appeals and quasi-judicial proceedings.
 - **Deemed registration:** Due to difficulties faced by officers to conduct physical verifications during second wave of COVID, the time limit for various compliances for grant of registration under rule 9 of the CGST Rules, 2017, which falls during the period from the 1st May, 2021 to 30th June, 2021, be extended to 15th July, 2021.
 - **Refund orders:** Officers to be allowed time for issuance of the refund orders upto fifteen days after the receipt of reply to the notice from the registered person or 30th June, 2021, whichever is later.

Proposal:

The matter is placed before the Council for deliberation and decision in the matter.

THANK YOU

Fitment agenda on goods and services

Agenda items 11(i)/11(ii)/11(iii)

43rd Council meeting

28th May, 2021

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GST relief for Covid items

Agenda item 11 (i) -Volume 3, pages 13 to 18

12

GIST of recommendations/representations

- To expand the scope of adhoc exemption to cover imports of specified goods procured either by specified agencies (eg WHO), or by any person and donated to government or hospital/covid management facility.
- GST exemption/ rate concession on
 - Covid vaccines
 - Covid related drugs and medicine (e.g., remdesivir and its inputs)
 - Oxygen therapy equipment (concentrator, ventilator, oximeter, medical oxygen etc)
 - Other covid relief item (PPE, mask, gloves, sanitizer, modular hospitals etc)
 - Personal imports of items like oxygen concentrators

3

Discussions in the fitment Committee

- **Broad principles applied by Fitment after detailed deliberations:**
 - IGST exemption to import of relief material (even if on cost basis) for free distribution be allowed subject to conditions as are necessary.
 - As regards GST rate concession for specific items, it may be considered by way of rate reduction instead of outright exemption.
 - 5% rate is nominal and puts a small incidence. All critical pharma attract 5%. Hence a rate lower than this may not be considered.
 - The goods that are mostly purchased by Government may not require exemption as GST thereon comes back as revenue.
 - GST concession should essentially be on items purchased by patients
 - Zero rating of domestic consumption is not permissible in law.

Recommendations for consideration of Council

- Exempt any such imports from IGST, of specified goods covered by adhoc exemption, that are imported by any person (with payment), that are donated to Central or State Government or any not for profit hospital or covid management facility.
- Condition proposed are that donee acknowledges that he would be receiving such goods for free distribution and subsequent to receipt acknowledges receipt of goods (within three months of imports)- upto 30.6.2021).

This will provide a major relief.

3

Recommendations for consideration of Council

On individual items:

Item	Present rate (%)	Proposed rate (%)	Fitment's view
Vaccine	5	5	It is at lowest slab along with all life saving drugs. ITC issues. Mostly, purchased by Govt. and distribute free .
Medicines	5/12	5/12	Medicine protocol changing, e.g. WHO has taken out remdesivir from protocol
Oxygen concentrator /generator	12	5	Upto 31.7.2021
Pulse Oximeter	12	5	Upto 31.7.2021
Medical grade oxygen	12	5	Upto 31.7.2021
Covid Test Kits (RT PCR kit)	12	5	Upto 31.8.2021 (as recommended by Ministry of Health)
Ventilators	12	12	Are procured by hospitals, produced sufficiently now in India and not covid specific, all medical equip are at 12%
Mask, PPE kit	5	5	Already at 5%. Produced domestically. Readily available

Recommendations for consideration of Council

▪ On individual items:

Item	Present rate (%)	Proposed rate (%)	Fitment's view
Intermediates like API	18	18	Pharma companies get refund for inverted rate structure. Lower rate to cause difficulty for domestic API manufacturers
Thermometers	18	18	Thermometer is a general requirement – not covid specific. Short duration concession may not provide any major relief
Ambulances	28	28	Institutional purchases. A short term concession may not provided any significant relief
Other diagnostic kit like d-dimer, il-6, LDH	12	12	These are general purpose kit
RT-PCR m/c. genome seq kit, rNA seq machine	12/18	12/18	Institutional purchase. ITC available
Modular hospital construction	18	18	Such modular hospital may not be very effective for covid relief. Exception may not be made only for such hospitals.

7

WP No. 16554/2021 – Gurcharan Singh v/s Ministry of Finance

- Matter relates to exemption of IGST on personal import of oxygen concentrators as gift
- Summary of HC order dated 21.05.2021
 - exemption is available to the petitioner from IGST, on personal import of concentrator as gift, vide an entry 607A of notification 50/2017-Cus.
 - Said entry 607A provides exemption for lifesaving drugs and medicines for personal use, supplied free of cost by overseas supplier' subject to the similar condition of certification by prescribed medical authorities.
 - Hon'ble Court has also waived of the condition as being impractical and inefficacious
 - Court has stated that drugs include oxygen concentrator and therefore covered under this exemption
 - Notification prescribing 12% IGST rate on personal imports of Oxygen concentrator was quashed holding it to unconstitutional
- SLP has been filed in the matter
- In an another matter Hon'ble High Court has directed to exempt imports of medicine for black fungus (including IGST)- relying on the above judgement and that till the time issue is not decided, clearance shall be allowed without payment of customs duty and IGST. The medicine (amphotericin b) attracts 5% BCD and 5% IGST.

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Other recommendation of Fitment on goods

Volume 3, pg 19-35

9

S. No.	Request	Fitment Committee views	Recommendations
1.	Diethylcarbamazine tablet (DEC) supplied to WHO, India by SEZ unit <u>(12% to exempt)</u>	DEC is used for treatment of endemic lymphatic filariasis. So deserves same concession as life saving drugs. Domestic units when make exempted or gift supplies required to reverse Input tax credit.	Reduce GST to 5%
2.	IGST on goods sent abroad for repair be clarified to settle dispute	Decision of the GST Council that re-import of goods sent abroad for repair attracts IGST on a value equal to the repair value, insurance and freight may be explicitly clarified, making the intention clear, in the light of discussion taken place in the Councils on the issue.	If required clarificatory amendment along with circular.

S. No.	Request	Fitment Committee views	Recommendations
3.	Parts of the Sprinklers/Drip Irrigation system if supplied separately <u>(CTH: 8424, GST Rate: 12%)</u>	<ul style="list-style-type: none"> Parts of the sprinklers/drip irrigation system falling under heading 8424 (laterals and nozzles) attract GST rate of 12%, even if these are supplied separately. General parts falling under other headings, attract the GST rate as applicable for that respective heading. 	Issue clarification
4.	Toy balloons made up of natural rubber latex <u>(CTH: 9503, GST Rate: 5%)</u>	<ul style="list-style-type: none"> Issue necessary clarification/ amendment to the notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017 to provide that 'toy balloons' are classifiable under heading 9503. 	Make necessary ammendments

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Issues deferred and not recommended for change

- Fitment Committee discussed 24 additional agenda items which were either recommended to be deferred for further inputs for examination.
- These issues have been separately mentioned in Agenda Note and will be placed before the GST Council for consideration
- Majority of these requests contain issues that have been examined earlier by the Council and not agreed to.

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Recommendation of Fitment on Services

Volume 3, pg 36-67

13

Recommendations on services

1. Supply of food/mid day meals to Schools and Anganwadis:

- Fitment Committee discussed the request of Akshaya Patra for a clarification.
- Has recommended for issuing a clarification that services supplied to an educational institution including anganwadis, which provide pre-school education, by way of serving of food including mid- day meals under any midday meals scheme sponsored by the Government, is exempt from levy of GST irrespective of its funding from government grants or corporate donations.

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Recommendations on services

2. Conduct of entrance examinations by National Board of Examination (NBE) for admission to Diplomate National Board (DNB)/Fellow of National Board (FNB) courses offered by medical colleges and on other services provided by NBE. Fitment recommends:

- fees collected by NBE towards conduct for such entrance examination, **examination for the students of DNB/FNB** and related input services are exempt from GST in view of explanation 3(iv) and sl. No. 66 (aa) & 66(b)(iv) of the notification No. 12/ 2017 CTR.
- Service provided by similar other central or state **educational** Boards for conduct of examinations including entrance examination shall accordingly be exempt.
- Other service provided like accreditation of medical colleges and **screening test for** registration of doctors (having obtained education outside India) are taxable

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Recommendations on services

3. ITC on construction of houses to landowner developer by promotor developer

- 5%/1% GST rate applicable for construction of houses, with no ITC except that land owner who transfer development rights to developers and sell the portion of constructed flats/houses received by them from the developer against TDR have been allowed to take ITC of GST charged to them by developer promoters.
- The construction industry has represented that land owners are not able to utilize ITC as developer promoters is required to pay tax on such services only at the date of issuance of the completion certificate for the project, by which time land owner had deposited all his tax on under construction **flats** sold by him. .

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Fitment committee has recommended that:

- appropriate changes may be made in the GST rate notification so as to allow land owner promoters to utilize credit of GST charged to them by developer promoters.
- Changes may also be made in notification No. 6/2019-CTR so as to provide that the developer promoter may pay GST on services supplied to land promoters in any tax period not later than the tax period in which the date of issuance of the completion certificate for the project.

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Recommendations on services

4. GST on ship repair units : The committee discussed and accepted the proposal of Ministry of Shipping to extend the same GST dispensation to ship repair units as extended to aviation MROs in order to provide them level playing field vis a vis foreign MRO units and accordingly recommended that ,-

- (a) GST on MRO services in respect of ships may be reduced from 18% to 5% with full ITC.
- (b) PoS of B2B supply of MRO Services in respect of ships/ vessels may be changed to location of recipient of service, by way of issuing a notification under section 13(13) of the IGST Act.

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Recommendations on services

5. GST guaranteeing of loans by State Govt.: Fitment Committee discussed the request of Haryana Shehri Vikas Pradhikaran (HSVP) seeking clarification regarding applicability of GST on service supplied by State Govt. by guaranteeing its loans.

Committee recommended for issuance of a clarification that service supplied by State Govt. to its **Undertaking or PSUs** by guaranteeing loans from banks and financial institutions is exempt under entry no. 34A of Notification no. 12/2017-CT (R) dated 28.06.2017.

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Recommendations on services

6. GST on annuities paid under the Hybrid Annuity Model Project for construction of roads: Committee discussed the request of Ministry of Road Transport and Highways regarding exemption on annuities paid under the Hybrid Annuity Model Project and has recommended that clarification may be issued that entry 23A of notification No. 12/2017-CT(R) exempts services by way of providing access to road or bridge on payment of annuity. It does not exempt annuity paid for construction of roads.

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Recommendations on services

7. GST exemption on milling of wheat into fortified Atta for under PDS: The committee discussed the issue referred by West Bengal/AP Government regarding taxability of the activity of milling of wheat into fortified atta or paddy into rice for distribution by State Government under PDS and recommended for issuance of clarification as under:

- (a) supply of such service would be exempt under entry 3A of the notification No. 12/2017-CT (Rate) dated 28.06.2017 provided value of goods in the composite supply does not exceed 25% of the value of the composite supply; and
- (b) where the value of goods in the composite supply exceeds 25%, and the service is supplied to a registered person, including a person registered only for the purpose of deduction of tax under section 51 of CGST Act , shall be entitled to the 5% GST rate applicable to job work services in relation to food and food products

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Recommendations on services

8. GST rate applicable on construction of Ropeway: Fitment Committee discussed the request of Bihar to clarify rate of tax applicable on construction services provided to a Government Entity in relation to construction of a ropeway on turnkey basis and recommended that,-

- clarification may be issued that services supplied by way of construction of a ropeway in the instant case would not be eligible for the concessional rate of 12% GST prescribed against Sl. No. 3 (vi) of Not. No. 11/2017- CT (R) dt. 28.06.2017 as the ropeway is not a civil structure or any original work meant predominantly for use other than for commerce, industry, business or profession. A general clarification be issued in this regard.

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Recommendations on services

Fitment Committee proposes not to accept the following requests

1. Request of Insurance Regulatory and Development of India (IRDAI) to exempt GST on all the services provided by them such as to **intermediaries** like brokers etc, instead of only those supplied to 'the insurers' as is the case presently.
2. Request to waive GST on service charges paid by Indian emigrants to the registered Recruiting Agents (RAs) and to grant moratorium on payment of GST by RAs for a period of 18 months in view of COVID-19 situation.
3. Request of IVCA to eliminate GST on management fees or extend the deemed export or **pass through** status for services rendered to AIFs. The issue also figured in the 112th Report of the Parliamentary Committee on Finance.

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Recommendations on services

Deferred Proposals on services

The committee deferred the rest of the 8 proposals for detailed examination in the next Fitment Committee. The issues are listed in the approved agenda on services for the Council meeting.

24

GST Rate on Disability Aids & Equipment

[Arising from direction of Hon'ble Supreme Court]

Agenda item 11 (iv): Vol 3 pg 68-71

43rd Council meeting

28th May, 2021

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GST Rate on Disability Aids and Equipment

- A concessional rate of 5% (lowest GST slab) has been prescribed on goods used by the persons with disability

S.No.	HS	Description of Goods	GST rate
256	90 or any other Chapter	Parts of the following goods, namely:- 1. Crutches; 2. Wheel chairs; 3. Walking frames; 4. Tricycles; 5. Brailers; and 6. Artificial limbs	5%
257	90 or any other Chapter	Assistive devices, rehabilitation aids and other goods for disabled, specified in List 3 appended to this Schedule	5%

- GST Council did not exempt Disability Aids and Equipment after discussions in its 14th,/16th/31st and 37th meetings

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Petition by Shri Nipun Malhotra

- A Writ Petition (Civil) No. 725/2017 has been filed by Shri Nipun Malhotra in the Supreme Court, challenging 5% GST on assistive devices for the disabled on following grounds:
 - Imposed GST has the effect of dividing the society amongst the disabled and the able by placing a tax burden on the disabled
 - This levy violates fundamental rights of disabled as envisaged under Article 14, 15, 19, 21 and 21A of the Constitution
 - It is also a deviation from the international practice
- Supreme Court Order, dated 26.10.2020:
 - Directed the petitioner to file a representation to the GST Council seeking the abolishment of the levy of 5% GST on the goods used by the persons with disability

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Representation by the petitioner

- Points made in the Representation:
 - The levy of 5% GST on the Disability aids and equipment is incorrectly stated as “beneficial” for the end disabled user by the Respondent
 - False and misleading assumption that 5% GST causes reduction of cost in domestic markets as the manufacturers claims ITC
 - This “benefit” is wrongly referenced to a “zero-tax regime”. Benefit of ITC accrued only to the manufacturer and not to the disabled consumer
 - The levy of 5% GST on disability aids and equipment violates the fundamental rights of the person with disability as envisaged under Article 14, 15, 19, 21 and 21A of the Constitution

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Examination by the Fitment Committee

- Tax policy is not the right instrument
- Indirect tax exemptions causes inversions. It lead to increase in costs of the goods required by the beneficiaries
- A nominal GST necessary to encourage domestic manufacturing and reducing import dependence
- Zero rating for domestic consumption is not permissible in law
- Many schemes are being run by the Department of Empowerment of Persons with Disabilities (Divyangjan)
- Support through public expenditure (direct subsidy) would be the more effective policy option to provide assistance and relief

Issue is placed before the Council for consideration and direction

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Existing Schemes for the disabled

1. Deendayal Disabled Rehabilitation Scheme (DDRS)
2. District Disability Rehabilitation Centers (DDRCs)
3. Assistance to Disabled Persons for Purchase/Fitting of Aids/Appliances (ADIP)
4. Scheme for Implementation of Rights of Persons with Disabilities Act, 2016 (SIPDA)
5. Accessible India Campaign / Sugamya Bharat Abhiyan
6. Scheme for Awareness Generation and Publicity
7. Research on Disability Related Technology, Products and Issues
8. Unique Disability ID Project (UDID)
9. Incentive Scheme for providing employment to Persons with Disabilities (PwDs) in the private sector
10. In-Service Training and Sensitization of key Functionaries of Central and State Government, Local Bodies and other Service
11. Scheme of "Support for Establishment/ Modernization/ Capacity Augmentation of Braille Presses"
12. State Spinal Injury Centre

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Existing Schemes for the disabled - continued

13. Scheme for Financial Assistance to Colleges for Deaf in Five Regions of the country Providers
14. Scholarship Schemes
15. Scheme for providing Financial Assistance under the National Fund for Persons with Disabilities
16. Exhibitions/workshops to showcase the products including paintings, handicraft, etc. made by the PwDs.
17. Support persons with benchmark disabilities who have excelled in sports/ fine arts/music/dance/film/theatre/literature at the State level to participate in the National and International events.
18. Support certain exclusive needs of persons with high support needs as recommended by the Assessment Boards on specific recommendation by the States on a case-to-case basis.
19. Indian Spinal Injury Centre (ISIC)
20. The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation & Multiple Disabilities
21. National Handicapped Finance and Development Corporation (NHFDCL)
22. National Awards for the Empowerment of Persons with Disabilities.

31

Plea for inclusion of Ice cream in composition levy

[Arising out of an order of Hon'ble Delhi HC]
Agenda item 11(v)- Volume 3 pg 72-74]

32

Issue: Writ Petition No. 5252/19 challenged the exclusion of Ice Cream from the ambit of composition levy

Background

- Exclusions from Composition Scheme was deliberated by Council [17th Meeting- 18.6.2017]. The Council recommended the following exclusions:
 - ✓ Ice Cream and other edible ice, whether or not containing cocoa [HS 2105 00 00].
 - ✓ Pan Masala [HS 2106 90 20].
 - ✓ Tobacco and manufactured tobacco substitutes [Chapter 24]
- Said Writ Petition challenged exclusion of ice cream. Hon'ble Delhi Court in its order dated 9.2.2021 issued directions for re-consideration by GST Council including the following two parameters:
 - ✓ The components used in the manufacture of ice cream and the GST payable thereon.
 - ✓ Other similar goods having similar tax effect continuing enjoy the benefit.

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For consideration of the Council

- The issue was discussed in Fitment Committee. It's view are :
 - ✓ The exclusion of Ice Cream has been well debated in the Council.
 - ✓ Has high Revenue implication as Ice Cream has high value addition.
 - ✓ In pre-GST regime too ice cream was excluded from composition in a number of states.
 - ✓ GST Council in its 37th Meeting [20th Sep 19] recommended exclusion of Aerated water on account of revenue implication.
- Fitment Committee felt that there is a need for a detailed study of coverage (inclusions and exclusions) from composition scheme, particularly as regards sectors where there is significant value addition and consumption. In this regards direction of the Council be taken.
- **Order of High Court is placed before the Council for further directions.**

34

Correction of inverted rate structure

Agenda item 12: Volume 3, pg 75-80

43rd Council meeting

28th May, 2021

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Inverted Rate Structure

- Manufactured goods in lower rate slabs (5% /12%) suffer inverted rate structure
- Inversion in rates has led to
 - Demand for refund ITC on services and capital goods.
 - Hardship to domestic manufacturers
 - Affecting investment decisions
 - Litigation, distortions, interface
- Estimated refunds on account of inverted rates ~ Rs 25,000 cr/ year

Items
Fertilizers
Footwear
Renewable equip
Man-made yarns
Tractors
Fabrics
Pharma
RMG and Madeups
Generators/inverters
Job work
Aggarbatti
Agri machinery

Items
Utensil
Bicycles
LED light
Milling & agri M/Cs
Ink
Medical equip
Water pumps
Pen
Animal feed
Railway parts
Other Misc items

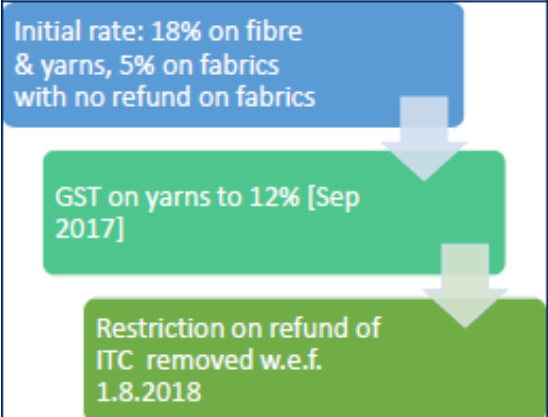
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Inverted rate structure in GST

- A presentation was made in the 39th and 40th meetings on the inverted rate structure based on the recommendations of Committee of Officers and Fitment Committee
- Inversions in the four sectors was emphasized,-
 - Mobile phone
 - Textiles
 - Footwear
 - Fertilizers
- The Council took a decision on mobile phones (**Rate increase-12% to 18%**)
- On others, the Council recommended further discussions in future meetings
- Textile Ministry has again reiterated and recommended a uniform rate structure and correction of inverted rate structure for textiles sector

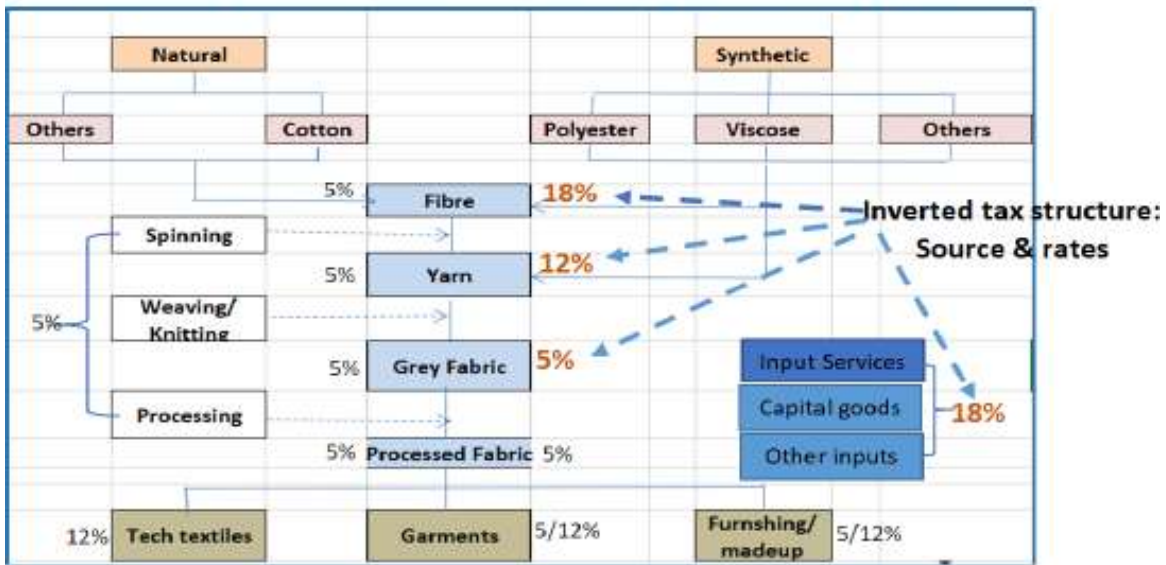
37

Inverted rates on Manmade Textiles segment

Evolution of Rate Structure	Implications and suggestions
 <p>Initial rate: 18% on fibre & yarns, 5% on fabrics with no refund on fabrics</p> <p>GST on yarns to 12% [Sep 2017]</p> <p>Restriction on refund of ITC removed w.e.f. 1.8.2018</p>	<ul style="list-style-type: none"> ▪ Based on 2018-19 numbers, it is estimated that annual refund for textiles sector is about ₹ 6,000 cr ▪ In coming years this amount would further increase ▪ Ministry of Textiles has strongly recommended for correction ▪ An IMG of NITI, DoC and MoT has also requested for correction

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Inverted rates on Manmade Textiles segment



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Proposed Rate Structure

	Item	Present rate	Proposed GST Rate
1.	Cotton and natural fibres/yarn (except raw jute, silk, and wool)	5%	5%
2.	Manmade Fibres	18%	12%
3.	Manmade Fibre Yarns	12%	12%
4.	Fabrics [Technical and spl fabrics are at 12%]	5%	12%
5.	Garments and made-up	5%/12%	12%
6.	Dyeing Services	5%	12%

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Footwears:

Refund on account of inversion ~ Rs 2000 cr a year

GST rate structure on footwears	
5%	If RSP upto Rs 5,00 [upto 25.7.2018]
	If RSP upto Rs 1,000 [upto 31.12.2018]
	If sale price upto Rs 1000 [w.e.f. 1.1.2019]
18%	Footwears other than the above

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Inverted Rate in Footwear

Items	GST Rate	Share in Value	Inversion
Chemicals: Adhesives, [PU, polychloroprene, PVA, Acrylics, IsoCyanate], Solvents [MEK], Colours and Pigments, Catalysts	18%	15%	Overall Inversion of upto 6%
SOLE: Natural/Synthetic Rubber, Precipitated Silica, Elasto Polymer	18%	30%	
UPPER: Leather, Industrial Textile, Rubber, Plastic	5%/12%/18%	35%	

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Proposed Rate Structure on footwears

- Fitment Committee felt that dual rate structure be avoided if possible. Ad valorem rate ensured that goods having lower prices suffer lower quantum of tax. Hence, uniform rate of 18% is a better option.
- However, if uniform rate is not found feasible, a 12% rate may be considered for footwears having price upto Rs 1,000 per pair

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Other significant items having inversion

Item	Approximate refund in a year
Renewable energy equipment, cells, panel, invertor, generators, windmill	Rs 1500 cr
Pharma	Rs 800 cr
Tractors	Rs 400 cr
Specified Railways parts	No refund allowed. Corrected partially by raising rate to 12%.
Wooden craft	Rs 400 cr
Aggarbati, water pumps, agri machines, utensil, ink	Rs 350 cr
Ores	Inversion on account of services being at 18%.
Others (medical equipment, bicycles, LED, Pen, animal feed)	

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Taxability of ENA in GST

[Agenda item 13: Volume 3, pg 81-86]

43rd Council meeting

28th May, 2021

43

Taxability of Extra Neutral Alcohol (ENA)/rectified spirit in GST

Background

- Denatured ENA is taxable at 18% GST
- However, there are divergent views as regards applicability of GST on ENA, i.e., whether it is alcoholic liquor for human consumption (hence outside the ambit of GST), or it is otherwise liable to GST (as it is not consumed by human as such and is only an input).
- GST Council in its 20th Meeting held on 5th August 2017 recommended:
 - ✓ Status quo to be maintained: thus ENA continue to attract VAT
 - ✓ legal opinion of the Attorney General of India may be sought
 - ✓ Views of States on the issue may be placed before the Ld. AG and States may also be invited to attend the briefing.

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Taxability of Extra Neutral Alcohol (ENA) in GST

- A number of States are of the view that ENA falls outside GST. Reliance placed by them on *Bihar Distillery v. Union of India* (1997) 2 SCC 727 in which Hon'ble Court held that rectified spirit (ENA) for manufacture of liquor will be under state control and regulated by state.
- Opinion of the Attorney General
 - a) *Bihar Distillery* has been over ruled in *Deccan Sugar & Abkari Co. Ltd. V Commissioner of Excise*. Larger bench in in (2004) 1 SCC 243 it held that "*the state can levy excise duty only on potable liquor fit for human consumption and as rectified spirit does not fall under that category the State Legislature cannot impose any excise duty*".
 - b) Thus the judgment of the Court in *Bihar Distillery* does not denude the Centre or the States of the power to levy GST on ENA that is used to manufacture 'alcoholic liquor for human consumption'

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Taxability of Extra Neutral Alcohol (ENA) in GST

- Ld AG has based his opinion on the judgements of Hon'ble Supreme Court.
- In case of *Deccan Sugar & Abkari Co. Ltd. V. Commissioner of Excise, A.P.*, Larger Bench has held that "*the state can levy excise duty only on potable liquor fit for human consumption and as rectified spirit does not fall under that category the State Legislature cannot impose any excise duty*" [(2004) 1 SCC 243]
- Ld AG also relied on judgments in the case of *Synthetics and Chemicals v. State of UP* (1990) 1 SCC 109 (7 judges) and *State of UP v. Modi Distillery* (1995) 5 SCC 753 (3 judges), wherein dealing with the power of the State under Entry 51 List II, it was held that "*by common standards, ethyl alcohol (which had 95 per cent strength) was an industrial alcohol and was not fit for human consumption.*"

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Taxability of Extra Neutral Alcohol (ENA) in GST

- Opinion of Ld. AG was placed before the Council in its 26th meeting.
- It was again placed before the Council in 37th meeting (20.9.19). It was decided that, status-quo be maintained till the time Council takes a view in the matter.
- However, due to lack of clarity, divergent practices are being adopted by distilleries. There is divergence in interpretation by States too.
- Units paying GST on ENA have been served demand notices for non-payment of VAT, whereas units paying VAT have been served notices for non-payment of GST.

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Taxability of Extra Neutral Alcohol (ENA) in GST

- DGGI has informed that different practices are being followed on ENA:
 - Some Distilleries are paying GST on it.
 - Some Distilleries are paying VAT/ State Excise Duty on it; and
 - Some Distilleries are neither paying VAT/State Excise Duty nor GST on it
- It has also been observed that some distilleries are adopting a dual practice i.e. paying GST @ 18% on ENA cleared to the manufacturers of 'liquor for human consumption', but not paying any GST on similar products namely Grain Neutral Spirits (GNS) etc. when supplying to a bottling unit.

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Taxability of Extra Neutral Alcohol (ENA) in GST

- Further comments have been received from the States
 - ✓ West Bengal and Rajasthan are of the view that ENA for manufacture of alcoholic liquor for human consumption is outside GST.
 - ✓ Uttar Pradesh is of the view that ENA is not fit for human consumption in its form and hence is chargeable at 18% rate in GST. However recommended a 12% rate on it.
- Writ petitions have also been filed on this issue.
- Considering the issue has wide implication. Divergent practices have led to disputes and doubts having implication to the revenue.
- The GST Council may like to consider the issue of applicability of GST on rectified spirit/ Extra Neutral Alcohol (ENA) for manufacture of alcoholic liquor for early resolution of this issue.

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Committee of Officers to suggest measures to augment GST Revenue [Agenda item 14: Volume 3 pg 87]

43rd Council meeting

28th May, 2021

52

Context

- After witnessing impressive growth in the fourth quarter of last FY, the GST revenue growth rate declined in recent months.
- The compensation requirements have increased significantly. The compensation cess collections are inadequate to meet this requirement.
- In view of these concerns, a Committee of Officers was constituted to suggest measures to augment revenue.

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Constitution of Committee

- **State CCTs**
 - Maharashtra
 - Tamil Nadu
 - Uttar Pradesh
 - West Bengal
 - Punjab
 - Any other State (opts to join)
 - Odisha
 - M.P.
 - Haryana
 - Rajasthan
- **Centre**
 - Joint Secretary (Revenue)
 - Pr Commissioner GST
 - Joint Secretary (TRU I/II)
 - ADG (ARM)
 - ADG (System)
 - Joint Secretary (GST Council)
 - Executive VP, GSTN
- **GSTC Sectt and GSTN**
 - Joint Secretary (GST Council)
 - Executive VP, GSTN

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Suggestions received for augmenting revenue (1/2)

▪ RATE SLAB

- Rate slabs be reviewed (two slabs of 10% and 20% for example).
- Special higher rate only on sin goods
- Correct inverted rate structure
- Widening Cess on items like cosmetics, gambling etc, and cess increase on certain items
- Rationalisation of exemptions

▪ COMPOSITION

- Revise composition rate upward for manufacturers
- Review of coverage under composition scheme

▪ PLUGGING LEAKAGE

- Widening of TDS
- MRP based levy of certain items like Pharma or goods sold to consumer
- ECO (e-commerce operator) may be made principal supplier
- Feasibility and efficacy of capacity based levy be examined

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Submissions

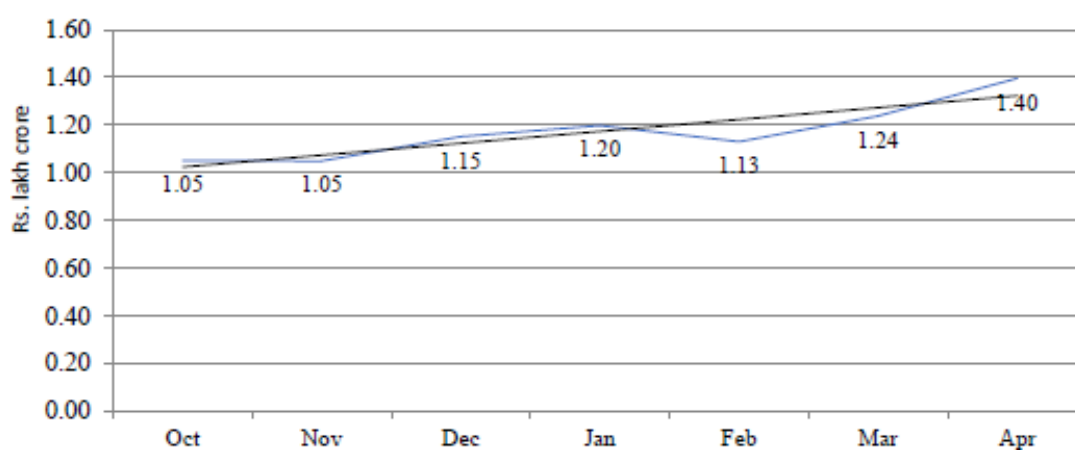
- Inverted rate structure agenda is before the Council
- Issues concerning capacity based levy are before GoM
- Other issues like review of slabs, review of exemption, MRP based levy on certain items, widening of TDS, Review of composition scheme coverage require elaborate discussion in the council.

- It is proposed that Fitment Committee shall examined each recommendation of the Committee in detail, and place it item wise for consideration of the Council in next few meetings for taking a view within this Financial year.

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Review of Revenue Position

Trends in monthly gross GST Revenue



Details of monthly gross GST revenue

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

IGST Account for 2020-21

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

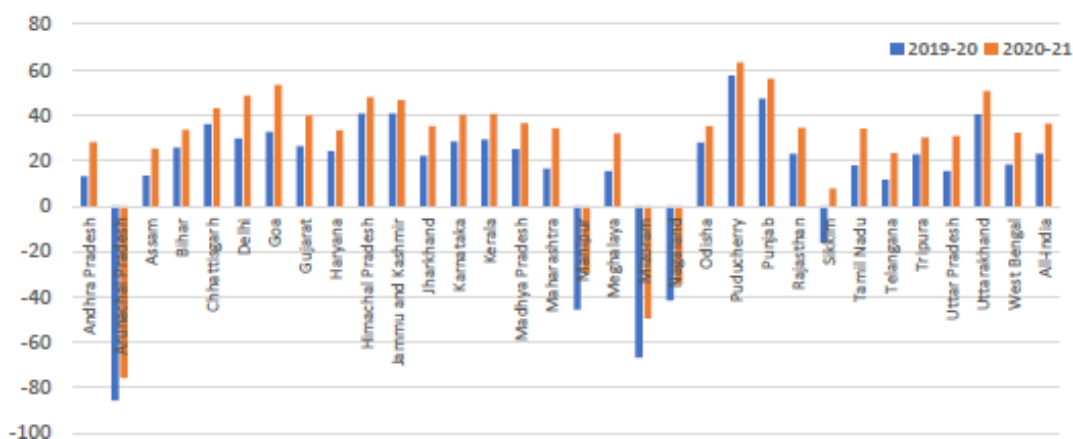
Compensation Fund

	Rs. Crore				
	2017-18	2018-19	2019-20	2020-21	2021-22 [#]
Opening Balance		21,466	47,272	55,737	3,940
Compensation Cess collected (Net)	62,612	95,081	95,551	85,191	9,100
Compensation released	41,146	69,275	1,20,498	1,36,988	
Balance	21,466	47,272	55,737*	3940	13,040

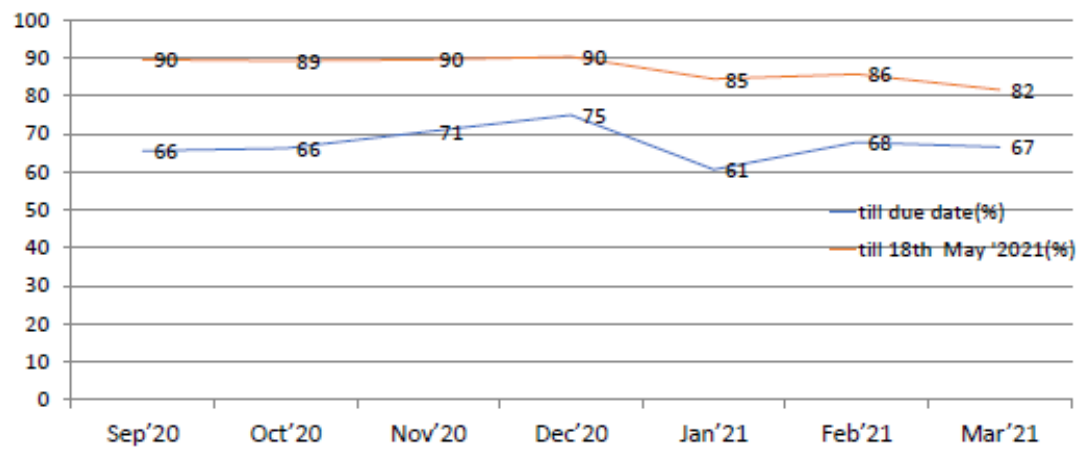
* Centre had transferred Rs. 33,412 crore from CFI to Compensation Cess Fund as part of an exercise to apportion balance IGST pertaining to FY 2017-18

[#] till 30.04.2021

Revenue Shortfall



Trend in GSTR-3B Return filing



GST Compensation Cess

Estimates for 2021-22

Background

- Shortfall in compensation due to 14% increase in protected revenue y-o-y, dip in SGST revenue as well as compensation cess collection due to pandemic
- Issue was discussed in detail in 41st and 42nd - legal provisions and the opinion of Ld. AGI were discussed in detail
- Two models for raising resources through debt to meet a part of shortfall
- Calculated based on the normative approach – 7% growth on 2019-20 revenues
- **During 2020-21, Gol raised Rs. 1.1 lakh crore of debt and passed on to the States on a back-to-back basis – the average rate of interest was 4.85%**

2021-22

- If the same model as last year is adopted, Gol will have to borrow approximately Rs. 1.6 lakh crore and pass it on to States on back-to-back basis
- If the monthly gross GST Revenue collection during 2021-22 is **Rs. 1.1 lakh crore**, the actual gap would be about **Rs. 1.5 lakh crore**
- If the monthly gross GST Revenue collection during 2021-22 is **Rs. 1.15 lakh crore**, the actual gap would be about **Rs. 1.25 lakh crore**



GST COUNCIL MEETING 28TH MAY, 2021

AGENDA POINTS OF GSTN



GSTN Agenda Points



- 1) Sanction for extension of Project REAP, LEAP and BIFA under T&M Model.
- 2) Proposal to Establish more than one IRP.
- 3) Intimation: GSTN Recruitment Guidelines Approved by Hon'ble Finance Minister.
- 4) Intimation: The Status of Transfer of Share-holding with the States.
- 5) Waiver of Interest on delayed receipt of Advance User Charges (AUC).

Sanction for extension of Project REAP, LEAP and BIFA under T&M Model



Summary: Engaging Tech Resources on T&M basis

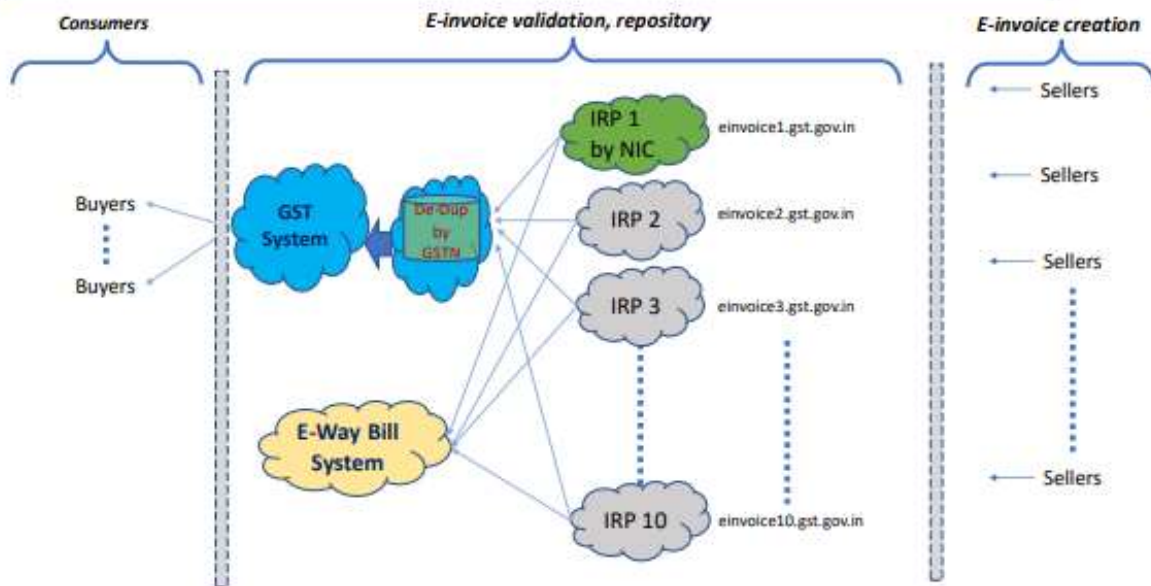
- The proposal of engaging Manpower from Infosys on T&M basis was approved in **39th Meeting** of the GST Council held on 14th March, 2020.
- GSTN and Infosys had started T&M model since April 2020 for developing the Incremental Changes in the Return under REAP [Return Enhancement and Advancement Project].
- Prompt monitoring through daily scrum calls and weekly governance calls by the senior management and continuous assignments etc. entailed a promising result of this model.
- Taking note of the expeditious delivery of critical changes, GST Council in its **42nd Meeting** on 5th of Oct, 2020 had approved the extension of T&M model till 30th June 2021 with 136.5 manpower counts.

Proposal: Considering the new Developments & Change Requirements in GST System, GST Council may like to:

- Approve and extend** the engagement model of tech resources on T&M basis from Infosys up to 31st March, 2022 for fast tracking the developments and implementations of critical applications in GST System and BIFA.
- Maximum number of tech. resources (including BIFA) under T&M shall not exceed 200. The deployment of resources, however, will be based on the actual requirement of works at a given point of time.
- Tech Resources for BIFA are required to be engaged under T&M immediately, since development of new use cases as suggested by the states are required to be accelerated. Tech resources of BIFA are of higher value as they need to have adequate skills in analytics to be developed.

Turnover PAN wise	Number of PANs eligible to generate e-invoice	No. of GSTINs eligible to generate e-Invoice	% age of number of Total B2B Invoices Reported in GST-R1	% of value (ITC % would be similar) of B2B supplies of these GSTINs	e- invoice launched from	No of GSTINs generated e-invoice in Mar-21/Apr*-21	Number of invoices generated in Mar-21/Apr*-21
500 Cr plus	6,938	53,523	22.26%	41.24%	1 st of Oct, 20	33,573	6,24,11,777
100-500 Cr	33,359	91,583	8.80%	15.32%	1 st of Jan, 21	46,508	2,06,25,294
50-100 Cr	51,200	95,461	6.86%	9.98%	1 st of April, 21	38,186*	85,03,764*
25-50 Cr	68,703	96,455	5.56%	5.55%	To be decided	Not implemented	
10-25 Cr	2,10,034	2,53,348	10.14%	7.12%			
5-10 Cr	3,02,470	3,38,356	9.02%	4.90%			
1.5 - 5.00 Cr	9,98,801	10,65,521	17.36%	7.69%			
Below 1.5 Cr	68,76,061	70,52,503	20.01%	8.20%			
TOTAL	85,47,566	90,46,750	100.00%	100.00%		118,267	9,15,40,835

Proposed E-invoice eco system with multiple IRPs



Proposal: For multiple IRPs



- Keeping in view the futuristic vision for digitization of invoices and the need for capacity augmentation of the e-Invoice Registration system, the GST Council may like to approve the selection and establishment of 3 to 5 IRPs by GSTN to provide a robust and uninterrupted ecosystem of IRPs for all the taxpayers. (Present system is running on e-way bill system.)
- NIC IRP system shall be strengthened to a full fledged DCDR system. It may also be explored if NIC can provide the services of IRP 2 as well.
- Decision on financial support, if any, to IRPs other than NIC shall be taken by GSTN to achieve appropriate scalability.
- The common platform for de-duplication of IRNs shall be managed by GSTN. It shall also provide an e-invoice download facility to the buyers (counterparties).
- The new IRPs shall provide e-Invoice registration and IRN generation services free of cost to the taxpayers, however, they will be free to provide other over the top (OTT) services to their clients on a chargeable basis.
- The multiple IRP system shall improve the turnaround time and reduce risk of outages and non-availability of system. It would also leverage load balancing during peak business hours.

Approval of GSTN Recruitment Guidelines



- The Recruitment Guidelines for onboarding the officers on deputation in GSTN and consolidation of existing guidelines for recruitment of market recruits was approved by the Board of GSTN in its 44th Meeting held on 11th Jan 2021.
- The recruitment guidelines were thereafter, also approved by the Hon'ble Finance Minister.
- **The Recruitment Guidelines along with the annexures are placed before the GST Council for kind perusal and information/approval.**
- The States are requested to send their experienced officers on deputation to GSTN, basis the vacancy circulars and requests made from time to time.
- CBIC is requested to continue supporting GSTN by providing adequate manpower.



Intimation: The Status of Transfer of Share-holding with the States



- Based on the decision taken in 27th GST Council Meeting dt. 4th may, 2018 and the Union Cabinet Meeting dt. 26th September, 2018, the process of conversion of GSTN into 100% Government-owned entity started.
- The GST Council in its 31st Meeting dt. 22nd December, 2018 and the Department of Revenue, vide its letter dt. 17th January, 2019 approved the revised shareholding of GSTN.
- The conversion plan of GSTN into 100% Government owned company, the procedure involved are detailed in the ROC/MCA Compliance Action Plan.
- The Empowered Committee & the Non- Government Institutions have already offered their entire existing shareholding in GSTN through Share Transfer Notice for Sale/Transfer to Centre, States & UTs.
- Centre, States & UTs have acknowledged the receipt of the above Share Transfer Notices and communicated their acceptance through Purchase Notices and have paid Share Purchase Consideration to Empowered Committee & Non- Government Institutions accordingly.

The states/UTs, who have not executed Security Transfer Form (SH-4)



The following States/UTs have not yet executed the 'Securities Transfer Form' in the prescribed Format (**Form SH-4**) along with the documents as required under the Companies Act, 2013

S No.	Government	S No.	Government
1	Rajasthan	10	Goa
2	Sikkim	11	Kerala
3	Andhra Pradesh	12	Manipur
4	Bihar	13	Delhi
5	Himachal Pradesh	14	Jharkhand
6	Mizoram	15	Uttar Pradesh
7	Arunachal Pradesh	16	Chhattisgarh
8	Haryana	17	Madhya Pradesh
9	Assam		

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Proposal



- Accordingly, the States/UTs as mentioned above may like to execute the Securities Transfer Form in the prescribed format (Form SH-4) along with necessary documents as per the requirements under the Companies Act, 2013 and share the same with GSTN in order to expedite the process of conversion.
- The Council may take the note of the above and may like to issue necessary advisory to all the concerns in order to complete the process of conversion at the earliest.

Status of Payment of User Charges by the States/Centre



- The expenditures on account of implementation, operation support & maintenance of GST System Project as approved by the Empowered Committee of State Finance Ministers (EC) in its meeting dt. 30th August 2016 and the Cabinet, are shared equally by the Centre and States and are remitted in 2 installments, half-yearly basis (1st March and 1st September). Further, as per Para iii (b) of the Revenue Model, interests are accrued on delayed payment.
- The GST Council in its 35th Meeting dt. 21st June 2019 had approved the waiver of interest on delayed payment of Actual User Charges to be paid till 31st July 2019 for all the past periods.
- Further, keeping in view the COVID-19 problems, the GST Council in its 42nd Meeting held on 5th and 12th Oct. 2020 had further approved the extension of payment of AUC of FY 2020-21 till 31st March 2021 on the basis of request made by few States.
- However, some of the States and CBIC have remitted the amount of AUC for FY 2017-18, 2018-19 and 2019-20 after expiry of waiver period i.e. 31st July, 2019 for the past periods. This interest amount is Rs 11.5 cr as calculated till 10th of May, 2021.
- The amount of interest on delayed remittance for the FY 20-21 comes to Rs 0.13 Cr till 10th May, 2021. Considerable payment for the year FY 20-21 is still due.

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Proposal:



Keeping in view the need for extension of time limit for payment of AUC due to the present situation of pandemic and its fiscal impact and for the waiver of the interest amount, the following proposals are placed before Hon'ble GST Council for approval:

- The time limit of payment of full payment of AUC or of the outstanding amount for FY 2020-21 may also be extended till 31st December, 2021.
- Payment for the year FY 20-21 is pending from some of the States as per the details provided in the agenda and the same may kindly be paid during this extended period.
- The interest accrued on delayed remittance of AUC by the States/Centre amounting to Rs.11.63 Cr. (till 10th May 2021), may be waived off for all the previous financial years and also for the year 20-21 as the due date for payment is being extended for the same.

Thank You

Agenda Item 1(ii): Confirmation of the Minutes of the 44th GST Council Meeting 12th June

2021

The 44th meeting of the GST Council (hereinafter referred to as ‘the Council’) was held on 12th June, 2021 at New Delhi under the Chairpersonship of Hon’ble Finance Minister, Smt. Nirmala Sitharaman. The list of the Hon’ble Members of the Council who attended the meeting is at **Annexure-I**. The list of officers of the Centre, the States, the GST Council, the Goods and Services Tax Network (GSTN) who attended the meeting is at **Annexure-II**.

2. The Secretary, GST Council (hereinafter referred to as ‘The Secretary’) welcomed all the Members to the 44th meeting of the GST Council and sought the permission of the Chairperson to begin the proceedings of the meeting. He stated that there was only one agenda for the 44th GST Council meeting which emanated from the 43rd GST Council meeting held on 28th May, 2021.

2.1 In the 43rd meeting of the GST Council, in agenda item No.11 there were two items under consideration:

- First, to extend the scope of the ad hoc exemption notification to include the import of COVID related materials on payment basis and provided free to the people, to the State/ Centre or State agencies.
- Second, to include certain more COVID related items and reduce taxes on them.

2.2 There was consensus on the first item in the said meeting and the notifications have already been issued, which provides for exemption for individuals and institutions who import COVID related notified items on payment basis and provide these free of cost for COVID relief.

2.3 On the second item, there were different viewpoints and accordingly, a Group of Ministers (GoM) was constituted on 29/05/2021 with Hon’ble Chief Minister of Meghalaya as the Convenor with Members from seven other States. In total, there were eight Members including the Convenor (**Annexure A**).

2.4 He then requested the Hon’ble Chief Minister of Meghalaya being the Convenor of the GoM to present the report along with the recommendations of the GoM to the Council.

3. The Hon’ble Member from Meghalaya and the Convenor of GoM thanked the Hon’ble Chairperson for providing him the opportunity to deliberate on this very important issue and table recommendations of the GoM for the Council to consider. He also thanked all the Members of the GoM for their valuable inputs. He made a presentation (**Annexure III**) outlining the recommendations of the GoM as well as the principles they had adhered to in the GoM. He stated that the GoM had considered giving relief to the common man in these difficult times as the paramount consideration. The GoM also sought to minimize the impact of the exemptions on the manufacturing sector and to ensure that the manufacturing sector was not adversely affected. He stated that the Committee looked at the overall GST structure and avoided tinkering with the fundamental GST rate structure besides minimizing the impact of their recommendations on the resources of the Central as well as the State Governments.

3.1 He stated that two options of zero rating and a lower rate of GST like 0.1% were considered along with the option of full exemption. He mentioned that the Hon’ble Member from Kerala had sent a letter reiterating that zero-rating or 0.1% rate should be considered. The Hon’ble Member from Odisha also suggested for zero-rating or 0.1% rate for vaccines.

3.2 He informed the Council that the GoM felt that while exemptions would lead to Input Tax Credit related issues in the long run; zero-rating would require amendments under the GST Laws and it may tinker with the fundamentals of the GST rate structure. Also, a 0.1% rate would affect

manufacturing units adversely in the short, medium as well as in the long term. Therefore, looking at all these aspects, the GoM did not recommend zero-rating or a 0.1% rate.

3.3 He then stated that tax rate for vaccines was the main issue which was considered, and that 85-90% of vaccines were being procured by the State or the Central Governments, out of which over 50% were being procured by the Central Government, which indicated that for vaccines, the major impact of the rate would not fall upon the end consumers. Therefore, keeping in mind the adverse impact of rate reduction in manufacturing, the Deputy Chief Minister of Maharashtra had also recommended keeping GST rate on vaccines at 5% and not at a lower rate.

3.4 He also stated that the GoM had felt that creating domestic demand in the long run was very important and bringing down the rates to 0.1% or zero-rating would impact that adversely and therefore they had decided not to opt for zero-rating or a 0.1% rate. The GoM discussed each of the items individually and broadly categorized them into five categories as follows and presented their recommendations:

- A. Vaccines
- B. Medicines
- C. Oxygen, oxygen generation equipment, and related medical devices
- D. Testing kits and machines, and
- E. Other covid-19 related relief materials

He then presented the recommendations of the GoM based on the discussions on these goods as detailed below.

3.5 Vaccines

He stated that for vaccines, the GoM opined that there should not be any change and it should remain at 5% only as mentioned earlier. Though some of the States in the GoM had suggested that the GST rate should be brought down, but for the reasons mentioned earlier, it was felt that it would create more issues in the long-run. Besides, the direct impact to the end consumers was not there as the Centre and the State Governments were procuring most vaccines. Further, as it has recently been decided that the Central Government would be procuring all the vaccines and paying for the same, there would not be any impact on the end consumers.

3.6 Medicines

He stated that on medicines, there was a suggestion from the Hon'ble Member of Maharashtra to either exempt or zero-rate or to bring down the rate to 0.1% on Tocilizumab and Amphotericin B as these were used for treatment of severe Covid-19 and Black Fungus infections post-COVID complications respectively. Though the GoM did not want to opt for zero-rating or a 0.1% rate due to concerns about structural issues, the GoM had suggested that these medicines be exempted in accordance with the suggestions of Hon'ble Member from Maharashtra and the other States which had supported that view, even though in the short run, there might be some impact on the manufacturing sector. As at the moment these medicines were largely imported, the issues of ITC blockage etc. may not arise in the short period. As regards other medicines, it was decided to bring down the rate to 5% as the cost was being borne by the patient and directly impacted them.

3.7 Oxygen, oxygen generation equipment, and related medical devices

He stated that the GoM discussed the other items that were very critical for the treatment of COVID-19

and looked at the direct impact on the end consumers. It was recommended to keep rate of 5% for all the materials and machines that were directly used for COVID-19 treatment now, as it would help the institutions in the long run which would eventually benefit the end consumers. This shall help in developing health infrastructure.

3.8 Testing kits and Machines

He stated that in case of testing kits, they were also very crucial and though some States were paying for them but in many cases, they were being paid for by the end consumers directly. Therefore, the GoM decided to give relief to people and recommended rate reduction on COVID-19 testing kits, diagnostic kits namely D-Dimer, IL-6, etc. Regarding RT-PCR machines, other genome sequencing and RNA extraction machines, the GoM opined that as most of the machines had been purchased, there was no direct impact on the patients as such. Therefore, no change was recommended. Similarly, for raw materials for COVID-19 testing kits, no change was suggested.

3.9 Other covid-19 related relief materials

He stated that hand sanitizer directly affected the consumers and some suggestions had come to reduce the rate to 12% from 18%. The Hon'ble Member from Goa had suggested that even 6% is a large decrease but post discussions, it was decided to reduce the rate to 5%. There was a concern that other similar products may also be impacted and people might ask for relief on those products as well. However, the GoM opined that if relief was given in a time bound manner, then it would not have too much of an impact on other complementary products.

In the case of pulse oximeters, it was felt that relief could be given on it in a time bound manner by bringing down the rate from 12% to 5%. Similarly, for temperature check equipment there were recommendations to reduce the rate by 6% (from 18% to 12%). Regarding gas/ electric and other furnaces for crematorium, there was also a Court case and the GoM had been asked to give recommendation on it. Therefore, considering not just the current situation which the country was facing but also long-term environmental impact, it was recommended to reduce rates on them from 18% to 12%. Most of the items like PPE kits, N95 masks were already in the lower rate bracket (i.e., 5%) and therefore no change was recommended on these. In the case of ambulances, being an automobile, it was opined that they should remain at 28% only. For portable hospitals, the GoM felt that they should remain at 18% only.

3.10 He stated that while making recommendations, they had kept public interest in the forefront and had opined that rate should be reduced on all those items which would directly benefit the public. Zero-rating or a 0.1% rate was not recommended as it would adversely impact the manufacturers in long run as well as short run. Regarding vaccines, it was felt that a 0.1% rate would impact manufacturing; zero-rating would require amendments to the GST Laws and exemption would lead to ITC issues. It was also noted that as the Hon'ble Prime Minister had announced that all the vaccines would be procured by the Central Government, it would not impact the public now.

4. The Secretary, GST Council thanked the Hon'ble Convenor of the GoM for his elaborate presentation and opened the floor for discussion.

5. Hon'ble Member from Madhya Pradesh welcomed the decisions taken by the GoM. He stated that the GoM had suggested that for medicines and other items which were directly procured by the public and where the GST burden was borne by the public, GST rates should be kept at a minimum. The GoM further considered that the changes in GST rates should not impact the Country's resources. He thanked the GoM for considering these issues. He then stated that as vaccines were mostly being procured by the Central Government and the GST on vaccines would be paid by Central Government

only, the GoM has recommended no change in rates, and that this was a welcome step. He then expressed his gratitude for Hon'ble Prime Minister's decision of bearing the entire expenditure pertaining to vaccines by the Union Government.

6. Hon'ble Member from Bihar thanked the Co-convenor of the GoM for coming up with the recommendations on various issues pertaining to the public at large in such a short span of time which had made it possible to hold the GST Council meeting quickly again for a decision. He also thanked Hon'ble Prime Minister and all his colleagues for their concern towards the public in announcing free vaccination for the people of India. He fully supported the GoM report and welcomed the report for exempting medicines required for the treatment of Black Fungus and for reducing rates on other medicines, medical grade oxygen, concentrators, ventilators, COVID testing kits etc. He stated that the demand pertaining to reducing the rates on thermometers and hand sanitizers was first made by Bihar and the GoM had accepted that and for that he expressed his gratitude towards the Hon'ble Chairperson and the Members of the GoM. He thanked GoM for reducing the rates on gas/ electric and other furnaces for crematorium for which a request had been made by him. This report took care of the domestic manufacturers as well. Simultaneously, reducing the rates on medicines needed for the treatment of COVID, as recommended by the Union Ministry of Health and Family Welfare of the Union of India would give great relief to the public. He expressed full support for the GoM recommendations and requested the Council to accept it with consensus and implement the recommendations to provide relief to the maximum people at the earliest.

7. Hon'ble Member from Manipur stated that the GoM had taken into consideration the deliberations which took place in the 43rd GST Council meeting. He stated that there were numerous demands for zero-rating and a 0.1% rate but the Convenor of the GoM had explained that with a view to promoting the manufacturing sector and developing the economy, these could not be considered. He then stated that he has particularly requested for rate reductions in case of ventilators and hand sanitizers and that had been taken into consideration by the GoM. He stated that what he found was, that those items which would directly affect the public in fighting with COVID had been taken into consideration and relief on such items had been provided to the public. He stated that the GoM had adopted a very balanced approach. On the one hand, they had provided relief to the people in fighting COVID and on the other, they had also taken into consideration the fact that States would need revenues from GST. He stated that Manipur depended a lot on GST. He fully supported the recommendations of the GoM.

8. Hon'ble Member from Assam appreciated the sincere efforts made by the GoM to resolve some of the important issues on COVID-19 related items. She stated that the GoM had done a very commendable job by submitting the report in a very short period of time. The GoM had rightly concluded that the concept of zero-rating was limited to exports under GST laws. There was no provision of zero-rate in domestic supply and it was not possible to make amendments in the CGST, SGST and IGST Acts in such a short period of time. Regarding application of a 0.1% rate, the GoM felt that there was no point in creation of separate rate for domestic supplies which would only lead to inverted rate structure and would not be beneficial to anyone. She then stated that the Committee had very meticulously gone through each and every COVID related item and then made their observations and recommendations. She fully agreed with the views of the GoM and supported the recommendations of the GoM.

9. Hon'ble Member from Punjab stated that he appreciated the hard work done by the Hon'ble Members of the GoM, however, having read the report, he felt disappointed. He stated that there were two ways to look at the report, either every item could be examined individually and then it could be decided what the appropriate rate was, or one could holistically look at the issue. Healthcare services were exempt per se and this had been so even under Service Tax and it included any medicine which

was given as part of healthcare in allopathy, homeopathy, naturopathy and even yoga. So, all supplies of medicines were also actually exempt, and there was a liberal healthcare policy in India as far as taxation was concerned. He then stated that it was being debated whether to restrict vaccines only for Government hospitals as private hospitals would probably make a profit, but the hospitals were treating people and it would be difficult for them to get registration and start billing 2.5% CGST and 2.5% SGST and then file returns. The optics of the GST being in the final bill were not good and as profit had been restricted to only Rs. 150 on vaccination, there was no rationale in saying that the hospitals would be making profit on vaccination. He further stated that he did not think that the Council would want the revenues to come from crematoriums and cremation services. Similarly, in RT- PCR machines it had been decided to retain the rate of 18%. He stated that even if these machines were bought at concessional rates, most State Governments had set the rates and he did not think profiteering was possible in this. He stated that he was in favour of zero-rating or a 0.1% rate. He suggested that exemptions may be given till 31st March, 2022. He stated that he would not be able to go along with the proposals of the GoM. He requested for the appointment of a Vice-Chairperson to the Council as also to operationalize the Dispute Resolution Mechanism.

10. Hon'ble Member from Tripura stated that Convenor of the GoM had given a very elaborate presentation. The recommendations showed a very balanced view. He further stated that Hon'ble Chief Minister of Meghalaya had rightly pointed out the concerns in the zero- rate and 0.1% rate and he had rightly made the point that tinkering with the fundamentals of GST or GST Council was perhaps not wise and most articles that would benefit the common man had been exempted and on vaccines he had elaborately explained why they could not be exempted. On sanitizers, as discussed in the previous meeting, rates had been reduced. So, this recommendation given by the GoM had good logic, and a wide perspective. He wholly and fully supported the recommendations made by the GoM.

11. Hon'ble Member from Jharkhand thanked Hon'ble Chairperson for constituting the GoM. He stated that all the Members of GoM deserved appreciation for their hard work, but Jharkhand did not agree with these recommendations. He seconded the view of the Hon'ble Member from Punjab and said that they demanded that for COVID-19 related materials and medicines GST should be at a 0.1% rate to benefit the common man. He requested for a 0.1% rate on COVID related materials and medicines and asked for the relief to be provided till 31st March, 2022.

12. Hon'ble Member from Rajasthan thanked Hon'ble Prime Minister of India for announcing free vaccines for the people above 18 years of age. Then, he mentioned that in Rajasthan the positivity rate was quite high and there was a danger of Black Fungus as a number of people were getting admitted to the hospitals but there was a dearth of medicines. He stated GoM had made changes only in some goods out of the recommendations made by the Fitment Committee and then questioned the purpose of constituting a GoM, as the Council could have accepted the Fitment Committee recommendations only in that case. He also asked for concessions/ relief to be given beyond 31st August ,2021 keeping in view the anticipated third wave of COVID around September/ October. He stated that exemptions should be extended at least till 31st March, 2022.

He also requested the release of pending GST Compensation for FY 2020-21 amounting to Rs. 4,635 crores to cope up with the situation and to continue the existing welfare schemes and announce new schemes. He disagreed with the proposals given by the GoM and stated that if not zero-rated then at least a 0.1% rate should be considered and that it would not impact the finances of the Government much.

13. Hon'ble Member from Himachal Pradesh thanked GoM for coming up with the recommendation in a very short span of time. He stated that their recommendations on the one hand gave relief to the people in these difficult times and on the other hand also took care of the domestic

manufacturers in the long run. He fully supported the recommendations of GoM and thanked Hon'ble Prime Minister of India for free vaccines to all.

14. Hon'ble Member from Chhattisgarh expressed his disagreement with the recommendations made by the GoM and registered his protest at the formulation of the GoM. He stated that the suggestions made by the GoM did not appear to show consistency in the rates that had been suggested for various items and the reasoning that had been given. He referred to the Section 9(1) CGST Act, 2017 which stated that "at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person." So, the intent of the Parliament clearly states that the rates of CGST could be up to 20% and hence, zero-rated taxes were permissible under GST laws. So, he could not be in agreement with the suggestion of the Fitment Committee which stated that zero rating was against the provisions of the law. He further referred to the Section 17(2) and Section 54(3) of the CGST Act and stated that there were provisions in the law for zero-rated supply and it was erroneous to state that the Act did not have a provision. He also stated that when nil rates had been provided for Tocilizumab and Amphotericin B, then there could be nil rates on other items also. He suggested that the period of relief in taxation should be beyond August and should be extended to March, 2022 or a flexible date. He stated that Chhattisgarh was in the process of setting up of many labs. Government too could set up labs as per the recommendations made by Ministry of Health of Government of India to enable maximum testing through RT-PCR. So, rates on machinery pertaining to RT PCR tests too should be reduced to check the drain on the exchequer.

15. Hon'ble Member from Delhi stated that while GoM had put in lots of efforts, he was not in agreement with their recommendations and demanded that vaccines, oxygen cylinders, concentrators, PPE kits, masks, oximeters, and thermometers should either be exempt or zero- rated. He further stated that public was looking at the outcome of the meeting with the hope that the cost of masks, sanitizers, thermometers, etc. would be reduced from their monthly budget. He also stated that every State Govt. was trying to increase the number of ventilators in small hospitals to cope up with the anticipated third wave of the COVID-19 and such hospitals also have hope that after this meeting, there would be a new price which would have no GST. He opposed the GoM recommendations and sought retrospective effect (i.e. form 3rd May) to be given to the ad-hoc exemptions on the goods imported on payment basis stating that it would benefit those people who had donated the COVID related goods to the Government and hospitals in the peak time.

16. Hon'ble Member from Karnataka stated that for Zero Rate supply as given in Section 16 of the Act, is only for exports and not for supply within India. Thus, zero rating was not brought into the GoM. For 0.1% the ITC on the input goods / services would be high and there would be inverted duty structure and blockage of capital. Then domestic producers would be affected. Rates on crematoriums and ambulances and temperature checking equipment could be further reduced. He thanked the Chairperson for giving compensation to the States which could be used for COVID relief work. He accepted the report of the GoM as pragmatic but suggested that the time period of relief could be extended beyond 31.08.2021. Further, the rate on temperature checking equipment is used by the common man could also be considered for reduction. He thanked the Hon'ble Chairperson for the timely arrangement of State compensation.

17. Hon'ble Member from Arunachal Pradesh thanked the Hon'ble PM for taking the responsibility of supplying the vaccine free of cost to the States for all people above the age of 18 years. He agreed with all the recommendations of the GoM.

18. Hon'ble Member from Uttar Pradesh thanked the Hon'ble PM, the Hon'ble FM and the Union Government for the free vaccination initiative. He stated that the GoM recommendations would

benefit the common man and that the report was balanced. If the tax rates were reduced to zero, it would affect revenue. He stated that they were in agreement with the report and the report should be accepted by consensus.

19. Hon'ble Member from Telangana stated that they accept the report prepared by the GoM. He stated that since vaccines were being supplied free of cost by the Central Government the revenue of the States would not be affected. He stated that he accepted the report completely. He requested an increase in the FRBM limit by 1% as it would increase demand, boost the economy and employment and it would facilitate revenue inflow.

20. Hon'ble Member from Sikkim stated that the report needed to be appreciated. It reduced the rates substantially on the COVID-19 related materials. He stated the Government of Sikkim endorsed the recommendation of the GoM to avoid zero rating or concessional rates of 0.1% of GST on COVID 19 related individual items. Hence the recommendation of GoM on revised rates structures reducing the GST rates substantially on COVID relief items from 12% to 5 % on some items from 18% to 12% and allowing exemption on Tocilizumab and Amphotericin B for which there was little manufacturing capacity in India, was supported and endorsed by Government of Sikkim.

21. Hon'ble Member from West Bengal stated that the Member from Kerala had sought zero rating. Therefore, the report could not be considered unanimous and the contents of his letter needed to be elaborated. Further, the Hon'ble Member from Odisha had also requested for zero rating before the Council. Two Hon'ble Members had proposed 31st March, 2022 as the end date for exemptions. By that time, only 20% would be vaccinated. In view of a possible third COVID wave, this date should be reconsidered. He stated that zero rating should be considered and an ordinance could be passed which could amend the laws and later a bill could be taken to parliament. Further, for a 0.1 % rate, no ordinance would be required. This route could be adopted if the ordinance route was considered as too long. He then stated that even by reducing the rate to 5%, there would still be an inverted duty structure, so if the reduction to 5% could be made, then a 0.1% rate could also be considered. He stated that as there were two items which were nil rated as per the report of GoM, the domestic producers of these medicines would be affected adversely. In these cases, they would not be able to take advantage of the input tax credit. He urged the Chairperson to take the zero rating or 0.1% route and said that he strongly disagreed with the report. He further stated that the two medicinal items which had been put at Nil rate would adversely affect domestic producers. He also stated that rates on certain items like sanitizers, masks, PPE kits had not been changed. He stated that he strongly opposed the GOM recommendations for the reasons advanced above.

22. Hon'ble Member from Gujarat appreciated the GoM for submitting their report in a very short time window. He stated that if there was anything that the States would like to suggest on the subject matter of GoM, the same could be considered. However, the GoM report should be considered positively. The GoM was entrusted with the responsibility of coming to a consensus of GST rate relaxations for COVID related items after analysing the prevailing rates and taking into consideration the interest of all stake holders. He requested for the acceptance of the GoM report. He thanked the Hon'ble Prime Minister for understanding the issue of vaccination with the help of the Hon'ble Union Finance Minister, and undertaking this initiative of shouldering the vaccine expense.

23. Hon'ble Member from Goa congratulated the Central government and the Hon'ble Prime Minister and the Union Finance Minister for resolving the issue of vaccines. He stated that the GoM report has considered all the issues like impact on economy, finances of the Centre and the State, domestic manufacturers and also the overall context has been carefully analysed. The GoM report was unanimous and had taken a balanced view. Zero rating was meant for exports and could not be considered in the current scenario. The GoM had considered the long-term impact on the economy as

well. Further, he stated that issuing an ordinance was not the right option. He stated that the Council, as a constitutional body, had been appreciated internationally and it should work by consensus. He congratulated the Convenor of the GoM for giving a well-considered report. He congratulated the Chairperson and the Honourable Prime Minister for living upto the expectation of their countrymen and that the main issue regarding vaccination had been taken care of by the Central Government.

24. Hon'ble Member from Tamil Nadu stated that GoM report was very meticulous and detailed. He stated that some issues such as vaccination had been taken care of. He stated that he was not in acquiescence with 5% but was looking for zero rating since the time period was very short and that there would be no fundamental change at a financial level. He stated that to bring in zero rating only an amendment may be needed in the IGST Act. He further stated that he was not comfortable with this notion of unanimity in the process and that he was supportive for zero rating and not for 5%.

25. Hon'ble Member from Kerala stated that the decision of the Union Government to provide vaccination had given them relief concerning State finances for vaccination. Further, he stated that he was relieved as the state had announced universal vaccination even though they had serious constraints of finances. He stated that he could not attend the GoM fully due to preparations for the State Budget, but had submitted a letter later to the Convenor of the GoM, stating his disagreement with the decision to not zero rate or reduce tax rate on all COVID-19 related medicines and oxygen therapy equipment to 0.1%. Further, 75% of vaccines were coming from the central pool and 25% from the private sector. In the private sector, they would transmit the tax burden to the common people, and that zero rating would be helpful there.

26. Hon'ble Member from Haryana stated that he had recommended that the GIC could finalise regarding drugs that were recommended by the Ministry of Health and Family Welfare. He further requested the Council that the tax rate on crematoriums should be further reduced from 12% to 5% as that would help reduce pollution. He also stated the Council should extend the last date for exemption by another two months.

27. Hon'ble Member from Uttar Pradesh stated that the discussions should only be in respect of the GoM and associated issues. He stated that he believed that the tradition of the Council had been to decide issues in consensus and all Members should respect that.

28. Hon'ble Chairperson stated that they had all come together to balance revenue and not to burden the consumer.

29. Hon'ble Member from Kerala clarified the background and intention behind his writing the letter to GoM specifying that he just wanted to place his opinion on record and it was not to be construed dissent note.

30. Hon'ble Convenor of the GoM stated that there was a need to consider the immediate impact of specific items and take an immediate decision. He also clarified that nil rate means that the manufacturers would not get input tax credit. However, since the two items to be nil rated were largely imported, therefore, manufacturers would not be affected. He also clarified that the letter received from the Hon'ble Member from Kerala clearly mentioned that it was not a dissent, and that he wanted to record his viewpoint which supported zero rate or a 0.1% rate. He stated that the GoM had gone through all aspects to find a balance within the framework of Constitution and fundamental principles of GST while trying to give maximum relief to the people. He requested all Members to accept the recommendations of the GoM.

31. Upon a direction to explain the statutory provision relating to zero rating, JS, TRU stated that the issue as to whether zero rating is permissible for domestic supply is crucial to the whole discussion.

One opinion expressed was that there were already provisions in the CGST Act which allows for zero rating, and that there was a way which allowed for it to be done. He stated that zero rating meant that GST would not be imposed on the final product, and at the same time, refund of accumulated ITC on input goods and services to be claimed/refunded. He then stated that there were some essential steps for granting zero rating. The first step was to identify those supplies where zero rating would apply. To identify these supplies, there was only one provision in the IGST Act, which is Section 16. This section prescribes which supplies would be entitled to zero rating. Once Section 16 was applicable to certain goods and services one could go to the next step which was to apply zero rate, that is to prescribe in law that ITC would be available even if no GST on such goods or services applies. This is achieved through section 17 (2) of the CGST Act. Third step is to allow in law to refund of accumulated ITC, which is achieved through section 54 (3) of the CGST Act. That first step was only satisfied by export or supplies made to SEZ. Hence amendment would be required in section 16 of the IGST Act. Another issue raised was that if perhaps only an amendment in the IGST act was required, and not in the CGST and SGST Act. In this context he submitted that currently zero rating is only for interstate supply, that is export and supplies to SEZ, and accordingly, the supplies to which zero rating apply is prescribed only in the IGST Act, however, if zero rating is also to be considered for intra state supply, which does not fall within the ambit of IGST, then some provisions would need to be built into CGST and SGST Acts as well. Hence, for zero rating of Covid-19 relief item, which would be both inter-state and intra state, amendment would be needed in IGST Act, CGST Act and all SGST Acts.

32. The Secretary further added that in view of above discussion, it is clear that an amendment or ordinance by the Centre would not suffice and all States would need to amend their respective acts as well. He also clarified that in zero rating, input credit of capital goods would need to be carried forward, and would not be immediately available. He elucidated that if rate was brought down to 0.1%, then not only the credit of capital goods would need to be carried forward, but also the credit for input services would need to be carried forward, and only credit of the input goods would be available. So, the impact of these two would go into the cost of product. He then stated that while benefit should go to the customer, awareness was required as to how domestic industry or the domestic manufacturers would react to such changes, so that they would not be disagreeable to changes made. He then stated that interactions had been held with the two vaccine manufacturers, and they had stated that if the vaccine was made zero rated or 0.1%, then they would need to keep separate books of accounts for input and output of the products. Thus, the manufacturers would need to maintain separate books for the period of the relief and they were uncomfortable with such a scenario. On the exemption of the two medicines, referred to by convener of the GoM, he stated that these two medicines were imported, and this would have salutary effect on the cost, and the exemption would be over by the time any domestic manufacturer started making it. On the exemption, he stated that he wished to inform the Council that if any goods are exempted, they would not get ITC on input goods, services and capital goods. He stated that this could lead to an increase in cost. He then stated that 75% vaccines were being procured by the Central Government, and that 25% of vaccines would be purchased by hospitals. Further he stated that even though 25% of the vaccines would be purchased by hospitals, but it was not mandatory for anyone to go to private hospitals, and anyone could go to the Government hospital and get vaccinated for free. So if anyone takes the decision to go to a Private hospital, then the cost of GST would be a minor part of the cost of the vaccines, so this would be a minor consideration. He also stated that GST on vaccine is to be paid by its supplier. Therefore, no compliance burden is added for hospital. He clarified that out of the tax being paid, 70% would go to the State governments, and only 30% would go to the Central Government. He informed that the black fungus drugs had already been covered under ad hoc exemption. He expressed that he would discuss the matter raised by the Member from Delhi, about retrospective application of the exemption with officials.

33. Hon'ble Chairperson thanked the Hon'ble Convenor and all Members of the GoM

particularly for the prompt report as well as for having looked at the technical matters in great detail. The exemption could be extended to September and it could be reviewed then if it was needed to be extended further based on the advice of the Ministry of Health Ministry and Family welfare and the situation at that time. The Chairperson stated that it could be explained as to how the functioning of GIC was critical. She stated that if a decision was to be taken on extending the exemption beyond September, the GIC being a body of officials from some States, could take guidance from the political leadership and those who are not a part of the GIC could contact it and state that they would like it to be extended. The GIC, with concurrence of the leadership, could take the call, instead of the GST council meeting again for one or two agenda items and the GIC could function with the guidance of the Council. The importance of GIC for execution purposes, particularly in a time like this was not to be lost out on. Regarding the FRBM limit, mentioned by the Telangana State, she stated that the Finance Ministry shall take a call on the same and it is not for the Council to decide on it. She also clarified that the Council had been briefed as to why two items had been nil rated. She proposed that GST rates on gas/electric and other furnaces for crematoriums could be reduced from 18% to 5% considering the environmental impact. She further proposed that on the temperature checking equipment GST could be reduced from 18% to 5% and on ambulances, the rates could be reduced from 28% to 12%. She stated that mutual hand holding was required to manage the Pandemic and nobody wanted a third wave. She said that compassion was being taken on board by saying that the vaccine shall be given for free and that she was grateful to the States who have thanked the Hon'ble Prime Minister. Vaccine policy was not a GST matter but since it had been raised, she clarified that the issue had been discussed with the States. She stated that consensus, or trying for it, had always been the culture in the Council.

34. The Secretary concluded the meeting with the permission of the chair and stated that the GoM report was accepted by the Council with modifications as proposed by the Hon'ble Chairperson. The decisions would be implemented at the earliest to give relief to the people.

F.No. S-31011/12/2021-DIR(NC)-DOR

Government of India
Ministry of Finance
Department of Revenue

New Delhi, 29th May, 2021**Office Memorandum**

Subject: Constitution of a Group of Ministers (GoM) on concessions/ exemption from GST to COVID relief material-reg.

In pursuance of the decision of the GST Council at its 43rd meeting on 28 May 2021, a Group of Ministers (GOM) has been constituted to examine the issue of GST concessions/ exemption to COVID relief material. The GOM shall consist of the following members:


S. No.	Name	Designation and State	
1.	Shri Conrad Sangma,	Chief Minister, Meghalaya	Convenor
2.	Shri Nitinbhai Patel,	Deputy Chief Minister, Gujarat	Member
3.	Shri Ajit Pawar,	Deputy Chief Minister, Maharashtra	Member
4.	Shri Mauvin Godinho,	Minister for Transport & Panchayati Raj, Housing, Protocol and Legislative Affairs, Goa	Member
5.	Shri K.N. Balagopal,	Minister for Finance, Kerala	Member
6.	Shri Niranjan Pujari,	Minister for Finance and Excise, Odisha	Member
7	Shri T. Harish Rao,	Minister for Finance, Telangana	Member
8	Shri Suresh Kr Khanna,	Minister for Finance, U. P.	Member

2. **Terms of Reference:** The GOM shall examine the need for GST concession/exemption and make recommendations on –

- COVID vaccines, drugs and medicines for COVID treatment, and testing kits for COVID detection;
- Medical grade oxygen, Pulse oximeters, Hand sanitizers, Oxygen therapy equipment such as Concentrators, Generators and Ventilators, PPE kits, N 95 masks, surgical masks, temperature checking equipment; and
- any other items required for COVID relief.

3. The GOM on COVID relief shall be assisted by a Committee of officers from the Centre and the States as convened by the GOM.

4. The secretarial assistance to this GOM shall be provided by Joint Secretary (TRU-I), CBIC.
5. The GOM shall submit its recommendations to the Council latest by 8 June, 2021.


(Dinesh Bouddh)
Director (DoR)
Tel:011-23092686

To

1. All Members of GoM and Officers
2. Revenue Secretary, North Block, New Delhi
3. Chairperson, CBIC, North Block, New Delhi
4. Member (Tax Policy), North Block, New Delhi
5. Joint Secretary, TRU-I, Department of Revenue, North Block, New Delhi
6. GST Council Secretariat, New Delhi
7. PS to Hon'ble Minister of Finance, Government of India, North Block, New Delhi
8. PS to Hon'ble Minister of State (Finance), Government of India, North Block, New Delhi.

Annexure-I

List Hon'ble Ministers who have attended the 44th GST Council Meeting on 12th June 2021

S.No.	Centre/State	Name of Hon'ble Minister	Charge
1	Govt of India	Smt. Nirmala Sitharaman	Union Finance Minister
2	Govt of India	Shri Anurag Singh Thakur	Minister of State (Finance)
3	Andhra Pradesh	Shri Buggana Rajendranath	Finance Minister
4	Arunachal Pradesh	Shri Chowna Mein	Deputy Chief Minister
5	Assam	Smt. Ajanta Neog	Finance Minister
6	Bihar	Shri Tarkishore Prasad	Deputy Chief Minister
7	Chhattisgarh	Shri T S Singh Deo	Minister for Commercial Tax
8	Delhi	Shri Manish Sisodia	Deputy Chief Minister
9	Goa	Shri Mauvin Godinho	Minister for Transport and Panchayat Raj, Housing, Protocol and Legislative Affairs
10	Gujarat	Shri Nitinbhai Patel	Deputy Chief Minister
11	Haryana	Shri Dushyant Chautala	Deputy Chief Minister
12	Himachal Pradesh	Shri Bikram Singh	Minister for Industries
13	Jammu & Kashmir	Shri Rajeev Rai Bhatnagar	Advisor to Lieutenant Governor
14	Jharkhand	Dr. Rameshwar Oraon	Minister for Planning cum Finance, Commercial Taxes, Food, Public Distribution & Consumer Affairs.
15	Karnataka	Shri Basavaraj Bommai	Minister for Home Affairs, Law & Parliamentary Affairs
16	Kerala	Shri K.N. Balagopal	Minister for Finance
17	Madhya Pradesh	Shri Jagdish Devda	Minister for Finance & Planning, Commercial Tax and Statistics
18	Maharashtra	Shri Ajit Pawar	Deputy Chief Minister
19	Manipur	Shri Yumnam Joykumar Singh	Deputy Chief Minister
20	Meghalaya	Shri Conrad K. Sangma	Chief Minister

21	Mizoram	Shri Lalchamliana	Minister for Taxation, Home, Disaster Management & Rehabilitation
22	Odisha	Shri Niranjan Pujari	Minister, Finance & Excise
23	Punjab	Shri Manpreet Singh Badal	Finance Minister
24	Rajasthan	Shri Shanti Kumar Dhariwal	Minister for Local Self Government, Urban Development & Housing, Law and Legal Affairs Parliamentary Affairs,
25	Sikkim	Shri B.S. Panth	Minister for Tourism , Civil Aviation, Commerce & Industries
26	Tamil Nadu	Dr. Palanivel Thiaga Rajan	Minister for Finance and Human Resource Management
27	Telangana	Sri T. Harish Rao	Finance Minister
28	Tripura	Shri Jishnu Dev Varma	Deputy Chief Minister
29	Uttar Pradesh	Shri Suresh Kumar Khanna	Minister for Finance, Parliamentary Affairs, Medical Education
30	Uttarakhand	Shri Subodh Uniyal	Minister for Agriculture, Agricultural Marketing, Agricultural Processing, Agricultural Education, Garden and Fruit Industries, Silk Development
31	West Bengal	Dr. Amit Mitra	Finance Minister

List of officials who have attended 44th GST Council meeting on 12.06.2021			
Sl No	State/Centre	Name of the Officer	Charge
1	Govt. of India	Shri Tarun Bajaj	Revenue Secretary
2	Govt. of India	Dr. Krishnamurthy Subramanian	Chief Economic Advisor
3	Govt. of India	Shri M. Ajit Kumar	Chairman, CBIC
4	Govt. of India	Shri Vivek Johri	Member (GST & Tax Policy), CBIC
5	GST Council	Dr. C.S. Mohapatra	Additional Secretary
6	Govt. of India	Shri Ritvik Pandey	Joint Secretary, DoR
7	Govt. of India	Shri Sanjay Mangal	Commissioner (GST PW), CBIC
8	GST Council	Shri S.K. Rahman	Joint Secretary
9	GSTN	Shri Manish Kumar Sinha	Executive Vice President
10	Govt. of India	Shri G.D. Lohani	Joint Secretary, TRU
11	GST Council	Ms Ashima Bansal	Joint Secretary
12	Govt. of India	Shri S.S. Nakul	PS to Finance Minister
13	Govt. of India	Shri Binod Kumar	PS to MoS (Finance)
14	Govt. of India	Shri Debashis Chakraborty	OSD to Revenue Secretary
15	Govt. of India	Shri B.N. Bhaskar	Addl. PS to Finance Minister
16	Govt. of India	Shri J.S. Kandhari	Deputy Secretary, TRU
17	Govt. of India	Shri Gaurav Singh	Deputy Secretary, TRU-I

18	Govt. of India	Shri Rahul Raja	OSD to Chairman, CBIC
19	Govt. of India	Shri Shashikant Mehta	OSD, TRU-II, CBIC
20	Govt. of India	Shri Sameer Patil	Deputy Commissioner, TRU
21	GST Council	Shri Kshitendra Verma	Director
22	GST Council	Shri Harish Kumar	Deputy Secretary
23	GST Council	Shri Arjun Kumar Meena	Joint Commissioner
24	GST Council	Shri Krishna Koundinya	Under Secretary
25	GST Council	Shri Naveen Agrawal	Under Secretary
26	GST Council	Shri Karan Choudhary	Under Secretary
27	GST Council	Shri Joginder Singh Mor	Under Secretary
28	GST Council	Shri Abhishek Kumar	Superintendent
29	GST Council	Shri Adesh Nayak	Superintendent
30	GST Council	Shri Manoj Kumar	Superintendent
31	GST Council	Shri K.K. Verma	Superintendent
32	GST Council	Shri Rakesh Joshi	Inspector
33	GST Council	Shri Vijay Malik	Inspector
34	Andhra Pradesh	Dr Rajath Bhargava	Special Chief Secretary, Revenue Department
35	Andhra Pradesh	Shri Peeyush Kumar	Chief Commissioner of State Tax
36	Andhra Pradesh	Shri D. Venkateswara Rao	OSD to Special Chief Secretary, Revenue
37	Andhra Pradesh	Shri. K. Ravishankar	Commissioner State Tax GST (FAC)

38	Andhra Pradesh	Shri. J. V. M Sarma	Joint Commissioner State Tax, GST
39	Arunachal Pradesh	Shri Kanki Darang	Commissioner
40	Arunachal Pradesh	Shri Tapas Dutta	SNO (GST)
41	Assam	Shri Manish Thakur	Commissioner & Secretary, Finance
42	Assam	Shri Rakesh Agarwala	Principal Commissioner of State Tax
43	Assam	Md. Shakeel Saadullah	Additional Commissioner of State Tax
44	Bihar	Dr. Pratima	Commissioner cum Secretary, Commercial Taxes
45	Bihar	Shri Arun Kumar Mishra	Special Secretary, Commercial Taxes
46	Chandigarh	Shri Mandip Singh Brar	Excise & Taxation Commissioner
47	Chandigarh	Shri Rakesh Kumar Popli	Additional Excise & Taxation Commissioner,
48	Chhattisgarh	Shri Gaurav Dwivedi	Principal Secretary, Commercial Tax
49	Chhattisgarh	Shri Sameer Vishnoi	Commissioner of State Tax
50	Delhi	Shri Sandeep Kumar	Secretary, Finance
51	Delhi	Shri Ankur Garg	Commissioner, GST
52	Delhi	Shri Anand Kumar Tiwari	Additional Commissioner, GST
53	Goa	Shri Hemant Kumar	Commissioner, State Tax
54	Gujarat	Shri J. P. Gupta	Chief Commissioner, State Tax
55	Gujarat	Shri Dilip Thaker	Deputy Secretary(Tax), Finance Department,
56	Gujarat	Shri Riddhesh Raval	Deputy Commissioner, State Tax
57	Haryana	Shri Anurag Rastogi	Additional Chief Secretary, Excise & Taxation

58	Haryana	Shri Shekhar Vidhyarthi	Excise & Taxation Commissioner
59	Haryana	Shri Siddarth Jain	Additional Excise & Taxation Commissioner
60	Haryana	Shri Rajeev Chaudhary	Joint Excise and Taxation Commissioner
61	Himachal Pradesh	Shri Jagdish Chander Sharma	Principal Secretary (Excise & Taxation)
62	Himachal Pradesh	Shri Rohan Chand Thakur	Commissioner of State Tax and Excise
63	Himachal Pradesh	Shri Rakesh Sharma	Additional Commissioner of State Tax and Excise
64	Jammu and Kashmir	Dr. Arun Kumar Mehta	Financial Commissioner
65	Jammu and Kashmir	Shri Showkat Aijaz Bhat	Commissioner, State Taxes
66	Jammu and Kashmir	Shri Waseem Raja	Assistant Commissioner, State Taxes
67	Jharkhand	Ms Aradhana Patnaik	Secretary, Commercial Tax
68	Jharkhand	Ms Akanksha Ranjan	Commissioner, Commercial Tax
69	Jharkhand	Shri Santosh Kumar Vats	Special Secretary, Commercial Tax
70	Jharkhand	Shri Brajesh Kumar	State Taxes Officer
71	Karnataka	Shri Srikar M.S.	Commissioner of Commercial Taxes
72	Kerala	Shri Bishwanath Sinha	Principal Secretary, Taxes
73	Kerala	Shri Anand Singh	Commissioner, State Taxes
74	Kerala	Dr. S.Karthikeyan	Special Commissioner, State Tax
75	Kerala	Shri. Abraham Renn	Addl. Commissioner, State Taxes
76	Kerala	Shri Mansur.M.I	Joint Commissioner, State Taxes
77	Madhya Pradesh	Shri Manoj Govil	Principal Secretary, Finance

78	Madhya Pradesh	Shri Raghwendra Kumar Singh	Commissioner, Commercial Taxes
79	Madhya Pradesh	Shri R.K. Sharma	Joint Commissioner, Commercial Taxes
80	Maharashtra	Shri Manoj Saunik	Additional Chief Secretary, Finance
81	Maharashtra	Shri Nitin Gadre	Principal Secretary (Financial Reforms)
82	Maharashtra	Shri Rajiv Mittal	Commissioner of State Tax
83	Maharashtra	Ms. Vishakha Borse	Joint Commissioner of State Tax
84	Maharashtra	Shri Kiran Shinde	Deputy Commissioner of State Tax
85	Manipur	Shri Yumnam Indrakumar Singh	Assistant Commissioner of Taxes
86	Meghalaya	Smt S. A. Synrem	Commissioner & Secretary, Excise, Registration, Taxation & Stamps
87	Meghalaya	Shri Arunkumar Khembavi	Commissioner , SGST
88	Meghalaya	Shri L. Khongsit	Additional Commissioner, SGST
89	Mizoram	Shri Vanlal Chhuanga	Commissioner & Secretary , Taxation Department
90	Mizoram	Shri Kailiana Ralte	Commissioner of State Tax
91	Mizoram	Shri HK Lalhawngliana	Joint Commissioner, State Tax
92	Mizoram	Shri Lalthansanga	Joint Commissioner, State Tax
93	Nagaland	Shri Y Mhathung Murry	Special Commissioner of State Taxes
94	Nagaland	Shri Wochamo Odyuo	Additional Commissioner of State Taxes
95	Odisha	Shri Ashok K. K. Meena	Principal Secretary, Finance
96	Odisha	Shri Sushil Kumar Lohani	Commissioner, Commercial Taxes & GST

97	Puducherry	Shri Shurbir Singh	Secretary (Finance)
98	Puducherry	Shri L. Kumar	Commissioner (ST)
99	Puducherry	Shri K. Sridhar	Deputy Commissioner (ST)
100	Punjab	Shri A. Venu Prashad	Additional Chief Secretary(Taxation)
101	Punjab	Shri Nilkanth S. Avhad	Commissioner of State Taxes
102	Punjab	Shri Ravneet Khurana	Additional Commissioner (Audit)
103	Rajasthan	Shri Akhil Arora	Principal Secretary(Finance)
104	Rajasthan	Shri T. Ravikanth	Secretary, Finance(Revenue)
105	Rajasthan	Shri Ravi Jain	Chief Commissioner, State Tax
106	Rajasthan	Shri Ketan Sharma	Special Commissioner (GST)
107	Rajasthan	Shri Vibhu Gautam	Assistant Commissioner, GST
108	Sikkim	Shri V.B. Pathak	Additional Chief Secretary, Finance & Planning
109	Sikkim	Shri J.D. Bhutia	Commissioner, Commercial Taxes
110	Sikkim	Shri Bikash Diyali	Deputy Director (GST), CTD
111	Tamil Nadu	Shri S. Krishnan	Additional Chief Secretary, Finance
112	Tamil Nadu	Shri M. A. Siddique	Principal Secretary/Commissioner, Commercial taxes
113	Tamil Nadu	Ms B. Jothi Nirmalasamy	Secretary, Commercial Taxes & Registration
114	Tamil Nadu	Shri K. Gnanasekaran	Senior Additional Commissioner (Policy and Public Relations)
115	Telangana	Shri Somesh Kumar	Chief Secretary

116	Telangana	Ms Neetu Prasad	Commissioner of Commercial Taxes
117	Telangana	Shri N. Sai Kishore	Additional Commissioner (ST) (Legal)
118	Telangana	Ms Rupa Sowmya	Deputy Commissioner(ST) Policy
119	Telangana	Ms V.D.N. Sravanthi	Deputy Commissioner(ST) Statics
120	Tripura	Shri Apurba Roy	Secretary, Finance
121	Tripura	Dr. Vishal Kumar	Chief Commissioner of State Tax
122	Tripura	Shri Badal Baidya	Assistant Commissioner of State Tax
123	Tripura	Shri Ashin Barman	Nodal Officer, GST
124	Uttarakhand	Ms Sowjanya	Secretary, Finance
125	Uttarakhand	Shri Vipin Chandra	Additional Commissioner, State Tax
126	Uttarakhand	Shri Anil Singh	Additional Commissioner, State Tax
127	Uttarakhand	Shri Amit Gupta	Additional Commissioner, State Tax
128	Uttarakhand	Dr Sunita Pandey	Joint Comm/Nodal Officer, State Tax
129	Uttarakhand	Shri Pramod Joshi	Joint Commissioner, State Tax
130	Uttarakhand	Shri S.S. Tiruwa	Deputy Commissioner, State Tax
131	Uttar Pradesh	Shri Sanjiv Mittal	Additional Chief Secretary, State Tax
132	Uttar Pradesh	Ms Ministhy S	Commissioner, Commercial Tax
133	Uttar Pradesh	Shri Vivek Singh	Joint Commissioner (GST),Commercial Tax HQ
134	Uttar Pradesh	Shri Manoj Tiwari	Joint Commissioner (Statistics), Commercial Tax HQ

135	West Bengal	Shri Manoj Pant	Principal Secretary, Finance Department
136	West Bengal	Ms Smaraki Mahapatra	Secretary, Finance Department
137	West Bengal	Shri Khalid Aizaz Anwar	Commissioner, Commercial Taxes
138	West Bengal	Shri Rajib S. Sengupta	Senior Joint Commissioner, Commercial Taxes

Report of the Group of Ministers (GoM) For GST concession on Covid relief items



Thought process of the GoM

- Relief to the common man was paramount
- Impact of GST exemptions/concessions on domestic manufacturing and supply side management
- Long-term implications on GST rate structure across all sectors of the economy
- Effect on resources of the Governments, particularly if States are to procure the vaccines
- Approach was to discuss each item at length, and arrive at consensus.



Discussions of the GoM

Option of Zero Rating

Considering zero rating as an immediate short-term relief was not found feasible

Option of 0.1% Rate

May not be considered for Covid relief items as a short-term measure

Discussions of the GoM

GST Exemption/Concession on Covid relief items

Items were placed in the following categories and discussed at length:

- A. Vaccines
- B. Medicines
- C. Oxygen, Oxygen generation equipment and related medical devices
- D. Testing Kits and Machines
- E. Other Covid related relief material

Recommendations of the GoM

S. No.	Description	Present GST Rate	GoM Recommended GST Rate
A. Vaccines			
1.	Covid-19 Vaccines	5%	No change
B. Medicines			
1.	Tocilizumab	5%	Nil
2.	Amphotericin B	5%	Nil
3.	Anti-Coagulants like Heparin	12%	5%
4.	Remdesivir	12%	5%
5.	Any other drug recommended by Ministry of Health and Family Welfare and Dept. of Pharma for Covid treatment	Applicable Rate	5%

Recommendations of the GoM

S. No.	Description	Present GST Rate	GoM Recommended GST Rate
C. Oxygen, Oxygen generation equipment and related medical devices			
1.	Medical Grade Oxygen	12%	5%
2.	Oxygen Concentrator/ Generator, including personal imports thereof	12%	5%
3.	Ventilators	12%	5%
4.	Ventilator masks / canula / helmet	12%	5%
5.	BiPAP Machine	12%	5%
6.	High flow nasal canula (HFNC) device	12%	5%

Recommendations of the GoM

S. No.	Description	Present GST Rate	GoM Recommended GST Rate
D. Testing Kits and Machines			
1.	Covid Testing Kits	12%	5%
2.	Specified Inflammatory Diagnostic Kits, namely D-Dimer, IL-6, Ferritin and LDH	12%	5%
3.	(i) RT PCR Machines; (ii) RNA Extraction Machines (iii) Genome sequencing machine	18%	No change
4.	Genome sequencing kits	12%	No change
5.	Raw materials for Covid Testing Kits	Applicable rate	No change

Recommendations of the GoM

E. Other Covid-19 related relief material			
1.	Pulse Oximeters, including personal imports thereof	12%	5%
2.	Hand Sanitizer	18%	5%
3.	Temperature check equipment	18%	12%
4.	Gas/Electric/other Furnaces for crematorium	18%	12%
5.	PPE Kits	5%	No change
6.	N95, triple layer, surgical masks	5%	No change
7.	Ambulances	28%	No change
8.	Portable Hospital Units	18%	No change

These rate reductions/exemptions are recommended for a period upto 31.8.2021

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

In the 22nd meeting of the GST Council held at New Delhi on 6th October, 2017, it was decided that the Notifications, Circulars and Orders, which are being issued by the Central Government with the approval of the competent authority, shall be forwarded to the GST Council Secretariat, through email, for information and deemed ratification by the GST Council. Accordingly, till the 43rd meeting held on 28.05.2021, the GST Council had ratified all the Notifications, Circulars, and Orders issued up to 18.05.2021.

2. In this respect, the following Notifications, Circulars and Orders issued after 18.05.2021 till 08.09.2021 under the GST laws by the Central Government, as available on www.cbic.gov.in, are placed before the Council for information and ratification: -

Act/Rules	Type	Notification / Circular / Order Nos.	Description/Subject
Notifications under CGST Act / CGST Rules	Central Tax	1. Notification No. 16/2021-Central Tax dated 01.06.2021	Seeks to appoint 01.06.2021 as the day from which the provisions of section 112 of the Finance Act, 2021, relating to amendment of section 50 of the CGST Act, 2017 shall come into force.
		2. Notification No. 17/2021-Central Tax dated 01.06.2021	Seeks to extend the due date for FORM GSTR-1 for May, 2021 by 15 days.
		3. Notification No. 18/2021-Central Tax dated 01.06.2021	Seeks to provide relief by lowering of interest rate for a specified time for tax periods March, 2021 to May, 2021.
		4. Notification No. 19/2021-Central Tax dated 01.06.2021	Seeks to rationalize late fee for delay in filing of return in FORM GSTR-3B; and to provide conditional waiver of late fee for delay in filing FORM GSTR-3B for the period from July, 2017 to April, 2021; and to provide waiver of late fees for delayed filing

			of return in FORM GSTR-3B for specified taxpayers and specified tax periods.
		5. Notification No. 20/2021-Central Tax dated 01.06.2021	Seeks to rationalize late fee for delay in furnishing of the statement of outward supplies in FORM GSTR-1.
		6. Notification No. 21/2021-Central Tax dated 01.06.2021	Seeks to rationalize late fee for delay in filing of return in FORM GSTR-4.
		7. Notification No. 22/2021-Central Tax dated 01.06.2021	Seeks to rationalize late fee for delay in filing of return in FORM GSTR-7.
		8. Notification No. 23/2021-Central Tax dated 01.06.2021	Seeks to amend Notification no. 13/2020-Central Tax to exclude government departments and local authorities from the requirement of issuance of e-invoice.
		9. Notification No. 24/2021-Central Tax dated 01.06.2021	Seeks to amend notification no. 14/2021-Central Tax in order to extend due date of compliances which fall during the period from "15.04.2021 to 29.06.2021" till 30.06.2021, under section 168A.
		10. Notification No. 25/2021-Central Tax dated 01.06.2021	Seeks to extend the due date for filing FORM GSTR-4 for financial year 2020-21 to 31.07.2021.
		11. Notification No. 26/2021-Central Tax dated 01.06.2021	Seeks to extend the due date for furnishing of FORM ITC-04 for QE March, 2021 to 30.06.2021.
		12. Notification No. 27/2021-Central Tax dated 01.06.2021	Seeks to make amendments (Fifth Amendment, 2021) to the CGST Rules, 2017.
		13. Notification No. 28/2021-Central Tax dated 30.06.2021	Seeks to waive penalty payable for non-compliance of provisions of Notification No. 14/2020 dated 21 st March 2020 between the period from 1 st day of December, 2020 to the 30 th day of September, 2021.

		14. Notification No. 29/2021-Central Tax dated 30.07.2021	Seeks to notify section 110 and 111 of the Finance Act, 2021 w.e.f. 01.08.2021.
		15. Notification No. 30/2021-Central Tax dated 30.07.2021	Seeks to amend Rule 80 of the CGST Rules, 2017 and notify FORM GSTR 9 and 9C for FY 2020-21. Rule 80 provides for exemption from filing FORM GSTR-9C to taxpayers having AATO upto Rs. 5 crores. (Sixth Amendment, 2021 to the CGST Rules, 2017)
		16. Notification No. 31/2021-Central Tax dated 30.07.2021	Seeks to exempt taxpayers having AATO upto Rs. 2 crores from the requirement of furnishing annual return for FY 2020-21.
		17. Notification No. 32/2021-Central Tax dated 29.08.2021	Seeks to make amendments (Seventh Amendment, 2021) to the CGST Rules, 2017.
		18. Notification No. 33/2021-Central Tax dated 29.08.2021	Seeks to extend the last date for FORM GSTR-3B late fee Amnesty Scheme (provided vide Notification No. 19/2021-Central Tax) from 31.08.2021 to 30.11.2021.
		19. Notification No. 34/2021-Central Tax dated 29.08.2021	Seeks to extend timelines for filing of application for revocation of cancellation of registration to 30.09.2021, where due date for filing such application falls between 01.03.2020 to 31.08.2021, in cases where registration has been canceled under clause (b) or clause (c) of section 29(2) of the CGST Act.
	Central Tax (Rate)	1. Notification No. 01/2021-Central Tax (Rate), dated 02.06.2021	Seeks to amend notification No. 1/2017-Central Tax (Rate) to prescribe change in CGST rate of goods.
		2. Notification No. 02/2021-Central Tax (Rate), dated 02.06.2021	Seeks to amend notification No. 11/2017- Central Tax (Rate) so as to notify CGST rates of various services as recommended by GST Council in its 43 rd meeting held on 28.05.2021.

		3. Notification No. 03/2021-Central Tax (Rate), dated 02.06.2021	Seeks to amend notification No. 06/2019- Central Tax (Rate) so as to give effect to the recommendations made by GST Council in its 43 rd meeting held on 28.05.2021.
		4. Notification No. 04/2021-Central Tax (Rate), dated 14.06.2021	Seeks to amend notification No. 11/2017- Central Tax (Rate) so as to notify GST rates of various services as recommended by GST Council in its 44 th meeting held on 12.06.2021.
		5. Notification No. 05/2021-Central Tax (Rate), dated 14.06.2021 along with corrigendum dated 15.06.2021	Seeks to provide the concessional rate of CGST on Covid-19 relief supplies, up to and inclusive of 30 th September 2021.
Notifications under UTGST Act	Union Territory Tax	1. Notification No. 02/2021-Union Territory Tax, dated 01.06.2021	Seeks to provide relief by lowering of interest rate for a specified time for tax periods March, 2021 to May, 2021.
	Union Territory Tax (Rate)	1. Notification No. 01/2021-Union Territory Tax (rate), dated 02.06.2021	Seeks to amend notification No. 1/2017- Union Territory Tax (Rate) to prescribe change in CGST rate of goods.
		2. Notification No. 02/2021-Union Territory Tax (rate), dated 02.06.2021	Seeks to amend notification No. 11/2017- Union Territory Tax (Rate) so as to notify CGST rates of various services as recommended by GST Council in its 43 rd meeting held on 28.05.2021.
		3. Notification No. 03/2021-Union Territory Tax (rate), dated 02.06.2021	Seeks to amend notification No. 06/2019- Union Territory Tax (Rate) so as to give effect to the recommendations made by GST Council in its 43 rd meeting held on 28.05.2021.

		4. Notification No. 04/2021-Union Territory Tax (rate), dated 14.06.2021	Seeks to amend notification No. 11/2017- Union Territory Tax (Rate) so as to notify GST rates of various services as recommended by GST Council in its 44 th meeting held on 12.06.2021.
		5. Notification No. 05/2021-Union Territory Tax (rate), dated 14.06.2021 along with corrigendum dated 15.06.2021	Seeks to provide the concessional rate of UTGST on Covid-19 relief supplies, up to and inclusive of 30 th September 2021.
Notifications under IGST Act	Integrated Tax	1. Notification No. 02/2021- Integrated Tax dated 01.06.2021	Seeks to provide relief by lowering of interest rate for a specified time for tax periods March, 2021 to May, 2021.
		2. Notification No. 03/2021- Integrated Tax, dated 02.06.2021	Seeks to amend Notification No. 4/2019-Integrated Tax dt. 30.09.2019 to change the place of supply for B2B MRO services in case of Shipping industry, to the location of the recipient.
	Integrated Tax (Rate)	1. Notification No. 01/2021-Integrated Tax (Rate), dated 02.06.2021	Seeks to amend notification No. 1/2017- Integrated Tax (Rate) to prescribe change in CGST rate of goods.
		2. Notification No. 02/2021-Integrated Tax (Rate), dated 02.06.2021	Seeks to amend notification No. 08/2017- Integrated Tax (Rate) so as to notify CGST rates of various services as recommended by GST Council in its 43 rd meeting held on 28.05.2021.
		3. Notification No. 03/2021-Integrated Tax (Rate), dated 02.06.2021	Seeks to amend notification No. 06/2019- Integrated Tax (Rate) so as to give effect to the recommendations made by GST Council in its 43 rd meeting held on 28.05.2021.
		4. Notification No. 04/2021- Integrated Tax (Rate), dated 14.06.2021	Seeks to amend notification No. 08/2017- Integrated Tax (Rate) so as to notify GST rates of various services as recommended by GST Council in its 44 th meeting held on 12.06.2021.

		5. Notification No. 05/2021- Integrated Tax (Rate), dated 14.06.2021 along with corrigendum dated 15.06.2021	Seeks to provide the concessional rate of IGST on Covid-19 relief supplies, up to and inclusive of 30th September 2021.
Circulars under CGST Act, 2017		1. Circular No. 149/05/2021-GST dated 17.06.2021	Clarification regarding applicability of GST on supply of food in Anganwadis and Schools.
		2. Circular No. 150/06/2021-GST dated 17.06.2021	Clarification regarding applicability of GST on the activity of construction of road where considerations are received in deferred payment (annuity).
		3. Circular No. 151/07/2021-GST dated 17.06.2021	Clarification regarding GST on supply of various services by Central and State Board (such as National Board of Examination).
		4. Circular No. 152/08/2021-GST dated 17.06.2021	Clarification regarding rate of tax applicable on construction services provided to a Government Entity, in relation to construction such as of a Ropeway on turnkey basis.
		5. Circular No. 153/09/2021-GST dated 17.06.2021	GST on milling of wheat into flour or paddy into rice for distribution by State Governments under PDS.
		6. Circular No. 154/10/2021-GST dated 17.06.2021	GST on service supplied by State Govt. to their undertakings or PSUs by way of guaranteeing loans taken by them.
		7. Circular No. 155/11/2021-GST dated 17.06.2021	Clarification regarding GST rate on laterals/parts of Sprinklers or Drip Irrigation System.
		8. Circular No. 156/12/2021-GST dated 21.06.2021	Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification no. 14/2020- Central Tax dated 21st March, 2020.

	9. Circular No. 157/13/2021-GST dated 20.07.2021	Clarification regarding extension of limitation under GST Law in terms of Hon'ble Supreme Court's Order dated 27.04.2021.
	10. Circular No. 158/14/2021-GST dated 06.09.2021	Clarification regarding extension of time limit to apply for revocation of cancellation of registration in view of Notification No. 34/2021 – Central Tax dated 29.08.2021

3. The GST Council may grant ratification to the Notifications, Circulars and Orders as detailed in para 2 above.

4. It is further informed that out of the Notifications, Circulars and Orders as detailed in para 2 above, the following Notifications, Circulars and Orders were issued to implement the decisions of the GST Implementation Committee (GIC) taken during the period since the 43rd meeting of the Council.

S. No.	Notification/Circular No.	Details
1.	Circular No. 156/12/2021-GST dated 21st June, 2021	Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification no. 14/2020- Central Tax dated 21st March, 2020.
2.	Notification No. 28/2021 – Central Tax, dated 30th June, 2021	Seeks to waive penalty payable for non-compliance of provisions of Notification No. 14/2020 dated 21st March 2020 between the period from 1st day of December, 2020 to the 30th day of September, 2021.
3.	Circular No. 157/13/2021-GST dated 20th July, 2021	Clarification regarding extension of limitation under GST Law in terms of Hon'ble Supreme Court's Order dated 27.04.2021.
4.	Notification No. 34/2021-Central Tax, dated 29th August, 2021.	Seeks to extend timelines for filing of application for revocation of cancellation of registration to 30.09.2021, where due date for filing such application falls between 01.03.2020 to 31.08.2021, in cases where registration has been canceled under clause (b) or clause (c) of section 29(2) of the CGST Act.
5.	Notification No. 33/2021-Central Tax, dated 29th August, 2021	Seeks to extend the last date for FORM GSTR-3B late fee Amnesty Scheme (provided vide Notification No. 19/2021-Central Tax) from 31.08.2021 to 30.11.2021.
6.	Notification No. 32/2021-Central Tax, dated 29th	Seeks to make amendments (Seventh Amendment, 2021)

	August, 2021	to the CGST Rules, 2017.
7.	Circular No. 158/14/2021-GST dated 6th September, 2021	Clarification regarding extension of time limit to apply for revocation of cancellation of registration in view of Notification No. 34/2021-Central Tax dated 29th August, 2021

5. The details of decisions of the GIC are enclosed as **Annexure-I** to this Agenda Note.

Decisions of the GST Implementation Committee (GIC) for Information of the GST Council.

The GST Implementation Committee (GIC) took certain decisions between 29th May 2021 and 5th September 2021. Due to the urgency involved, some decisions were taken after obtaining approval by circulation amongst GIC members. The details of the decisions taken are given below:

2. Decisions of GIC by circulation on 08.06.2021 on Issuance of FAQs for clarifications on Dynamic Quick Response (QR) Code in B2C invoice

2.1 It was mentioned in the agenda note that various representations had been received from trade regarding the challenges in implementation of Dynamic QR Code as per the Notification No.14/2020 dated 21st March, 2020 as amended, which were clarified vide Circular No.146/02/2021 dated 23rd February, 2021. Trade and associations have further sought clarity regarding various other compliance requirements vis-à-vis the implementation of Dynamic QR Code, especially for the supplies made through Electronic Commerce Operators (ECO). The agenda note also stated that the issues raised in these representations have been discussed with all stakeholders in consultation with the National Payment Corporation of India (NPCI) and have been examined.

2.2 Lastly it was stated that all the issues raised, were discussed in Law Committee meeting held on 12.05.2021. The Law Committee, in the said meeting, has approved the draft circular / FAQs related to Dynamic QR Code.

2.3 The draft Circular was put before the GIC and the GIC approved the proposed circular.

2.4 The recommendation of GIC has been implemented by way of issuance of Circular No. 156/12/2021-GST dated 21st June, 2021.

3. Decisions of GIC by circulation on 23.06.2021 on Waiver of penalty for issuing invoice without dynamic QR Code

3.1 In the agenda note it was stated that notification No. 14/2020-Central Tax, dated 21st March 2020 as amended by notification no. 71/2020-Central Tax dated 30th September, 2020 was issued, which requires dynamic QR code on B2C invoice issued by taxpayers having aggregate turnover above 500 crore rupees, w.e.f. 01.12.2020. Based on various interactions with banks and trade bodies, it was however noticed that banks and payment service providers were not in a ready state to roll out the facility for the dynamic QR code w.e.f. 01.12.2020

3.2 Accordingly, to facilitate the transition for implementation of scheme of Dynamic QR Code, the penalty payable under section 125 of the CGST Act, 2017 for non-compliance of the provisions regarding Dynamic QR Code, was waived vide notification no. 89/2020 -CT dated 29th November, 2020, for the period from 01.12.2020 to 31.03.2021, and then was further waived vide notification no. 06/2021 -CT dated 30th March, 2021, for the period from 01.12.2020 to 30.06.2021, subject to the condition that the said persons comply with the provisions of the said notification from 01.07.2021. Meanwhile, to address various queries/issues represented by the trade, Circular number 146/02/2021-GST dated 23.02.2021 was issued, which clarified a number of the queries raised by the trade. Further clarifications have been issued through a circular number 156/12/2021-GST dated 21.06.2021 to clarify the additional queries/issues raised by trade.

3.3 In the agenda note it was stated that as per feedback provided by NPCI, which is the nodal agency for on boarding of the banks for QR Code application, most of the banks are in advanced stage of development and certification process for Dynamic QR Code and will be able to go live and release

their application by end of June 2021. As informed by them, 15 Banks including major PSU banks such as SBI, Punjab National bank, Bank of Baroda etc. are already ready and live, while major private banks such as HDFC, ICICI, Axis Bank, Yes Bank, etc. are expected to go live by 30th June, 2021.

3.4 It was also mentioned in the agenda note that interactions have been done with major trade associations like NASSCOM, USISPF, Retailers Association of India (RAI), ASSOCHAM and other major retailers / e-commerce operators to outreach about the scheme and to understand further challenges, if any, being faced by them. NPCI has also conducted various workshops with banks and merchants for smooth on boarding of merchants and vendors. As the merchants are dependent on their banks to initiate making changes in their systems to integrate with bank applications, the requisite banks' applications need to be made available by banks with their customers (merchants). It has been informed that banks are handholding their customers in this regard, but applications of a number of banks are yet to go live yet.

3.5 Feedback has been received from the trade bodies and merchants that after the last extension granted vide notification dated 31st March 2021, restrictions and lockdowns have been imposed in various parts of the country since mid-April 2021 to contain the spread of COVID-19 pandemic. Due to this, most of the retail business had come to standstill and most of the offices/ establishments were lying closed. The unlock process has recently started with various levels in various parts of the country. This has led to delays in development and implementation of the required IT and logistical infrastructure required for the QR Code to work. The trade bodies are requesting that due to these delays and dependency on banks, they will need more time to be fully compliant with the requirement of dynamic QR code at their end are seeking an extension of another three months for the relaxations from penalty granted in respect of implementation of dynamic QR code. It has also been highlighted by them that if extension to this effect for relaxation from imposition of penalty for non-compliance of provisions of Dynamic QR Code is not made after 30.06.2021, merchants/taxpayers may be subjected to harassment and penal action, by the tax officer due to non-compliance of provisions of Dynamic QR Code.

3.6 Considering the above, there may be a need of extending the relaxation from imposition of penalty under Section 125 of CGST Act for noncompliance of the provisions of notification No.14/2020 – Central Tax, dated the 21st March, 2020, beyond 30.06.2021 for another 3 months. It is also mentioned that earlier, the relaxation from imposition of penalty under Section 125 of CGST Act for noncompliance of the provisions of dynamic QR Code, was conditional, subject to the compliance of the provisions of dynamic QR code with effect from 01.07.2021. It is proposed that considering that the banks were not ready during this period for implementation of dynamic QR code and therefore, merchants/ retailers were not in a position to comply with the said provisions, it would be desirable that the conditionality is removed for relaxation of penalty during this interim period.

3.7 Accordingly, it was proposed that the penalty payable under section 125 of the CGST Act, 2017 for non-compliance of the provisions of notification No.14/2020 – Central Tax, dated the 21st March, 2020 as amended, may be waived till 30.09.2021.

3.8 The proposals were put before the GIC and the GIC approved the proposal of waiving the penalty payable under section 125 of the CGST Act, 2017 for non-compliance of provisions of Notification No. 14/2020 dated 21st March 2020 between the period from 1st day of December, 2020 to the 30th day of September, 2021.

3.9 The recommendation of GIC has been implemented by way of issuance of Notification No. 28/2021 – Central Tax, dated 30th June, 2021.

4. Decisions of the 39th Meeting of the GIC held on 29th June, 2021

Agenda: Regarding Clarification on the issue of extension of limitations for various compliances / actions under GST in the light of Hon'ble Supreme Court's order dated 23.03.2020, 08.03.2021 and 27.04.2021 in suo-motu Writ petition (Civil) No. 3 of 2020.

4.1 In the Agenda Note it was stated that an Agenda Note for the Law Committee was received from CCT, West Bengal vide email dated 04.05.2021 for seeking clarification in respect of the applicability of the order of the Hon'ble Supreme Court dated 27/04/2021 relating to extension of period of limitation, for matters under GST. The Hon'ble Supreme Court had, in its order dated 23rd March, 2020 directed that the period of limitation in filing petitions / applications / suits / appeals / all other proceedings, irrespective of the period of limitation prescribed under the general or special laws, shall stand extended with effect from 15th March 2020 till further orders. The Hon'ble Court thereafter, in its order dated 8th March 2021 sought to regulate and bring to end the extension of period of limitation by issuing inter-alia certain directions. In view of the extraordinary situation caused by the sudden and second outburst of COVID-19 virus, the Hon'ble Court vide order dated 27.04.2021 has restored the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021, directed that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.

4.2 The Notification No.14/2021-CT dated 1st May, 2021 was issued wherein the time limit for completion or compliance of any action, by any authority or by any person, under the CGST Act, which falls during the period from the 15th day of April, 2021 to the 30th day of May, 2021 (with suitable exemptions), was extended upto the 31st May, 2021, as per the powers granted under Section 168A of the CGST Act 2017.

4.3 The Law Committee in its meeting held on 12-05-2021, deliberated on this issue and opined as follows:

(i) A reference may be sent to Law Officer and seek legal opinion. Till such time, the notifications issued under section 168A of CGST Act, to be followed.

(ii) Unilateral action may not be taken by States and a uniform stand to be taken by all States and Centre.

4.4 The matter of further relief measures was also deliberated by the GST Council in its 43rd meeting held on 28.05.2021 and the time limit for completion or compliance of any action was further extended upto 30th June, 2021 vide Notification No.24/2021-Central Tax dated 01.06.2021.

4.5 As recommended by the Law Committee, legal opinion was sought from learned Additional Solicitor General of India (ASG) about applicability of the order dated 27.04.2021 of the Hon'ble Supreme Court on various compliances and actions under GST. The legal opinion dated 14.06.2021 was received from the ASG.

4.6 The Law Committee examined the issue in its meeting dated 16.06.2021. Considering the opinion received from the learned ASG, the Law Committee recommended to issue a circular after getting the same vetted by the learned ASG.

4.7 The above agenda was deliberated in the 39th meeting of the GIC held through video conferencing on 29th June 2021 and the GIC made the following decisions:

(a) GIC approved the draft circular; and

(b) the proposal for notification under Section 168A of the CGST Act 2017 for extension of timelines for application for revocation of cancellation of registration would be examined by the Law Committee.

4.8 The recommendation of GIC has been implemented by way of issuance of Circular No. 157/13/2021-GST dated 20th July, 2021.

5. GIC Decision by Circulation 05.08.2021 regarding proposal to settle IGST amount of Rs. 24000 crore on ad hoc basis

5.1 In the Agenda Note it was stated that depending on the amount of IGST remaining un-apportioned under the IGST Head, provisional settlement was done from time to time on ad-hoc basis. Details of previous ad-hoc settlements were as under:

Month	Amount (in Rs. Crore)
February, 2018	35,000
June, 2018	50,000
August, 2018	12,000
October, 2018	30,000
December, 2018	18,000
March, 2019	20,000
April, 2019	12,000
June 2019	15,000
March 2020	6,000
Feb 2021	48,000
March 2021	28,000

5.2 These amounts were settled in a ratio of 50:50 to Centre and States and the amount apportioned to States was divided in the ratio of subsumed/ protected revenue. Based on the collection of IGST during the year (2021-22) upto June, net of refunds and the settlement of IGST during the period, both regular and provisional, it was proposed to do ad-hoc settlement of another Rs. 24,000 crore, 50% to Centre and 50% to States. This would reduce the revenue gap of States and therefore, the compensation required

5.3 The proposals were put before the GIC and the GIC approved the proposal.

6. Decisions in the 40th Meeting of the GIC held on 18 August 2021

The 40th Meeting of the GST Implementation Committee (GIC) was held via WebEx on 18 August 2021 from 03:00PM onwards.

6.2 The five agenda items, circulated through email among Members of GIC, were discussed and decisions taken are as under:

6.3 Agenda-1: Extension of time limit for filing application for revocation of cancellation of registration

6.3.1 In the agenda note it was stated that GIC (GST Implementation Committee) in its 39th meeting held on 29.06.2021, while approving the circular (157/30/2021-GST dated 20.07.2021) on the subject issue had decided the following:

“The proposal for notification under section 168A of the CGST Act 2017 for extension of timelines for application for revocation of cancellation of registration would be examined by the Law Committee.”

6.3.2 Accordingly, the issue was placed in the Law Committee. It may be noted that notification No.14/2021-CT dated 1st May 2021 was issued wherein the time limit for completion or compliance of any action, by any authority or by any person, under the CGST Act, which falls between 15th April 2021 to 30th May 2021 **was extended up to the 31st May, 2021**, as per the powers granted under section 168A of the CGST Act 2017. Subsequent to the deliberations at the 43rd meeting of the GST Council dated 28.05.2021, the said time limit for completion or compliance of any action was further **extended up to 30th June 2021** vide Notification No. 24/2021-Central Tax dated 01.06.2021 (i.r.o. due date of compliances which falls between 15th April 2021 to 29th June 2021). This notification had extended the date of filing of application for revocation of cancellation of registration till 30th June 2021, where the due date of filing of application falls between 15th April 2021 to 29th June 2021.

6.3.3 It was further stated that the GST Council in its 43rd meeting dated 28.05.2021 had approved an Amnesty Scheme whereby late fee for non-furnishing FORM GSTR-3B for the tax periods from July 2017 to April 2021 has been reduced / waived if the returns for these tax periods are furnished between 01.06.2021 to 31.08.2021. However, various representations have been received stating that many taxpayers, whose GST Returns and Tax Payment were outstanding, couldn't comply earlier due to higher late fee, and their registrations were cancelled due to non-filing of returns. With the Amnesty Scheme, they may be willing to avail benefits of the reduced late fee and furnish the outstanding returns. But, where the time limit for application for revocation of such cancellation of registration is already over, the taxpayers are not able to get their registration cancellation revoked and are not able to get the real benefit of the amnesty scheme. This is more relevant for those registered persons whose registration have been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of the CGST Act.

6.3.4 It was also stated that earlier a one-time relaxation was provided vide Removal of Difficulty Order No. 01/2020-CT dated 25.06.2020 wherein the due date of filing of application of revocation of cancellation of registration in respect of all the cancellation order passed up to 12th June 2020, was effectively extended up to 30th September 2020.

6.3.5 The Law Committee, in its meeting dated 28.07.2021, had recommended to extend the timelines for filing of application for revocation of cancellation of registration to 30.09.2021, under section 168A of the CGST Act, where the due date of filing of application for revocation of cancellation of registration falls between 01.03.2020 to 31.08.2021. Further, it was also recommended that the extension may be limited for those cases where registrations have been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of the CGST Act.

6.3.6 **Decision:** The GIC made the following decisions:

(i) Approved the proposed scheme for extension of the timelines for filing of application for revocation of cancellation of registration to 30.09.2021, under section 168A of the CGST Act, where the due date of filing of application for revocation of cancellation of registration falls between 01.03.2020 to 31.08.2021, in cases where registrations have been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of the CGST Act.

(ii) Last date to avail benefit of the late fee amnesty scheme be extended from 31.08.2021 to 30.11.2021.

6.3.7 The recommendations of GIC have been implemented by way of issuance of Notification No. 34/2021-Central Tax, dated 29th August, 2021 and Notification No. 33/2021-Central Tax, dated 29th August, 2021.

6.4 **Agenda-2: Authentication using EVC (e-verification code)**

6.4.1 In the agenda note it was stated that Sub-rule (1) of rule 26 of the CGST Rules, 2017 provides for the methods of authenticating applications, returns, appeals or any other documents required to be submitted electronically under the CGST Rules. The default method provided for such authentication is digital signature certificate or e-signature as specified under the provisions of the Information Technology Act, 2000 or any other mode of signature or verification as notified by the Board.

*“26. **Method of authentication.**- (1) All applications, including reply, if any, to the notices, returns including the details of outward and inward supplies, appeals or any other document required to be submitted under the provisions of these rules shall be so submitted electronically with digital signature certificate or through e-signature as specified under the provisions of the Information Technology Act, 2000 (21 of 2000) or verified by any other mode of signature or verification as notified by the Board in this behalf.”*

6.4.2 It was further stated that the Board, vide Notification No. 06/2017-Central Tax, dt. 19.06.2017 as amended vide Notification No. 11/2017-Central Tax, dt. 28.06.2017, has notified the following modes of verification, for the purpose of the said rule, namely: -

- (i) Aadhaar based Electronic Verification Code (EVC);
- (ii) Electronic verification code generated through net banking login on the common portal; and
- (iii) Electronic verification code generated on the common portal.

6.4.3 However, the first proviso to the said rule mandates authentication through digital signature certificate (DSC) only, for a registered person registered under the provisions of the Companies Act, 2013, as under: -

“Provided that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall furnish the documents or application verified through digital signature certificate.”

6.4.4 Considering the problems faced by such registered persons in accessing DSC during the period of nationwide lockdown imposed in view of COVID-19 pandemic, the Government has relaxed the condition to verify using DSC and allowed authentication through EVC to the companies during the period 27.04.2021 to 31.08.2021 for furnishing the return under section 39 and the details of outward supplies under section 37.

6.4.5 It was further highlighted that it is felt that the mandatory requirement of authentication using DSC for such registered persons may be done away with and they may be allowed to authenticate documents using DSC or e-signature as specified under the Information Technology Act, 2000 or EVC, at par with other registered persons. As such, the facility of authentication using such means other than DSC may be extended to companies for all forms including returns, applications, replies etc. furnished by taxpayers on GST portal. However, DSC will remain an optional facility for authentication whosoever intends to use the same.

6.4.6 It was also stated that GSTN had informed that such functionality to allow authentication of documents by such registered persons will be ready for deployment on the common portal by 31.10.2021.

6.4.7 Accordingly, until the said functionality is developed and deployed by GSTN on common portal, the option to furnish **GSTR-3B, IFF and GSTR-1** using EVC may be further extended from 31.08.2021 to 31.10.2021.

6.4.8 Thereafter, rule 26(1) may be amended to remove the special requirement of authentication through DSC for registered persons registered under the provisions of the Companies Act, 2013.

6.4.9 It was also stated that the Law Committee, in its meeting dated 28.07.2021, has recommended the proposals placed above.

6.4.10 **Decision:** The GIC made the following decisions:

(i) The option to furnish **GSTR-3B, IFF and GSTR-1** using EVC for companies may be further extended from 31.08.2021 to 31.10.2021.

(ii) Rule 26(1) may be amended with effect from 01.11.2021 to remove the mandatory requirement of authentication through DSC for registered persons registered under the provisions of the Companies Act, 2013.

6.4.11 The recommendation of GIC has been implemented by way of issuance of Notification No. 32/2021-Central Tax, dated 29th August, 2021.

6.5. Agenda-3: Restriction on furnishing of information in PART A of FORM GST EWB-01

6.5.1 In the agenda note it was stated that Rule 138 E of the CGST Rules, 2017 mandates that no person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in PART A of FORM GST EWB-01 in respect of any outward movement of goods of a registered person, who do not file two or more consecutive GSTR-3B or the statement of outward supplies in GSTR- 1 or the statement in FORM GST CMP-08

6.5.2 It was further stated that various relief measures were provided to the taxpayers during the second wave of the COVID which, *inter-alia*, included waiver / reduction of interest for delay in payment of tax and waiver of late fee for furnishing return in FORM GSTR-3B for the months / tax period of March to May 2021. However, the actual due date for furnishing return in FORM GSTR-3B was not extended.[*Notification No. 8&9/2021-CT dated 01.05.2021 and Notification No. 18&19/2021-CT dated 01.06.2021 may be referred*] Therefore, the provision of rule 138E of the CGST Rules viz. blocking of e-way bill generation if the return/ outward supply statement is not furnished for consecutive period of two months/quarters was still applicable on the taxpayers during the second wave of the COVID relief period.

6.5.3 It was also highlighted that during the first wave of the COVID pandemic, keeping in view the extraordinary circumstance, this issue was deliberated by the Law Committee in its meeting held on 08.06.2020 and 22.07.2020. It was deliberated that though the due dates for filing FORM GSTR-3B for the months of February 2020 to April 2020 had not been extended, yet the taxpayers had been granted relief in interest and late fee, if filed by dates as given in the corresponding notifications. Considering the spirit in which relaxations were granted to the taxpayers, EWB blocking was kept in abeyance during the COVID period. Accordingly, a proviso was inserted, w.e.f. 20.03.2020, in rule 138E of the CGST Rules, vide notification No. 79/2020-CT, dated 15.10.2020, as below:

“Provided also that the said restriction shall not apply during the period from the 20th day of March, 2020 till the 15th day of October, 2020 in case where the return in FORM GSTR-3B or the statement of outward supplies in FORM GSTR-1 or the statement in FORM GST CMP-08, as the case may be, has not been furnished for the period February, 2020 to August, 2020.”

6.5.4 It was mentioned that in terms of the relief measures as explained above, blocking of E way bill for the month of March, 2021 onwards had been kept in abeyance, w.e.f 01.05.2021. It should be noted that the said relief measures for the months of March, April and May, 2021 are over by end July, 2021. It was proposed that blocking of e-way bill generation for taxpayers who fail to file their FORM GSTR-3B/1 returns for a consecutive period of two months or more or statement in FORM CMP-08 for two quarters or more in respect of a registered person, may be resumed from mid-August 2021 after issuing necessary advisory on the portal. Further, CGST Rules may have to be amended, as was done last year.

6.5.5 Lastly, it was stated that the Law Committee, in its meeting dated 28.07.2021, had recommended the proposals placed above.

6.5.6 **Decision:** The members of the GIC agreed that:

(i) 19th August 2021 shall be the date from which e-way bill blocking will restart. The following proviso may, therefore, be inserted in Rule 138E of the CGST Rules, 2017, with effect from 01.05.2021:

*Provided also that the said restriction shall not apply during the period from the 1st day of May, 2021 till the 18th day of August, 2021 in case where the return in **FORM GSTR-3B** or the statement of outward supplies in **FORM GSTR-1** or the statement in **FORM GST CMP-08**, as the case may be, has not been furnished for the period March, 2021 to May, 2021.”*

6.5.7. The recommendation of GIC has been implemented by way of issuance of Notification No. 32/2021-Central Tax dated 29th August, 2021.

6.6 Agenda-4: Proposed amendment in Form GST ASMT-14

6.6.1 In the agenda note it was stated that Section 63 of CGST Act, 2017 provides for assessment of those taxable persons who have failed to obtain registration even though liable to do so or whose registration has been cancelled under sub-section (2) of section 29 of the CGST Act, 2017. Rule 100 of CGST Rules, 2017 provides the relevant procedure to be followed in cases where Section 63 of CGST Act, 2017 is applicable.

6.6.2 Further, as per rule 100, a show cause notice in Form GST ASMT-14 is to be issued to a taxable person in accordance with the provisions of section 63 of CGST Act, 2017.

6.6.3 It was further highlighted that per Section 63 of CGST Act, 2017, assessment of unregistered person can be made under two conditions-

- (i) Where a taxable person fails to obtain registration even though liable to do so; or.
- (ii) Where registration of a person has been cancelled under section 29(2) of the CGST Act 2017 but the said person was liable to pay tax.

However, from a careful reading of the form ASMT-14, it was clear that the show cause notice for assessment under section 63, as per the present Form ASMT-14, does not appropriately elaborate

reason for show cause in cases where registration has been cancelled under section 29(2). The last paragraph of the ASMT-14 reads as under:-

“Therefore, you are hereby directed to show cause as to why a tax liability along with interest not be created against you for conducting business without registration despite being liable for registration and why penalty should not be imposed for violation of the provisions of the Act or the rules made thereunder.”

As evident, this paragraph in FORM ASMT-14 does not appropriately show cause for tax liability on cancellation of registration under section 29(2) of the CGST/ RGST Act, 2017.

6.6.4 Therefore, it was proposed in the Law Committee meeting held on 19.05.2021 that the format of Form GST ASMT-14 may be amended. The Law Committee recommended amendment in the format of Form GST ASMT-14, to appropriately provide for show cause notice in respect of both the conditions mentioned in Section 63 of CGST Act, 2017.

6.6.5 **Decision:** The GIC approved the proposed amendment, along with the proposal of Tamil Nadu to also add address field (of the tax officer) in the Form GST ASMT-14.

6.6.7 The recommendation of GIC has been implemented by way of issuance of Notification No. 32/2021-Central Tax dated 29th August, 2021.

6.7 Agenda-5: Suspension of Registration under sub-rule (2A) of rule 21A of the CGST Rules, 2017.

6.7.1 In the agenda note it was stated that Vide Notification No.-94/2020-Central Tax dated 22.12.2020 sub-rule (2A) has been inserted in Rule 21A of the Central Goods and Services Tax Rules, 2017 (CGST Rules, 2017). The said clause is reproduced as under:

“(2A) Where, a comparison of the returns furnished by a registered person under section 39 with

- a. the details of outward supplies furnished in FORM GSTR-1; or*
- b. the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1,*

or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be suspended and the said person shall be intimated in FORM GST REG-31, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.”

6.7.2 In this regard, reference was made to an analytical report generated by GSTN of Turnover slab wise summary of taxpayers who have not filed specified number of GSTR-3B returns, including the quarterly filers (QRMP).

6.7.3 Thus it was suggested that GSTINs, which are liable for cancellation, might be suspended centrally through the GST portal under sub-rule (2A) of Rule 21A of the CGST Rules, 2017. It was also stated that as per data provided by GSTN, the number of active such GSTINs whose registrations are to be suspended is approximately fifteen thousand.

6.7.4 Decision: The GIC approved the centralized suspension of registration under rule 21A(2A) of the CGST Rules, as proposed in the agenda note. GIC also directed GSTN to bring out analysis and data in respect of additional parameters for consideration by GIC for centralized suspension of registration.

7. Decision of GIC by circulation on 27.08.2021 on clarification regarding extension of time limit to apply for revocation of cancellation of registration

7.1 In the agenda note, it was mentioned that the GIC, in its 40th meeting held on 18.08.2021 had recommended that where the due date of filing of application for revocation of cancellation of registration falls between 1st March, 2020 to 31st August, 2021, the time limit for filing of application for revocation of cancellation of registration may be extended to 30th September, 2021. While recommending the above extension, the GIC also desired that a circular clarifying the impact of provision for further extension of due date for filing application for revocation by tax officers under section 30 of CGST Act, 2017, may be issued.

7.2 Accordingly, the issue was deliberated by the Law Committee in its meeting held on 25.08.2021. The Law Committee approved a draft circular for issuance.

7.3 The draft circular was put before the GIC and the GIC approved the proposed circular.

7.4 The recommendation of GIC has been implemented by way of issuance of Circular No. 158/14/2021-GST dated 6th September, 2021

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

Agenda Item 3(i): Aadhaar authentication of existing taxpayers under GST

Reference is invited to the deliberations in the 39th GST Council meeting held on 14.03.2020 on the issue of amendment in rules for operationalization of Aadhaar based authentication of new and existing taxpayers. It was recommended, to begin with the notification/ rule for enabling Aadhaar based authentication in GST for only new taxpayers, as the date for enabling Aadhaar based authentication for the existing taxpayers was yet to be decided. Accordingly, Aadhaar authentication for new registration was notified w.e.f. 21.08.2020.

2. In this context, attention is drawn to sub-section (6A) to section 25 of the CGST Act relating to provisions for authentication of Aadhaar for existing taxpayers. Sub-section (6A) of section 25 of the CGST Act is reproduced hereunder for reference:

“(6A) Every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed: Provided that if an Aadhaar number is not assigned to the registered person, such person shall be offered alternate and viable means of identification in such manner as Government may, on the recommendations of the Council, prescribe: Provided further that in case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration.”

Thus, broadly the section provides for the following:

- Every registered person to undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed.
- There is a proviso for exceptional handling in cases where furnishing Aadhaar / Aadhaar authentication is not possible.
- Registration allotted to such person shall be deemed to be invalid in case of failure to undergo Aadhaar authentication/ furnishing proof of possession of Aadhaar/ furnishing alternative means of identification.

3.1 The issue has been examined. It may not be desirable to implement aadhaar authentication for all existing registered persons in one go as there are more than 80 lakhs taxpayers in the database as “existing registered persons” and enforcing Aadhaar authentication in one go for all these exiting taxpayers may raise concerns about increased compliance burden. In order to implement the provisions of sub-section (6A) of section 25 and to also help in filtering out risky and fake dealers, thus restricting misuse of ITC and refund facility, it is proposed that Aadhaar authentication of existing taxpayers is implemented in the manner as detailed below.

3.2 The requirement to get the GST registration Aadhaar authenticated may be made mandatory on such occasions where there is potential threat to revenue or the taxpayer is availing a beneficial provision under GST law. These events may include:

- a. **Refund:** Any taxpayers making a refund application may be required to get the GST registration Aadhaar authenticated before submission of such application. As a one-time measure, Aadhaar authentication may be required to be done based on 1+1 rule i.e., authentication of Primary Authorized Signatory and one person from Promoter/Partner/Director etc. as selected by the applicant. Refund application may be

considered to be filed only when the registration has been Aadhaar authenticated.

- b. **Revocation of cancellation of registration:** As an application for revocation of cancellation is akin to reviving a registration, the requirement to get the registration aadhaar authenticated may be imposed before such a cancellation is revoked. Aadhaar authentication in this case may also be done based on 1+1 rule, discussed above.

At later stages, more processes may be included where there would be a prior requirement to get the GST registration aadhaar authenticated. Some of these suggested processes/ criteria that could be considered in future are- filing an application to make core amendment of registration, generation of e-way bills, filing an application for advance ruling, request for un-blocking of e-way bills, filling appeals, taxpayers paying tax predominantly through ITC, etc.

3.3. The proposed changes in the CGST Rules, 2017 are enclosed as **Annexure-A** to this agenda note. Further, in order to provide exemption from Aadhaar authentication for certain categories in terms of section 25(6D), the notification No. 03/2021-Central Tax dated 23.02.2021 will also be required to be amended to include section 25(6A) also. The draft notification is enclosed as **Annexure-B**.

4. The Law Committee approved the above proposal in its meeting dated 28.07.2021 and recommended that the proposed draft rule may be finalized in consultation with Ministry of Law and Justice.

5. Accordingly, the issue is placed before the GST Council for deliberation and approval.

1. Insertion of new rule 10B in CGST Rules 2017:

“10B. Aadhaar authentication for registered person :— The registered person, other than a person notified under sub-section (6D) of section 25, who has been issued a certificate of registration under rule 10 shall, undergo authentication of the Aadhaar number of the proprietor, in the case of proprietorship firm, or of any partner, in the case of a partnership firm, or of the karta, in the case of a Hindu Undivided Family, or of the Managing Director or any whole time Director, in the case of a company, or of any of the Members of the Managing Committee of an Association of persons or body of individuals or a Society, or of the Trustee in the Board of Trustees, in the case of a Trust and of the authorized signatory, in order to be eligible for the purposes as specified in column (2) of the Table below:

Table

S. No.	Purpose
(1)	(2)
1.	For filing of application for revocation of cancellation of registration in FORM GST REG-21 under Rule 23
2.	For filing of refund application in FORM RFD-01 under Rule 89
3.	For refund under Rule 96 of integrated tax paid on goods exported out of India

Provided that if Aadhaar number has not been assigned to the person required to undergo authentication of the Aadhaar number, such person shall furnish the following identification documents, namely: –

- a. Her/his Aadhaar Enrolment ID slip; and
- b. (i) Bank passbook with photograph; or
(ii) Voter identity card issued by the Election Commission of India; or
(iii) Passport; or
(iv) Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988 (59 of 1988):

Provided further that such persons shall undergo the authentication of Aadhaar number within 30 days of the allotment of the Aadhaar number.”

2. Amendment of rule 89 of the CGST Rules, 2017

89. Application for refund of tax, interest, penalty, fees or any other amount.-(1) Any person, except the persons covered under notification issued under section 55, claiming refund of

any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file, **subject to provisions of rule 10B**, an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

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

Provided further that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the –

- a. supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;
- b. supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:

[Provided also that in respect of supplies regarded as deemed exports, the application may be filed by, -

- (a) the recipient of deemed export supplies; or
- (b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund]

Provided also that refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him.

3. Amendment in rule 96

96. Refund of integrated tax paid on goods [or services] exported out of India. -(1) The shipping bill filed by [an exporter of goods] shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when: -

- (a) the person in charge of the conveyance carrying the export goods duly files [a departure manifest or] an export manifest or an export report covering the number and the date of shipping bills or bills of export; and
- (b) the applicant has furnished a valid return in **FORM GSTR-3** or **FORM GSTR-3B**, as the case may be;
- (c) the applicant has undergone Aadhaar authentication in the manner provided in rule 10B;

4. Amendment of rule 23 of the CGST Rules, 2017:

“23. Revocation of cancellation of registration.-(1)A registered person, whose registration is cancelled by the proper officer on his own motion, may, **subject to provisions of rule 10B**, submit an application for revocation of cancellation of registration, in **FORM GST REG-21**, to such proper officer, within a period of thirty days from the date of the service of the order of cancellation of registration [or within such time period as extended by the Additional Commissioner or the Joint Commissioner or the Commissioner, as the case may be, in exercise of the powers provided under the proviso to sub-section (1) of section 30,] at the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that no application for revocation shall be filed, if the registration has been cancelled for the failure of the registered person to furnish returns, unless such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns:

[Provided further that all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of thirty days from the date of order of revocation of cancellation of registration:

Provided also that where the registration has been cancelled with retrospective effect, the registered person shall furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of thirty days from the date of order of revocation of cancellation of registration]

(2). . . .”

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

**Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs
Notification No/2021-Central Tax**

New Delhi, the, 2021

G.S.R.....(E).— In exercise of the powers conferred by sub-section (6D) of section 25 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Government, on the recommendations of the Council the Government, hereby makes the following amendment in the notification of the Government of India, Ministry of Finance, Department of Revenue No. 03/2021-Central Tax, dated the 23rd February, 2021 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 132(E), dated the 23rd February, 2021, namely: -

In the said notification, in the first paragraph after the words, “hereby notifies that the provisions of”, the words and letters “sub-section (6A) or”, shall be inserted.

[F. No. CBEC-20/06/02/2020-GST]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: - The principal Notification No. 03/2021 -Central Tax, dated the 23rd February, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 609(E), dated the dated the 23rd February, 2021.

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

Export of services has been defined under sub-section (6) of section 2 of IGST Act, 2017. As per the definition, any supply of services needs to fulfil five conditions for it to qualify as export of services. Section 2(6) of the IGST Act 2017 is reproduced below:

“(6) “export of services” means the supply of any service when, –
(i) the supplier of service is located in India;
(ii) the recipient of service is located outside India;
(iii) the place of supply of service is outside India;
(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;”

2. One of the conditions mentioned at clause (v) of Section 2(6) of the IGST Act, 2017 is that the supplier and recipient of the service shall not be mere establishment of distinct person as per Explanation 1 in Section 8. On perusal of the Explanation 1 in Section 8 of IGST Act, it is observed that the said explanation lists the cases wherein two establishments of a person would be treated as distinct establishments. Explanation 1 of Section 8 of IGST Act, 2017 is reproduced below:

“Explanation 1.—For the purposes of this Act, where a person has,—
(i) an establishment in India and any other establishment outside India;
(ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
(iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory,
then such establishments shall be treated as establishments of distinct persons.”

On conjoint reading of clause (v) of section 2(6) and Explanation 1 in section 8, it can be stated that the said reference to the explanation has been made in the definition of export of services to clarify that the cases where the supply is between two establishments of a person, that supply of service would not qualify as the export of services.

3. However, due to ambiguity in interpreting the Explanation 1 under section 8 of the IGST Act 2017, refund claims of the exporter of services were being rejected by the field formations. Further, in many cases even demands are being issued seeking to recover the past refunds which were sanctioned to these exporters. Accordingly, a reference in this regard was made by Delhi Government, which was deliberated by the Law Committee in its meeting held on 27th December 2019, wherein the following recommendation was made by the Law Committee:

Explanation 1 of the Section 8 of the IGST Act 2017 provides for the treatment of the different establishment of a person. The definition of person has been provided in the CGST Act 2017. Therefore, as such there is no ambiguity in the provisions of the Act. However, to ensure uniformity in interpretation of the provisions of the Act, a circular need to be issued.

4. Accordingly, the draft circular was placed before the Law Committee and was deliberated in its meetings dated 16.06.2021 and 25.08.2021. The circular as approved by the Law Committee is enclosed as **Annexure A** to this note.

5. Accordingly, the agenda note along with the draft circular is placed before the GST

Council for approval.

F. No. CBEC-20/08/03/2020– GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, the , 2021

To

The Pr. Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners
of Central Tax (All)
The Principal Directors General / Directors General (All)

Madam / Sir,

Subject: Clarification relating to export of services-condition (v) of the Section 2 (6) of the IGST Act 2017–reg.

Various representations have been received citing ambiguity caused in interpretation of the Explanation 1 under section 8 of the IGST Act 2017 in relation to condition (v) of export of services as mentioned in sub-section (6) of the section 2 of the IGST Act 2017. Doubts have been raised whether the supply of service by a subsidiary/ sister concern/ group concern, etc. of a foreign company in India, which is incorporated under the laws in India, to the foreign company incorporated under laws of a country outside India, will hit by condition (v) of sub-section (6) of section 2 of IGST Act.

2. The matter has been examined. In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issue in succeeding paragraphs.

3. Relevant legal provisions:

3.1 The export of services has been defined in sub-section (6) of the section 2 of the IGST Act 2017 as under:

- (6) “export of services” means the supply of any service when,—
- (i) the supplier of service is located in India;
 - (ii) the recipient of service is located outside India;
 - (iii) the place of supply of service is outside India;
 - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
 - (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

3.2 Explanation 1 of the Section 8 of the IGST Act provides for the conditions wherein establishments of a person would be treated as establishments of distinct persons, which is reproduced as under:

Explanation 1.—For the purposes of this Act, where a person has,—

- (i) *an establishment in India and any other establishment outside India;*
- (ii) *an establishment in a State or Union territory and any other establishment outside that State or Union territory; or*
- (iii) *an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.*

As per the above Explanation, an establishment of a person in India and another establishment of the said person outside India are considered as establishments of distinct persons.

3.3 Reference is also invited to the Explanation 2 of Section 8 of IGST Act, which is reproduced below:

“Explanation 2.—A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.”

3.4 Reference is also invited to the definition of “person” as provided under CGST Act 2017, made applicable to IGST Act vide section 2(24) of IGST Act 2017. “Person” has been defined under sub-section (84) of the section 2 of the CGST Act 2017, as under:

(84) “person” includes—

- (a) an individual;*
- (b) a Hindu Undivided Family;*
- (c) a company;*
- (d) a firm;*
- (e) a Limited Liability Partnership;*
- (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;*
- (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;*
- (h) any body corporate incorporated by or under the laws of a country outside India;*
- (i) a co-operative society registered under any law relating to co-operative societies;*
- (j) a local authority;*
- (k) Central Government or a State Government;*
- (l) society as defined under the Societies Registration Act, 1860;*
- (m) trust; and*
- (n) every artificial juridical person, not falling within any of the above;*

3.5. The definitions of company and foreign company have been provided under section 2 of Companies Act 2013, as under:

(20) “company” means a company incorporated under this Act or under any previous company law;

(42) “foreign company” means any company or body corporate incorporated outside India which—

- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and*
- (b) conducts any business activity in India in any other manner.*

Analysis of the issue:

4.1 Clause (v) of sub-section (6) of section 2 of IGST Act, which defines “export of services”, places a condition that the services provided by one establishment of **a person to another establishment of the same person, considered as establishments of distinct persons as per Explanation 1 of section 8 of IGST Act**, cannot be treated as export. In other words, any supply of services by an establishment of a foreign company in India to any other establishment of the said foreign company outside India will not be covered under definition of export of services.

4.2 Further, perusal of the Explanation 2 to section 8 of the IGST Act suggests that if a foreign company is conducting business in India through a branch or an agency or a representational office, then the said branch or agency or representational office of the foreign company, located in India, shall be treated as establishment of the said foreign company in India. Similarly, if any company incorporated in India, is operating through a branch or an agency or a representational office in any country outside India, then that branch or agency or representational office shall be treated as the establishment of the said company in the said country.

4.3. In view of the above, it can be stated that supply of services made by a branch or an agency or representational office of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, shall be treated as supply between establishments of distinct persons and shall not be considered as “export of services” in view of condition (v) of sub-section (6) of section 2 of IGST Act. Similarly, any supply of service by a company incorporated in India to its branch or agency or representational office, located in any other country and not incorporated under the laws of the said country, shall also be considered as supply between establishments of distinct persons and cannot be treated as export of services.

4.4 From the perusal of the definition of “person” under sub-section (84) of section 2 of the CGST Act, 2017 and the definitions of “company” and “foreign company” under Section 2 of the Companies Act, 2013, it is observed that a company incorporated in India and a foreign company incorporated outside India, are separate “person” under the provisions of CGST Act and accordingly, are separate legal entities. Thus, a subsidiary/ sister concern/ group concern of any foreign company which is incorporated in India, then the said company incorporated in India will be considered as a separate “person” under the provisions of CGST Act and accordingly, would be considered as a separate legal entity than the foreign company.

Clarification:

5.1 In view of the above, it is clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate **persons** under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as “merely establishments of a distinct person in accordance with Explanation 1 in section 8”.

5.2 Therefore, supply of services by a subsidiary/ sister concern/ group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013 (and thus qualifies as a ‘company’ in India as per Companies Act), to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act 2017 for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under Explanation 1 of section 8 of IGST Act 2017. Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of section 8 of IGST Act 2017. Such supplies, therefore, would qualify as ‘export of services’, subject to fulfilment of other conditions as provided under sub-section (6) of section 2 of IGST Act.

6. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

7. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)
Principal Commissioner

Agenda Item 3(iii): Clarification in respect of certain GST related issues

Various representations have been received from taxpayers and other stakeholders seeking clarification in respect of certain issues pertaining to GST laws. A gist of such issues and its analysis in light of relevant legal provisions is presented below.

2. Entitlement of ITC in respect of debit note in terms of section 16(4) of Central Goods and Services Tax Act, 2017:

2.1 Section 16(4) of the CGST Act, 2017 was amended *vide* the Finance Act, 2020 to omit the words “invoice relating to such” w.e.f. 01.01.2021. The text of the amended section 16(4) of CGST Act, 2017 is reproduced below:

“A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or ~~invoice relating to such~~ debit note pertains or furnishing of the relevant annual return, whichever is earlier.”

2.2 Through the said amendment, the date of issuance of debit note has been delinked from the date of issuing underlying invoice for the purposes of availing ITC. However, an advance ruling by Gujarat AAR (Authority for Advance Ruling) in the case of M/s I-Tech Plast India Pvt. Ltd. has held that even though amendment has been carried out in section 16(4) of CGST Act, the recipient cannot claim ITC in respect of debit notes that are issued after furnishing of **FORM GSTR-3B** for the month of September following the end of financial year to which such invoice pertains or furnishing of the relevant annual, whichever is earlier. Basically, Gujarat AAR has upheld the legal position that existed prior to the said amendment. The ruling stated that the debit note is not an independent document like an invoice. Instead, it is linked to the underlying invoice as it is issued in order to change the details that were declared in the original invoice. The ruling also held that it is the date of issuance of invoice, and not the date of issuance of debit note, which determines the relevant ‘financial year’ for the purpose of determining the due date in terms of section 16(4) of CGST Act, 2017. Representations have also been received from various field formations as well, regarding the interpretation of section 16(4) of the CGST Act, 2017, i.e. whether any availment of input tax credit, on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, will be governed by the provisions of the amended section 16(4), or the amended provision will be applicable only in respect of the debit notes issued after 01.01.2021?

2.3 The intent of law as specified in the Memorandum explaining the Finance Bill, 2020 states that “*Clause 118 of the Bill seeks to amend sub-section (4) of section 16 of the Central Goods and Services Tax Act so as to **delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit.***” Clearly, the advance ruling is contrary to the legislative intent of the said amendment. From the legal standpoint, the recipient is entitled to avail ITC in respect of a debit note by considering that F.Y. during which such debit note was issued, irrespective of the date of issuance of underlying invoice. Further, as the amended provision of section 16(4) have come into effect from 01.01.2021, any availment of ITC on or after 01.01.2021 will be governed by the provisions of amended section 16(4).

2.4 **Illustration.** A debit note dated 07.07.2021 is issued to change the value of supply, as declared in the original invoice dated 16.03.2021. As the invoice pertains to F.Y. 2020-21, the relevant financial year in terms of section 16 (4) to avail ITC in respect of the said invoice shall be 2020-21. However, as the debit note has been issued in F.Y. 2021-22, the relevant financial year shall be 2021-22 to avail ITC in respect of the said debit note in terms of section 16(4) of the CGST Act.

2.5 Accordingly, the issue may be clarified through a Circular by including the following clarification:

Issue	Clarification
<p>Section 16 (4), as amended with effect from 01.01.2021, provides that a registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.</p> <p>Doubts have been raised seeking following clarification:</p> <ol style="list-style-type: none"> Which of the following dates are relevant to determine the 'financial year' for the purpose of section 16(4): <ol style="list-style-type: none"> date of issuance of debit note, or date of issuance of underlying invoice. Whether any availment of input tax credit, on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, will be governed by the provisions of the amended section 16(4), or the amended provision will be applicable only in respect of the debit notes issued after 01.01.2021? 	<ol style="list-style-type: none"> With effect from 01.01.2021, section 16(4) of the CGST Act, 2017 was amended <i>vide</i> the Finance Act, 2020, so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit. The amendment made is shown as below: <p><i>"A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier."</i></p> <p>As can be seen, the words "invoice relating to such" were omitted w.e.f. 01.01.2021.</p> The intent of law as specified in the Memorandum explaining the Finance Bill, 2020 states that <i>"Clause 118 of the Bill seeks to amend sub-section (4) of section 16 of the Central Goods and Services Tax Act so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit</i> Accordingly, it is clarified that: <ol style="list-style-type: none"> w.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of the CGST Act. The availment of ITC on debit notes in respect of amended provision shall be applicable from 01.01.2021. Accordingly, for availment of ITC on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, the eligibility for availment of ITC will be governed

	<p>by the amended provision of section 16(4), whereas any ITC availed prior to 01.01.2021, in respect of debit notes, shall be governed under the provisions of section 16(4), as it existed before the said amendment on 01.01.2021.</p> <p>Illustration 1. A debit note dated 07.07.2021 is issued in respect of the original invoice dated 16.03.2021. As the invoice pertains to F.Y. 2020-21, the relevant financial year for availment of ITC in respect of the said invoice in terms of section 16(4) of the CGST shall be 2020-21. However, as the debit note has been issued in FY 2021-22, the relevant financial year for availment of ITC in respect of the said debit note shall be 2021-22 in terms of amended provision of section 16(4) of the CGST Act.</p> <p>Illustration 2. A debit note has been issued on 10.11.2020 in respect an invoice dated 15.07.2019. As per amended provision of section 16(4), the relevant financial year for availment of input tax credit on the said debit note, on or after 01.01.2021, will be FY 2020-21 and accordingly, the registered person can avail ITC on the same till due date of furnishing of FORM GSTR-3B for the month of September, 2021 or furnishing of the annual return for FY 2020-21, whichever is earlier.</p>
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3. Dispensing off the requirement to carry invoice in physical printed form in terms of rule 138A (1) of the CGST Rules, 2017 in cases where e-invoice has been generated:

3.1 Representations have been received raising the question specifically in context of those taxpayers, who generate e-invoices, as to whether producing QR Code of invoice for verification during the physical movement of goods would be sufficient or there is an additional need to carry the physical copy of the invoice. Apparently, the said doubt has arisen due to the seemingly contrary provisions under rule 138A (1) and rule 138A (2) of CGST Rules, 2017.

3.2 The relevant legal provisions in this regard are presented below:

(i) **Rule 138A (1) of CGST Rules, 2017:**

“(1) The person in charge of a conveyance shall carry—

(a) the invoice or bill of supply or delivery challan, as the case may be; and

(b) a copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner

Provided that nothing contained in clause (b) of this sub-rule shall apply in case of movement of good by rail or by air or vessel:

*Provided further that in case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer of such goods and shall indicate the number and date of the bill of entry in Part A of **FORM GST EWB-01**.*”

- (ii) **Rule 138A (2) of CGST Rules, 2017:** Rule 138A (2), which provided for the requirement to obtain an Invoice Reference Number from the common portal by uploading a tax invoice, was substituted vide notification No. 72/2020-Central Tax dated 30.09.2020 after the implementation of e-invoice. Accordingly, the provision of Rule 138A(2) before and after the said notification is reproduced below:

Before notification:

“A registered person may obtain an Invoice Reference Number from the common portal by uploading, on the said portal, a tax invoice issued by him in FORM GST INV-1 and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of thirty days from the date of uploading.”

After notification:

*“In case, invoice is issued in the manner prescribed under sub-rule (4) of rule 48, the Quick Reference (QR) code having an embedded **Invoice Reference Number (IRN)** in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice.”*

- (iii) **Rule 48(4) of CGST Rules, 2017:**

*“The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in FORM GST INV-01 after obtaining an **Invoice Reference Number** by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.”*

3.3 In these representations, it has been stated that while rule 138A(2) was substituted to do away with the requirement of carrying physical printed invoice during movement of goods, rule 138A(1) is **not aligned** with rule 138A(2), as the rule 138A(1) still requires the person in charge of the conveyance to carry the physical copy of the invoice/delivery challan/bill of entry whereas the substituted rule 138A(2) doesn't require the same consequent upon the implementation of e-invoice. It has been represented that apparently, the amendment to rule 138A (1) has been missed inadvertently and accordingly, it has been requested to either align rule 138A (1) with rule 138A (2) by suitably amending rule 138A (1) and/or issue a clarification to the effect that in cases where e-invoice has been generated, then the transporter carrying the goods can produce only the QR Code of that invoice and the physical copy of invoice is not needed.

3.4 In this regard, a conjoint reading of rules 138A (1) and 138A (2) of CGST Rules, 2017 clearly indicates that there is no need to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier. After amendment, the revised rule 138A (2) states in unambiguous words that whenever e-invoice has been generated, the Quick Reference (QR) code, having an embedded **Invoice Reference Number (IRN)** in it, may be produced electronically for verification by the proper officer in lieu of the physical copy of such tax invoice.

- 3.5 The issue has also been clarified by NIC vide email dated 28.07.2021. It has been informed by NIC that:

“The QR Code has the important parameters of the invoice document. The officer is provided with an app to scan and verify the E-Waybill and if IRN exists for the EWB then complete details of the e-Invoice can also be viewed.

Also, the officer can scan and verify the digital signature of QR Code of the e-Invoice through app. He can also view the complete details of the e-Invoice after scanning the QR code using the app as app will hit the e-invoice portal and get the details and show to him. The same functionality also exists in the web based MIS system”

- 3.6 Accordingly, the issue may be clarified through a Circular by including the following clarification:

Issue	Clarification
Whether carrying physical copy of invoice is compulsory during movement of goods in cases where suppliers have issued invoices in the manner prescribed under rule 48 (4) of the CGST Rules, 2017 (i.e. in cases of e-invoice).	<ol style="list-style-type: none"> <li data-bbox="799 763 1417 1137">1. Rule 138A (1) of the CGST Rules, 2017 <i>inter-alia</i>, provides that the person in charge of a conveyance shall carry— (a) the invoice or bill of supply or delivery challan, as the case may be; and (b) a copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner. <li data-bbox="799 1171 1417 1543">2. Further, rule 138A (2) of CGST Rules, after being amended <i>vide</i> notification No. 72/2020-Central Tax dated 30.09.2020, states that “<i>In case, invoice is issued in the manner prescribed under sub-rule (4) of rule 48, the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice</i>” <li data-bbox="799 1576 1417 2013">3. A conjoint reading of rules 138A (1) and 138A (2) of CGST Rules, 2017 clearly indicates that there is no requirement to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier. After amendment, the revised rule 138A (2) states in unambiguous words that whenever e-invoice has been generated, the Quick Reference (QR) code, having an embedded Invoice Reference Number (IRN) in it, may be produced electronically for verification by the proper officer in lieu of the physical copy of such tax invoice.

	<p>4. Accordingly, it is clarified that there is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.</p>
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4. Applicability of first proviso to Section 54(3) of CGST/SGST Act, prohibiting refund of unutilized ITC in cases of exports of goods which are subjected to export duty:

4.1 Section 54(3)(i) of CGST/SGST Act permits a registered person to claim refund of unutilized ITC on account of zero-rated supplies of goods and services. However, the first proviso to Section 54(3) of CGST/SGST Act, prohibits refund of unutilized input tax in those cases where the goods exported out of India are subjected to export duty.

4.2 Doubts have been raised as to whether the first proviso to Section 54(3) of CGST/SGST Act, prohibiting refund of unutilized ITC, is applicable in those cases of exports of goods also which are having NIL rate of export duty.

5.1 The issue has been examined. In terms of Section 12 of the Customs Act, 1962, read with section 2 of the Customs Tariff Act, 1975, export duty is leviable as duties of customs at specified rate under Second Schedule to the Customs Tariff Act, 1975 on goods exported from India. There are a number of goods, which though may be covered under Second Schedule to the Customs Tariff Act, 1975, but which are either having Nil rate as specified in the said Schedule or are subjected to Nil rate of export duty by virtue of exemption notifications. Further, in terms of Note (4) to the second schedule to the Customs Tariff Act, 1975, in respect of all other goods which are not having specified rate of export duty under Second Schedule, the rate of duty shall be 'Nil'. Thus, all other goods, which are not specified in Second Schedule to the Customs Tariff Act, 1975 are covered under NIL rate of export duty.

5.2 The term '**subjected to export duty**' used in section 54(3) of the CGST Act, 2017 means where the goods are actually leviable to customs export duty and suffering export customs duty at the time of export. These goods cannot be allowed to be exported without payment of export duty. Therefore, goods which are not subject to any export duty and having NIL rate of export duty, either as specified in Second Schedule to the Customs Tariff Act, 1975, or in any customs exemption notification, or which are not covered under Second Schedule to the Customs Tariff Act, 1975, would not be subjected to the restriction on refund of unutilized ITC imposed by the first proviso to section 54(3).

5.3 Accordingly, the issue may be clarified through a Circular by including the following clarification:

Issue	Clarification
Whether the first proviso to section 54(3) of CGST / SGST Act,	1. The term ' subjected to export duty ' used in first proviso to section 54(3) of the CGST Act, 2017 means where the goods are actually

<p>prohibiting refund of unutilized ITC is applicable in cases of exports of goods which are subject to export duty at NIL rate.</p>	<p>leviable to export duty and suffering export duty at the time of export. Therefore, goods in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, cannot be considered to be subjected to any export duty under Customs Tariff Act, 1975.</p> <p>2. Accordingly, it is clarified that only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) from availment of refund of accumulated ITC. Goods, which are not subject to any export duty and in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, would not be covered by the restriction imposed under the first proviso to section 54(3) of the CGST Act for the purpose of availment of refund of accumulated ITC.</p>
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5. The Law Committee deliberated the matter in its meetings held on 11.08.2021 and 25.08.2021 and recommended that the issues mentioned in para 2, 3 and 4 above may be clarified through a Circular.

6. Accordingly, the agenda note along with draft circular (enclosed as **Annexure A**) is placed before the GST Council for approval.

F. No. CBEC-20/01/01/2021-GST

Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, the , 2021

To

The Pr. Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of
Central Tax (All)
The Principal Directors General / Directors General (All)

Madam / Sir,

Subject: Clarification in respect of certain GST related issues - reg.

Various representations have been received from taxpayers and other stakeholders seeking clarification in respect of certain issues pertaining to GST laws. The issues have been examined. In order to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies each of these issues as under:

S. No.	Issue	Clarification
1.	Section 16 (4), as amended with effect from 01.01.2021, provides that a registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier. Doubts have been raised seeking following clarification: 3. Which of the following dates are relevant to determine the ‘financial year’ for the purpose of section 16(4): (c) date of issuance	4. With effect from 01.01.2021, section 16(4) of the CGST Act, 2017 was amended <i>vide</i> the Finance Act, 2020, so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit. The amendment made is shown as below: <i>“A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.”</i> As can be seen, the words “invoice relating to such” were omitted w.e.f. 01.01.2021. 5. The intent of law as specified in the Memorandum explaining the Finance Bill, 2020 states that “ <i>Clause 118 of the Bill seeks to amend sub-section (4) of section 16 of the</i>

	<p>of debit note, or (d) date of issuance of underlying invoice.</p> <p>4. Whether any availment of input tax credit, on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, will be governed by the provisions of the amended section 16(4), or the amended provision will be applicable only in respect of the debit notes issued after 01.01.2021?</p>	<p><i>Central Goods and Services Tax Act so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit.</i></p> <p>6. Accordingly, it is clarified that:</p> <p>c) w.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of the CGST Act.</p> <p>d) The availment of ITC on debit notes in respect of amended provision shall be applicable from 01.01.2021. Accordingly, for availment of ITC on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, the eligibility for availment of ITC will be governed by the amended provision of section 16(4), whereas any ITC availed prior to 01.01.2021, in respect of debit notes, shall be governed under the provisions of section 16(4), as it existed before the said amendment on 01.01.2021.</p> <p>Illustration 1. A debit note dated 07.07.2021 is issued in respect of the original invoice dated 16.03.2021. As the invoice pertains to F.Y. 2020-21, the relevant financial year for availment of ITC in respect of the said invoice in terms of section 16(4) of the CGST shall be 2020-21. However, as the debit note has been issued in FY 2021-22, the relevant financial year for availment of ITC in respect of the said debit note shall be 2021-22 in terms of amended provision of section 16(4) of the CGST Act.</p> <p>Illustration 2. A debit note has been issued on 10.11.2020 in respect an invoice dated 15.07.2019. As per amended provision of section 16(4), the relevant financial year for availment of input tax credit on the said debit note, on or after 01.01.2021, will be FY 2020-21 and accordingly, the registered person can avail ITC on the same till due date of furnishing of FORM GSTR-3B for the month of September, 2021 or furnishing of the annual return for FY 2020-21, whichever is earlier.</p>
2.	Whether carrying physical copy of invoice is compulsory during movement of goods in cases where	<p>5. Rule 138A (1) of the CGST Rules, 2017 <i>inter-alia</i>, provides that the person in charge of a conveyance shall carry— (a) the invoice or bill of supply or delivery challan, as the case</p>

	suppliers have issued invoices in the manner prescribed under rule 48 (4) of the CGST Rules, 2017 (i.e. in cases of e-invoice).	<p>may be; and (b) a copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner.</p> <p>6. Further, rule 138A (2) of CGST Rules, after being amended <i>vide</i> notification No. 72/2020-Central Tax dated 30.09.2020, states that “<i>In case, invoice is issued in the manner prescribed under sub-rule (4) of rule 48, the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice</i>”</p> <p>7. A conjoint reading of rules 138A (1) and 138A (2) of CGST Rules, 2017 clearly indicates that there is no requirement to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier. After amendment, the revised rule 138A (2) states in unambiguous words that whenever e-invoice has been generated, the Quick Reference (QR) code, having an embedded Invoice Reference Number (IRN) in it, may be produced electronically for verification by the proper officer in lieu of the physical copy of such tax invoice.</p> <p>8. Accordingly, it is clarified that there is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.</p>
3.	Whether the first proviso to section 54(3) of CGST / SGST Act, prohibiting refund of unutilized ITC is applicable in case of exports of goods which are having NIL rate of export duty.	3. The term ‘ subjected to export duty ’ used in first proviso to section 54(3) of the CGST Act, 2017 means where the goods are actually leviable to export duty and suffering export duty at the time of export. Therefore, goods in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, cannot be considered to be subjected to

		<p>any export duty under Customs Tariff Act, 1975.</p> <p>4. Accordingly, it is clarified that only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) from availment of refund of accumulated ITC. Goods, which are not subject to any export duty and in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, would not be covered by the restriction imposed under the first proviso to section 54(3) of the CGST Act for the purpose of availment of refund of accumulated ITC.</p>
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2. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

3. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)
Principal Commissioner

Agenda Item 3(iv): Notifying www.gst.gov.in as the Common Goods and Services Tax Electronic Portal

Section 146 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to “CGST Act”) provides that Common Goods and Services Tax Electronic Portal may be notified for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, electronic way bill and for carrying out such other functions as may be prescribed. The said section is reproduced below:

*“146. Common Portal.— The Government may, on the recommendations of the Council, **notify** the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, electronic way bill and for carrying out such other functions and for such purposes as may be prescribed.”*

Further in terms of section 20 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to “IGST Act”), the said provision applies mutatis mutandis to the IGST Act.

2. Vide notification No. 4/2017 dated 19.06.2017, www.gst.gov.in was notified as the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax and electronic way bill. Subsequently, the said notification was superseded by notification No. 9/2018 dated 23.01.2018 vide which www.gst.gov.in was notified as the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns and computation and settlement of integrated tax and www.ewaybillgst.gov.in was notified as the Common Goods and Services Tax Electronic Portal for furnishing electronic way bill.

3. Further, vide notification No. 69/2019 dated 13.12.2019 certain websites such as www.einvoice1.gst.gov.in, www.einvoice2.gst.gov.in, etc. were notified as the Common Goods and Services Tax Electronic Portal for the purpose of preparation of the invoice in terms of sub-rule(4) of rule 48 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to “CGST Rules”) i.e. for e-invoice.

4.1 From the above, it is seen that for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, furnishing electronic way bill and preparation of e-invoice, various common portals have been notified under section 146 of the CGST Act read with section 20 of the IGST Act. However, various other functions and purposes, in addition to above, have been prescribed in the CGST Rules which do not have a common portal notified yet. For instance, the CGST Rules prescribes various forms such as **FORM GST DRC-07A, FORM GST DRC-08A, FORM GST ITC-01, FORM GST ITC-02, FORM GST ITC-02A, FORM GST CMP-/01/02/03/04** which are required to be furnished electronically on the common portal. In addition, provisions of the refund rules provide for furnishing **FORM GST RFD-01 / 02/ 03** etc. electronically on **common portal**.

4.2 Though a technical issue, it appears that the ‘common portal’ for the various provisions related to Composition levy, Input Tax Credit, Refund, Transitional provisions, Assessment, Demand, Audit, etc. have not been notified yet under section 146 of the CGST Act. It is proposed that www.gst.gov.in may be designated, with retrospective effect, as the Common Goods and Services Tax Electronic Portal, for all functions and purposes under CGST Act 2017 and CGST Rules 2017, other than e-way bill and e-invoicing. This may be done by retrospectively amending notification number 9/2018-CT dated 23.01.2018 and issuance of a retrospective notification w.e.f. 22.06.2017. Draft notifications in this respect are enclosed as **Annexure-A**.

5. The Law Committee deliberated the issue in its meeting dated 25.08.2021 and recommended that retrospective amendment to notification/ issuance of retrospective notification may be done as discussed in para 4.2. The draft notifications would be finalized in consultation with the Union

Ministry of Law and Justice.

6. Accordingly, the issue is placed before the GST Council for deliberation and approval.

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

**Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs**

Notification No. XX/2021 – Central Tax

New Delhi, the , 2021

G.S.R.....(E).– In exercise of the powers conferred by section 146 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017)) (hereinafter referred to as the “said Acts”), the Government, on the recommendations of the Council, save as otherwise provided in any other notification issued under the said provision, hereby notifies *www.gst.gov.in* as the Common Goods and Services Tax Electronic Portal for all functions and purposes under the said Acts and the rules made thereunder.

Explanation.- For the purposes of this notification, “*www.gst.gov.in*” means the website managed by the Goods and Services Tax Network, a company incorporated under the provisions of section 8 of the Companies Act, 2013 (18 of 2013).

2. This notification shall be deemed to have come into force on the 22nd day of June, 2017

[F. No. CBEC-/ / 2021-GST]

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Under Secretary, Government of India

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs

Notification No. XX/2021 – Central Tax

New Delhi, the , 2021

G.S.R.....(E).– In exercise of the powers conferred by section 146 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017)) (hereinafter referred to as the “said Acts”), the Government, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 9/2018– Central Tax, dated the 23rd January, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 58(E), dated the 23rd January, 2018, namely:–

(i) in paragraph 1, the words “*www.gst.gov.in* as the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns and computation and settlement of integrated tax and” shall be omitted;

(ii) Explanation 1 shall be omitted.

2. This notification shall be deemed to have come into force on the 16th day of January, 2018

[F. No. CBEC-/ /2021-GST]

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Under Secretary, Government of India

Agenda Item 3(v): Mechanism to collect late fee imposed under section 47 of the CGST Act for delayed filing of FORM GSTR-1

Reference is drawn to sub-section (1) of section 47 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”) which provides for levy of late fee for failure to file returns by the due date. The same is reproduced hereunder:

47. Levy of late fee- (1) Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.

Similar late fee is also levied under corresponding provisions of the SGST/UTGST Acts.

2. In this context, reference is drawn to notification no. 04/2018-CT dated 23.01.2018 whereby the late fee payable per day under section 47 for delay in furnishing **FORM GSTR-1** was reduced to twenty rupees per day (Rs. 10/- under CGST Act plus Rs. 10/- under SGST Act) for persons having NIL outward supplies and fifty rupees per day (Rs. 25/- under CGST Act plus Rs. 25/- under SGST Act) for others. Further, vide Notification No. 20/2021-CT dated 01.06.2021, the upper cap of late fee payable for delay in furnishing of **FORM GSTR-1** has also been rationalised, per return, as below:

(i) For taxpayers having nil outward supplies in **FORM GSTR-1**, the late fee has been capped at Rs. 500 (Rs. 250 CGST + Rs. 250 SGST)

(ii) For other taxpayers:

a. For taxpayers having Annual Aggregate Turnover (AATO) in preceding year upto Rs. 1.5 crore, late fee has been capped to a maximum of Rs. 2000 (1000 CGST+1000 SGST);

b. For taxpayers having AATO in preceding year between Rs. 1.5 crore to Rs. 5 crore, late fee has been capped to a maximum of Rs. 5000 (2500 CGST+2500 SGST);

c. For taxpayers having AATO in preceding year above Rs. 5 crores, late fee remains at a maximum of Rs. 10000 (5000 CGST+5000 SGST).

3.1 However, as of now, there is no mechanism (other than self-declaration and payment by the taxpayer) to compute and collect the late fee for delayed filing of **FORM GSTR-1**. In contrast, late fee for **FORM GSTR-3B** is system-computed based on the number of days elapsed after the due date of filing and is automatically added to the taxpayers’ liability while furnishing subsequent **FORM GSTR-3B**. It is felt that the late fee for delayed filing of **FORM GSTR-1** may also be similarly computed and collected while furnishing **FORM GSTR-3B**.

3.2 Now, that the late fee has been significantly reduced and rationalized, as discussed above; it may be prudent to collect late fee for delay in furnishing **GSTR-1** through **GSTR-3B**. It may incentivize timely furnishing of **GSTR-1**, which in itself is crucial for claiming ITC by recipients. Moreover, the gap between number of **GSTR-3Bs** filed vis-à-vis number of **GSTR-1s** filed has also narrowed down considerably over a period, owing to the various amnesty schemes provided and policy measures undertaken viz. introduction of rule 36(4). The gap now remains within 6-7% of the number of **GSTR-3Bs** filed for any tax period. For December, 2020 and March, 2021, the details as on 24.06.2021, are as under:

Table: Number of returns filed

	GSTR-3B	GSTR-1
December, 2020	99,60,866	92,29,454
March, 2021	94,62,500	88,52,674

Moreover, the system is now evolving towards sequential filing of **FORM GSTR-1** and mandatory filing of **FORM GSTR-1** before furnishing return in **FORM GSTR-3B**. The GST Council in its 43rd meeting dated 28.05.2021 has recommended amendments in provisions of the Act for the same.

3.3 In such a scenario, it is also feasible to collect late fee for delayed filing of **FORM GSTR-1** while furnishing the next open **GSTR-3B** return. Further, to ensure uniformity in implementation, the aforementioned system for collection of **GSTR-1** late fee may be deployed for prospective tax periods and an advisory may also be displayed on portal for the same.

4. The Law Committee deliberated the issue in its meeting dated 28.07.2021 and recommended that:

(i) late fee for delayed filing of **FORM GSTR-1** should be auto-populated in next open **GSTR-3B**, and the same may be implemented on portal for prospective tax periods (From July, 2021 tax period onwards).

(ii) Section 47 may be amended by omitting the words “*or section 38*” when section 38 would be amended (as recommended by the Council in 42nd Council meeting).

5. Accordingly, the issue is placed before the GST Council for information in respect of para 4(i) and for approval of para 4(ii).

Agenda Item 3(vi): Review of requirement of filing FORM GST ITC-04

Various representations have been received regarding difficulties being faced by taxpayers regarding compliance of provisions of rule 45 (3) of the CGST Rules, 2017 i.e. filing of **FORM GST ITC-04**.

2.1 In the representation of the Western Maharashtra Tax Practitioners' Association, it is represented that for movement of goods for Job work, supplier is required to prepare a delivery challan and is also required to generate e-way Bill. Further, he is required to file **FORM GST ITC-04** return, which contains details of all goods sent to job worker and received from job worker. It has been represented that **FORM GST ITC-04** is duplication of compliance, since e-way bill is also prepared and that **FORM GST ITC-04** has number of issues for preparation, uploading and filing which makes it impossible/extremely difficult to file. It has also been represented that this issue is faced by all taxpayer in India and that the compliance of **FORM GST ITC-04** should be removed.

2.2 Representation has also been received from CAIT wherein it has been represented that **FORM GST ITC-04** is very difficult and it is not possible for small suppliers to comply with filing of the same. It has been requested that **FORM GST ITC-04** should be done away with or alternatively the suppliers having turnover of less than Rs. 5 crores should be exempted from filing **FORM GST ITC-04**.

2.3 Similar representations have also been received from various other forums.

3.1 The issue has been examined. The requirement of **FORM GST ITC-04** emanates from section 143 of the CGST Act, read with sub-rule (3) of rule 45 of the CGST Rules. The relevant provisions are as below:

Section 143: Job work procedure. — (1) A registered person (hereafter in this section referred to as the “principal”) may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise, and shall,—

- (a) bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;
- (b) supply such inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out from the place of business of a job worker on payment of tax within India, or with or without payment of tax for export, as the case may be;

Provided that the principal shall not supply the goods from the place of business of a job worker in accordance with the provisions of this clause unless the said principal declares the place of business of the job worker as his additional place of business except in a case—

- (i) where the job worker is registered under section 25; or
- (ii) where the principal is engaged in the supply of such goods as may be notified by the Commissioner:

Provided further that the period of one year and three years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding one year and two years respectively.

- (2) The responsibility for keeping proper accounts for the inputs or capital goods shall lie

with the principal.

(3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out.

(4) Where the capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for job work are not received back by the principal in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of three years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out.

(5) Notwithstanding anything contained in sub-sections (1) and (2), any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax, if such job worker is registered, or by the principal, if the job worker is not registered.

Explanation.—For the purposes of job work, input includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker.

Rule 45: Conditions and restrictions in respect of inputs and capital goods sent to the job worker.—(1) The inputs, semi-finished goods or capital goods shall be sent to the job worker under the cover of a challan issued by the principal, including where such goods are sent directly to a job-worker, and where the goods are sent from one job worker to another job worker, the challan may be issued either by the principal or the job worker sending the goods to another job worker:

Provided that the challan issued by the principal may be endorsed by the job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal:

Provided further that the challan endorsed by the job worker may be further endorsed by another job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal.

(2) The challan issued by the principal to the job worker shall contain the details specified in rule 55.

(3) The details of challans in respect of goods dispatched to a job worker or received from a job worker during a quarter shall be included in **FORM GST ITC-04** furnished for that period on or before the twenty-fifth day of the month succeeding the said quarter or within such further period as may be extended by the Commissioner by a notification in this behalf:

Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

(4) Where the inputs or capital goods are not returned to the principal within the time stipulated in section 143, it shall be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out and the said supply shall be declared in **FORM GSTR-1** and the principal shall

be liable to pay the tax along with applicable interest.

3.2 It may be seen that sub-rule (1) of rule 45 mandates that goods shall be sent to the job worker under the cover of a challan issued by the principal. Further, the delivery challan contains the details specified in rule 55, namely: -

- (i) date and number of the delivery challan;
- (ii) name, address and Goods and Services Tax Identification Number of the consigner, if registered;
- (iii) name, address and Goods and Services Tax Identification Number or Unique Identity Number of the consignee, if registered;
- (iv) Harmonised System of Nomenclature code and description of goods;
- (v) quantity (provisional, where the exact quantity being supplied is not known);
- (vi) taxable value;
- (vii) tax rate and tax amount – central tax, State tax, integrated tax, Union territory tax or cess, where the transportation is for supply to the consignee;
- (viii) place of supply, in case of inter-State movement

Further, the delivery challan is prepared in **triplicate**, in case of supply of goods, in the following manner: –

- (a) the original copy being marked as ORIGINAL FOR CONSIGNEE;
- (b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and
- (c) the triplicate copy being marked as TRIPPLICATE FOR CONSIGNER

Accordingly, each movement of goods for job-work is statutorily required to be recorded and details to be maintained by the registered person, as specified in rule 45. All such details would be available for any audit, inspection etc. by the tax officers and the details can be correlated, if required, from job-worker's record during investigation.

3.3 FORM GST ITC-04 is essentially to keep track of the movement of inputs/capital goods gone from Principal to Job worker and return of finished goods from job worker within the time span of one year/ three year. In the event goods are not returned within the time span prescribed, duties on such goods are to be paid by the Principal from the date they are sent to the Job worker. In this context, the provision of section 143 of the Act suggests that a registered person (principal) may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker. Therefore, it appears that, though, seeking ITC-04 return may be within the statutory powers, an intimation by registered person would also suffice. Under Central Excise Act, 1944 also, the manufactures were required to give an intimation (annually) for sending the goods for job work along with an undertaking to pay the duty in case the goods are not returned from the job-work premises within stipulated time (180 days).

3.4 Vide a special procedure under section 148 issued vide notification No. 38/2019 - Central Tax, dated 31.08.2019, the requirement of filing **FORM GST ITC-04** was conditionally waived for the period July, 2017 to March, 2019. The total number of **FORM GST ITC-04** filed for each quarter ending (From June, 19), as on 30th May, 2021 is tabulated as below:

QE	June, 19	Sept 19	Dec 19	March, 20	June, 20	Sept 20	Dec., 20
No. of returns	23,972	21,852	21,078	19,501	15,301	16,304	15,390

It is observed that in the first two years, the requirement of filing the said return was waived and for

last 7 quarters, the total number of ITC-04 filed is in the range of, approximately, 15,000 – 20,000.

3.5 The data on number of GSTINs who have filed **FORM GST ITC-04** has also been analyzed based on turnover and the same is tabulated below:

Table

Financial year wise, AATO wise Unique GSTIN count

FY (1)	No. of GSTINs who have filed ITC-04 (2)	Out of (2), GSTINs having AATO above 5 Cr (3)	% of filers having AATO above 5 Cr (4)	% of filers having AATO upto 5 Cr (5)
2017-18	41912	20954	50 %	50 %
2018-19	37403	21777	58.2 %	41.8 %
2019-20	30367	20142	66.3 %	33.7 %
2020-21	20278	14317	70.6 %	29.4 %

Approximately 57778 Unique GSTINs have filed ITC-04.

4. Based on the facts mentioned in para 3.1 to 3.5 above, it is felt that the requirement of filing quarterly return in **FORM GST ITC-04** may be reviewed. For tax administration, the details of job-worker and the details of the goods which are not received back from job-worker within the stipulated time, and for which a tax invoice is required to be raised, appears to be more relevant. However, it is not clear how the field formations are utilizing the information contained in ITC-04, and whether they have been able to recover any additional revenue on the basis of the information contained in ITC-04. Besides, the utility of the various details sought in ITC-04 as well as periodicity of the said return, needs to be reviewed. For this purpose, a feedback from the field formations may be required. Therefore, CBIC is in the process of conducting a study to examine the utility of various tables/ information sought in ITC-04, the results achieved as a result of use of information in ITC-04 for garnering additional revenue/ detection of cases of misuse of job work provisions, the need for continuity or otherwise of ITC-04 and suggestion for any alternate mechanism to capture the relevant details for tax administration's requirement without burdening the taxpayers.

5.1. The Law Committee deliberated the issue in its meeting dated 30.06.2021 and recommended that till the time a final decision is taken on the requirement of **FORM GST ITC-04**:

- (i) Taxpayers whose annual aggregate turnover in preceding financial year is above Rs. 5 crores shall furnish ITC-04 once in six months;
- (ii) Taxpayers whose annual aggregate turnover in preceding financial year is upto Rs. 5 crores shall furnish ITC-04 annually;

5.2. Accordingly, the Law Committee recommended amendment in rule 45(3). The amended rule to be notified is reproduced below:

*“(3) The details of challans in respect of goods dispatched to a job worker or received from a job worker during a specified period shall be included in **FORM GST ITC-04** furnished for that period on or before the twenty-fifth day of the month succeeding the said period or within such further period as may be extended by the Commissioner by a notification in this behalf:*

Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

Explanation. - For the purposes of this sub-rule, the expression “specified period” shall mean:

- (a) the period of six consecutive months commencing on the 1st day of April and the 1st day of October in respect of a principal whose aggregate turnover during the immediately preceding financial year exceeds five crore rupees; and*
- (b) a financial year in any other case.”;*

5.3. The Law Committee has also recommended *pari-materia* changes in **FORM ITC-04**.

6. Accordingly, the issue is placed before the GST Council for approval.

Agenda Item 3(vii): Agenda Note for amendment in CGST Rules for refund to be disbursed in bank account linked with same PAN and Aadhaar on which registration has been obtained under

Reference is invited to the deliberations in the 42nd meeting of GST Council held on 05.10.2020 wherein it was decided that the refund to be disbursed in bank account linked with same PAN and Aadhaar on which the registration has been obtained.

2. The intent behind the said proposal was that even after putting in place various measures to identify the person and to verify the financial footprints of the said person, there may arise a situation where a person may defraud the government by obtaining registration in other person's name by utilising their PAN and Aadhaar details. Such person may also get Aadhaar authenticated during the registration process and may thereafter indulge in passing on the fake credit or obtaining refund from the government fraudulently. The said person may open a bank account in name of a third person/entity, on the basis of forged documents, and may give details of such bank account for the purpose of obtaining refund under GST, thus defrauding the government by creating an un-traceable chain. Once the refund amount is disbursed, the amount is withdrawn from the said account and closed immediately.

3. Therefore, in order to prevent such misuse in future, it was proposed that refund shall be paid/dispensed in a bank account, which is linked to the **same PAN and Aadhaar** on which the registration has been obtained, as it would help in creating trail of money and if any refund has been obtained fraudulently, it would be easier to catch the intended beneficiary. The said proposal was placed in the 42nd GST Council held on 05.10.2020 wherein the Council has agreed to the proposal. Accordingly, GSTN has been requested to develop the functionality for the same.

4. In this regard, it would be pertinent to refer to the definition of Aadhaar number as provided in section 2(a) of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, which is reproduced hereunder:

(a) "Aadhaar number" means an identification number issued to an individual under sub-section (3) of section 3;

On perusal of the aforesaid definition, it is observed that **Aadhaar number is issued to an individual/natural person and not to a legal/juridical person**, who have been defined as a person for specific purpose.

5. In view of the above, it can be stated that the decision of the GST Council regarding disbursement of refund in the same PAN and Aadhaar linked bank account, on which registration has been obtained, may be implemented in the following manner:

- i. **In case of Proprietorship concern:** Refund to be paid/ dispensed in the bank account linked to the **same PAN** (of the proprietor) and **Aadhaar** (of the proprietor) on which the registration has been obtained under GST, in case of proprietorship concern.
 - ii. **In case of others:** Refund to be paid/ dispensed in the bank account linked to the **same PAN** of the Company or Business entity or firm, on which the registration has been obtained under GST.
6. Therefore, in order to implement the said recommendation of the GST Council, there is a

need to make suitable amendment in the CGST Rules, 2017. In this regard, reference is made to rule 10A of the CGST Rules, 2017 which provides for furnishing of bank account details by the taxpayer after he has obtained registration within a specified period of time. In this regard, it is submitted that at present, a taxpayer can furnish details of any bank account under rule 10A. Further, reference here is invited to sub-rule (3) of rule 91, sub-rule (4) of rule 92, rule 94 and sub-rule (3) of rule 96 of CGST Rules, 2017 which provide that the refund to be paid to the applicant in any of the bank accounts mentioned in his registration particulars. Therefore, **it is felt that it would be prudent to make amendment in rule 10A itself to the effect that any new taxpayer would be able to furnish details of those bank accounts only which are opened with the same PAN, on which GST registration has been obtained and the said bank account/ PAN must also be linked with the Aadhaar of the proprietor (in case of proprietorship concern).**

7. Further, reference to bank account for disbursement of refund has been made in rules 91, 92, 94 and 96 of CGST Rules, 2017. In respect of the existing registrations, the bank accounts, the details of which have been furnished by the taxpayers under rule 10A of CGST Rules 2017, may not have been linked with PAN of the taxpayer, and also with Aadhaar, in case of proprietorship concern. Therefore, there may be a need to prescribe condition to the effect that the refund will be disbursed only in the bank account obtained on the same PAN on which registration has been taken under GST and that the said bank account/ PAN should also be linked to the Aadhaar, in case of proprietorship concern. Instead of making amendment in each of the said rules/sub-rules, where there is reference to bank account for disbursement of refund amount, it would be desirable that **a new rule may be inserted in CGST Rules, 2017 in this regard.**

8. In view of the above, the following amendments are proposed in CGST Rules, 2017:

(a) Amendment in Rule 10A:

“10A. Furnishing of Bank Account Details.-After a certificate of registration in FORMGST REG-06 has been made available on the common portal and a Goods and Services Tax Identification Number has been assigned, the registered person, except those who have been granted registration under rule 12 or, as the case may be rule 16, shall as soon as may be, but not later than forty five days from the date of grant of registration or the date on which the return required under section 39 is due to be furnished, whichever is earlier, furnish information with respect to details of bank account, **which is in name of the registered person and obtained on Permanent Account Number of the registered person**, or any other information, as may be required on the common portal in order to comply with any other provision:

Provided that in case of a proprietorship concern, the said bank account shall also be linked with the Aadhaar number of the proprietor.”

(b) Insertion of Rule 96C:

“96C. Bank Account for credit of refund: For the purpose of sub-rule (3) of rule 91, sub-rule (4) of rule 92 and rule 94, “bank account” shall mean such bank account of the applicant which is in name of the applicant and obtained on Permanent Account Number of the applicant:

Provided that in case of a proprietorship concern, the said bank account shall also be linked with the Aadhaar number of the proprietor.”

It is further mentioned that at present, the refund of integrated tax paid on export of goods is processed by proper officer of customs on the ICEGATE portal. Further, such refunds are disbursed in a bank account of the exporter mentioned in his registration particulars and intimated to the Customs Authorities. As the functionality for validating the bank account with respect to PAN and also Aadhaar (in case of proprietorship concern) would first be developed by GSTN and only thereafter the requisite changes would be carried out in the ICEGATE portal, it is proposed that the said requirement of disbursement of refund in the bank account linked with the same PAN and also Aadhaar, in case of proprietorship concern, may be extended to refund of integrated tax paid on export of goods, only after requisite changes in ICEGATE portal are carried out by DG Systems (ICEGATE). Once the changes in ICEGATE portal are made, the aforesaid rule 96C would be substituted with the following rule:

Post amendment on ICEGATE portal

“96C. Bank Account for credit of refund: For the purpose of sub-rule (3) of rule 91, sub-rule (4) of rule 92, rule 94 and sub-rule (3) of rule 96, “bank account” shall mean such bank account of the applicant which is in name of the applicant and obtained on Permanent Account Number of the applicant:

Provided that in case of a proprietorship concern, the said bank account shall also be linked with the Aadhaar number of the proprietor.”

9. The aforesaid agenda was placed before Law Committee in its meeting held on 25.08.2021 wherein it was approved with the comments that rules to be inserted/amended from a date to be notified.

10. Accordingly, the issue is placed before the GST Council for approval.

Agenda Item 3(viii): Applicability of interest on ineligible Input Tax Credit (ITC) wrongly availed and/or utilized, in terms of section 50 of Central Goods and Services Tax Act, 2017 (CGST Act)

Certain representations have been received from the field formations seeking clarification regarding interest applicable on reversal of ineligible ITC. Doubts have been raised as to whether interest is to be paid by a taxpayer on “ineligible ITC availed and utilized” or on “ineligible ITC availed”.

2. In order to examine this issue, it is pertinent to examine the relevant legal provisions under GST, as reproduced below:

i. **Section 73 of CGST Act, 2017: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.**— (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or **where input tax credit has been wrongly availed or utilized for any reason,** other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice **along with interest payable thereon under section 50** and a penalty leviable under the provisions of this Act or the rules made thereunder.

ii. **Section 50 of the CGST Act, 2017: Interest on delayed payment of tax.** (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council:

Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) A taxable person who **makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43,** shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per

cent., as may be notified by the Government on the recommendations of the Council.

3. In order to understand this issue in totality, the following points are noteworthy:

- a) **Interest to be levied on net cash liability:** GST Council, in its 31st meeting held on 22.12.2018, gave in-principle approval to amend section 50 of the CGST Act, 2017 so as to provide that interest should be charged only on the net tax liability of the taxpayer, after taking into account the admissible input tax credit, i.e. interest would be leviable only on the amount payable through the electronic cash ledger. Accordingly, a proviso was inserted to section 50(1) of CGST Act, 2017 *vide* section 100 of the Finance (No. 2) Act, 2019 to this effect. Further, the GST Council, in its 39th meeting held on 14.03.2020, recommended that the amendment to section 50 of CGST Act, 2017 be made applicable retrospectively w.e.f. 01.07.2017. Accordingly, section 50(1) was amended retrospectively, w.e.f. 01.07.2017, vide the Finance Act, 2021.
- b) **Section 50(3) is not operational as it has to be read with sections 42 and 43 of CGST Act, 2017:** Section 50(3) of CGST Act, 2017 mandates levy of interest if undue or excess ITC has been claimed under sub-section (10) of section 42 or if undue/excess reduction in output tax liability is done under sub-section (10) of section 43 of CGST Act, 2017. While section 42 of CGST Act, 2017 deals with matching, reversal and reclaim of Input Tax Credit, section 43 of CGST Act, 2017 deals with matching, reversal and reclaim of reduction in output tax liability. As the mechanism of matching, reversal and reclaim in terms of sections 42 and 43 of CGST Act, 2017 was envisaged under the original return scheme (comprising FORM GSTR-1, 2 & 3), these provisions never came into force because the original return scheme was not implemented. **Till such time sections 42 and 43 of CGST Act, 2017 are not made operational, interest cannot be levied in terms of section 50 (3) of CSGT Act, 2017.** Therefore, interest cannot be charged on undue/excess claim of ITC under section 50(3) of CGST Act, 2017.
- c) **Excess claim of ITC is to be added to the output tax liability of the taxpayer:** The original return model provided that excess claim of ITC by a taxpayer is required to be added to his output tax liability in the returns filed for subsequent tax periods. Essentially, excess claim of ITC has to be treated at par with output tax liability. As such, excess ITC claim (that is reversed in subsequent tax periods) shall be subjected to interest in terms of section 50 (1) of CGST Act, 2017 which provides for interest on delayed payment of output tax. This also implies that section 50(1) of CGST Act, 2017 covers both scenarios i.e. levy of interest on delayed payment of tax; and levy of interest on undue/excess claim of ITC.
- d) GST Council, in its 43rd meeting had recommended amendment in return related provision wherein the provisions of section 42 and 43 of the CGST Act, 2017 are proposed to be omitted. Amendment was accordingly also proposed in section 50 (3) of the CGST Act, 2017 as below:

~~(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43 shall pay interest on such undue or excess claim or on such undue or excess reduction, as~~

~~the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.~~

(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent., as may be notified by the Government, on the recommendations of the Council.

4. The discussion at para 3 makes it abundantly clear that the legislative intent behind carrying out the amendment to section 50 of CGST Act, 2017 was to levy interest only on the cash component of tax paid by a taxpayer. As the reversal of ineligible ITC is to be treated as similar to output tax liability [refer para 3(c)], the principle of payment of interest on “**net cash liability**”, as made applicable for delayed payment of tax, should be made applicable for payment of interest on excess/undue claim of ITC. As such, it is not the entire ITC availed, but only the utilised portion of ITC, that shall attract interest. In other words, it is not the availment of ITC per se but the utilization of ITC that determines the applicability of interest in terms of proviso to section 50(1) of CGST Act, 2017. Therefore, it does not appear legally correct to demand interest on excess ITC availed (but not utilised) by the taxpayer in terms of section 50 of the CGST Act, 2017. Hon’ble High Court of Madras, in the WP No. 28437 of 2020 etc. batch, has taken the same stand that interest would be charged on such ineligible ITC that is availed and utilized.

5. The Law Committee deliberated the matter in its meeting dated 11.08.2021 and recommended that:

(i) amendment in Section 50(3), as recommended by the Council in 43rd meeting, may be made retrospectively, w.e.f. 01.07.2017. Sub-section (3) also needs to be slightly modified to provide for calculation of interest in the manner as prescribed in Rules, as below:

“(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent., as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.”

(ii) The notification issued to notify rate of interest under section 50 may be amended retrospectively (w.e.f. 01.07.2017) to specify rate of interest as 18% for ITC availed and utilized, till the time amended section 50(3) is notified.

6. Accordingly, the issue is placed before the GST Council for deliberation and approval.

Agenda Item 3(ix): Proposal for clarification in respect of refund of tax wrongfully paid as specified in section 77(1) of the CGST/SGST Act and section 19(1) of the IGST Act-

An agenda was brought before the Law Committee seeking clarification on the following issues:

- i. Whether limitation of time for making an application for refund as provided in section 54 would be applicable to an application for refund of taxes provided in section 77(1) of the CGST/SGST Act or section 19(1) of the IGST Act and, if not,
 - ii. Whether there is a specific requirement to frame rule for section 77.
2. The relevant sections quoted verbatim are as follows:
- 2.1 Section 77(1) of the CGST/SGST Act, 2017 reads as follows:

“77. Tax wrongfully collected and paid to Central Government or State Government.— (1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.”

- 2.2 Section 19 of the IGST Act, 2017 reads as follows:

“19. Tax wrongfully collected and paid to Central Government or State Government----- (1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.”

3. Accordingly, the matter was examined. It may be noted that there are two major issues pertaining to refund under Section 77 of CGST Act and Section 19 of IGST Act, which require clarification and deliberation, which are:

- i. Regarding interpretation of the term “**subsequently held**” in the said sections, and whether refund claim under the said sections is available only if supply made by a taxpayer as inter-state or intra-state, is subsequently held by tax officers as intra-state and inter-state respectively, either on assessment, or as a result of any adjudication/ appellate or any other proceeding like audit/ investigation, etc. Alternatively, whether the refund under the said sections is also available when the inter-state or intra-state supply made by a taxpayer, is subsequently found by taxpayer himself as intra-state and inter-state respectively.
- ii. Whether there is any time limit for applying for refund under section 77 of CGST Act/ section 19 of IGST Act, i.e. whether time limit of two years prescribed under Section 54 (1) of CGST Act is applicable to such refund claims also, and if so, what is the relevant date for the same. Besides, whether there is a need to prescribe separate rule/ sub-rule for prescribing the

manner and conditions for such refunds, as section 77 of CGST Act and section 19 of IGST Act use the phrase “*in such manner and subject to such conditions as may be prescribed*”.

4. **Issue of Interpretation of the term “subsequently held”**

4.1 From a nuanced reading of the aforementioned sections, it is clear that the refund of the tax amount which has been paid in the wrong head shall be granted only when the matter is “***subsequently held***”. However, the interpretation of the phrase “subsequently held” as mentioned in the Act and the implications of the same on granting refund of the tax amount paid in the wrong head are not clear.

4.2 There can be a number of possible interpretations of the term “subsequently held” such as:

- i. Whether the refund is admissible in the said sections, only if the intra-state/ inter-state supply is *subsequently held* to be inter-state or intra-state supply, as the case may be, by the tax authority. Further, if so, under what scenarios the matter will be considered as “subsequently held” by tax officer:
 - a. Whether it would suffice to say that the matter is said to be “subsequently held” when it comes to the notice of the proper officer during scrutiny proceedings/ assessment and is pointed out by the tax officer to the taxpayer through a letter/ notice and the taxpayer agrees and pays the required tax amount under correct head.
 - b. Similarly, if the matter comes to the notice during an investigation by anti-evasion teams or during audit by audit teams, whether any letter/ notice issued by such tax officers would be sufficient to be treated as “subsequently held”?
 - c. Alternatively, whether there would be a need for an adjudication order/ appellate order by an adjudicating/ appellate authority for the matter to be treated as “subsequently held”?
- ii. Whether the refund is also admissible in the said sections, if the intra-state/ inter-state supply is *subsequently held/ found* to be inter-state or intra-state supply, as the case may be, by the taxpayer on his own? If so,
 - a. Whether refund claim in such cases can be granted based on the assertion by the taxpayer, or
 - b. Whether the refund claim can be granted only if the claim/ assertion of the tax payer is confirmed by the proper officer through an order/ report.

5. In this context, it is pertinent to mention that the original draft law had used the term “subsequently **found**”. However, based on deliberation by the Law Committee / Council, the phrase was changed to “subsequently **held**”. This change was made in the 11th GST Council Meeting held on 4th March 2017. Para 6.1 (x), page 5 of Minutes of the meeting may kindly be referred

“Issue No. 10–

Section 19 - Tax wrongfully collected and paid to Central Government or State Government.

(1) A registered person who has paid integrated tax on a supply considered by him to be an inter-state supply, but which is subsequently ***held found*** to be an intra-State supply, shall, be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.”

6. Accordingly, the issue relating to the interpretation of term “subsequently held” was placed before the **Law Committee in its meeting held on 28.07.2021**. The Law Committee has recommended that the refund under Section 77 is also available when the inter-state or intra-state supply made by a taxpayer, **is subsequently found by taxpayer himself as intra-state or inter-state respectively**, and the corrections are accordingly made by taxpayers on their own and **it was decided**

that the issue may be clarified through a Circular.

7. The issue of time period and the relevant date for claiming refund under section 77 of CGST Act/ section 19 of IGST Act 77

7.1 Further, another issue which needs to be deliberated is whether there is any time limit for applying for refund under section 77 of CGST Act/ section 19 of IGST Act, i.e. whether time limit of two years prescribed under Section 54(1) of CGST Act is applicable to such refund claims also, and if so, what is the relevant date for the same. The relevant date for refund, in general, is determined by Section 54 of the CGST Act, 2017, the relevant provisions of which are reproduced as follows:

“54. Refund of tax.— (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

...

Explanation.—For the purposes of this section,— (1) —refund includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3).

(2) —relevant date means—

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—

(i) receipt of payment in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India], where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

(e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(h) in any other case, the date of payment of tax.”

7.2 From a plain reading of the aforementioned, it is clear that Section 54 of the CGST Act, 2017 does not separately specify the relevant date for seeking refund in cases where the integrated tax on a supply is subsequently **held** to be an intra-State supply.

7.3 One interpretation could be that time limit prescribed under sub-section (1) of Section 54 is also applicable to the refunds under section 77 of CGST Act 2017 or section 19 of IGST Act 2017 and that the relevant date in the impugned cases shall be determined by Explanation 2(h) of the Section 54 of the CGST Act, 2017 i.e. the relevant date in the impugned cases shall be the date of payment of tax. It can be argued that Section 54 of the CGST Act, 2017 also refers to the refunds under section 77 in its sub-section (8) which provides that the refund shall instead being paid to fund, be credited to applicant. If this interpretation is accepted, then the question arises what is the date of payment of tax in cases under section 77 of CGST Act or under section 19 of CGST Act. There may be an interpretation that even if Explanation 2(h) of the Section 54 of the CGST Act, 2017 is applicable in cases of such refunds, the date of payment of tax in such cases, would be the date of payment of tax in correct head on being “subsequently held”, as the amount paid originally under wrong head does not represent the amount of tax payable on the said supply. Accordingly, the relevant date for calculating period of 2 years under section 54(1) would be the date of subsequent payment of tax in correct head on being subsequently held.

7.4 However, there may be an alternative interpretation that the manner and procedure of the refund in the impugned cases are not governed by Section 54 of the CGST Act, 2017 as per the current position of the existing law. This interpretation is based on the following assertions:

(i) Language of the Section 77 of the CGST Act, 2017 and Section 19 of the IGST Act, 2017 clearly mentions “...***shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.***” A careful reading of the aforementioned sections suggests that refund in the impugned cases “***shall***” be granted and the only manner and conditions of such refund may be prescribed. As per section 2(87) of CGST Act, “prescribed” can only be through the CGST Rules. As no time limit has been prescribed in the CGST Rules 2017 in respect of such refund claims, it appears that the time limit prescribed in section 54 of CGST Act 2017 is not applicable for such refund claims, and thus, there is no time limit for filing such refund claims, unless the same is prescribed specifically through CGST Rules, 2017.

(ii) If time period under section 54 is considered for refund claims under section 77 of CGST Act/ section 19 of IGST Act, and the relevant date is considered as the date when the tax was originally paid *albeit* under the wrong head, then many cases may become time-barred for refund. In such scenarios, the taxpayers will not be able to apply for the refund of the tax inadvertently paid in the wrong head, even though the mistake was not deliberate, and the matter could come to light much later in scrutiny/ assessment or audit or anti-evasion proceedings, which could be even later than the 2 years of date of payment of tax in wrong head. It is not a case, when the tax was not paid by the taxpayer, but was inadvertently paid under a wrong head, and therefore depriving the taxpayer from refund of tax paid in wrong head, even when he has paid tax under correct head now, would not be justifiable. It appears that considering the same only, the wording used in section 77 of CGST Act and section 19 of IGST Act is “***shall be refunded the amount of taxes so paid***”.

(iii) In FAQs issued by the CBIC, following clarification in the impugned matter has been given:

“Q 87. A registered person pays IGST for a supply which is subsequently held to be intra-state. What is the relevant date, within which he has to file a claim for refund of IGST wrongly paid?”

Ans. Section 77 of CGST Act, 2017, read with Section 19 of IGST Act, are the enabling provisions for grant of refund in such cases. These provisions use the words “.....shall be granted refund of the amount of Central/integrated tax so paid in such manner and subject to such conditions as may be prescribed....” Thus, refunds will have to be mandatorily

granted. The stipulation in Section 54(1) that claims will have to be filed within 2 years from the relevant date, will not apply for a claim under this category.”

7.5 In this regard, it is also added that clause (j) of sub-rule (2) of rule 89, specifies that the person claiming refund in the impugned category is required to submit a statement showing the details of transactions considered as intra-state supply but which is subsequently held to be inter-State supply along with the refund application. Accordingly, a separate category of refund i.e. “*Tax paid on an intra-State supply which is subsequently held to be inter-State supply and vice versa (change of POS)*” has been created in FORM GST RFD-01. However, there is no other provision in CGST Rules, 2017 specifically prescribing any manner or conditions for refund in such cases covered by Section 77 of CGST Act, 2017 and Section 19 of the IGST Act, 2017. The sections clearly mention “*...shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.*” Thus, there appears to be a need to prescribe the procedure and conditions for granting refunds in the impugned category.

8.1 The issue was placed before the Law Committee in its meeting held on 28.07.2021 wherein it was recommended that sub-rule (1A) may be inserted to rule 89 of the CGST Rules. Further, the said sub-rule should also cover past cases. Accordingly, the Law Committee recommended insertion of the following sub-rule (1A) to be finalized in consultation with Law Ministry:

*“(1A) Any person, claiming refund under Section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of two years from the date of payment of the tax on the inter-state supply, file an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:*

Provided that the said application may, as regards any payment of tax on inter-state supply before the coming into effect of this sub-rule, be filed before the expiry of two years from the date on which this sub-rule comes into effect.”

Further, the Law Committee also recommended that the issue of time limit for filing refund claim under section 77 prospectively, as well as for past period, should also be clarified in the proposed Circular. Law Committee further recommended that GSTN may examine feasibility of development of a functionality, whereby the amount wrongly paid under CGST/ SGST head instead of IGST head, and vice versa, can be adjusted on system itself on payment of amount under correct head by the taxpayer, without need of filing of a separate refund claim by the taxpayer.

8.2 Further, the Law Committee in its meeting held on 11.08.2021 approved the draft circular enclosed as **Annexure-A** to this agenda note.

9. The agenda along with the draft circular, as approved by the Law Committee, is placed before the GST Council for approval.

Circular No. ---/--/2021-GST

F. No. -----
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the, 2021

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/ Commissioners of Central Tax (All)

The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act -Reg

Representations have been received seeking clarification on the issues in respect of refund of tax wrongfully paid as specified in section 77(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”) and section 19(1) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST Act”). In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues detailed hereunder:

2.1 Section 77 of the CGST Act, 2017 reads as follows:

“77. Tax wrongfully collected and paid to Central Government or State Government. — (1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.”

Section 19 of the IGST Act, 2017 reads as follows:

“19. Tax wrongfully collected and paid to Central Government or State Government----- (1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such

manner and subject to such conditions as may be prescribed.

*(2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is **subsequently held** to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.”*

3. Interpretation of the term “subsequently held”

3.1 Doubts have been raised regarding the interpretation of the term “**subsequently held**” in the aforementioned sections, and whether refund claim under the said sections is available only if supply made by a taxpayer as inter-state or intra-state, is subsequently held by tax officers as intra-state and inter-state respectively, either on scrutiny/ assessment/ audit/ investigation, or as a result of any adjudication, appellate or any other proceeding or whether the refund under the said sections is also available when the inter-state or intra-state supply made by a taxpayer, is subsequently found by taxpayer himself as intra-state and inter-state respectively.

3.2 In this regard, it is clarified that the term “subsequently held” in section 77 of CGST Act, 2017 or under section 19 of IGST Act, 2017 covers both the cases where the inter-state or intra-state supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-state or inter-state respectively or where the inter-state or intra-state supply made by a taxpayer is subsequently found/ held as intra-state or inter-state respectively by the tax officer in any proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above mentioned situations, provided the taxpayer pays the required amount of duty in the correct head.

4. The relevant date for claiming refund under section 77 of CGST Act/ Section 19 of IGST Act, 2017

4.1 Section 77 of CGST Act and Section 19 of IGST Act, 2017 provide that in case a supply earlier considered by a taxpayer as intra-state or inter-state, is subsequently held as inter-state or intra-state respectively, the amount of central and state tax paid or integrated tax paid, as the case may be, on such supply shall be refunded in such manner and subject to such conditions as may be prescribed. In order to prescribe the manner and conditions for refund under section 77 of CGST Act and section 19 of IGST Act, sub-rule (1A) has been inserted after sub-rule (1) of rule 89 of CGST Rules, 2017 vide Notification XX/2021-Central Tax dated _____. The said sub-rule (1A) of rule 89 of CGST Rules, 2017 reads as follows:

*“(1A) Any person, claiming refund under Section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of two years from the date of payment of the tax on the inter-state supply, file an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:*

Provided that the said application may, as regards any payment of tax on inter-state supply before the coming into effect of this sub-rule, be filed before the expiry of two years from the date on which this sub-rule comes into effect.”

4.2 The aforementioned amendment in the rule 89 of CGST Rules, 2017 clarifies that the refund under section 77 of CGST Act/ Section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head, i.e. integrated tax paid in respect of subsequently held inter-state supply, or central and state tax in respect of subsequently held intra-state supply, as the case may be. However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of Notification XX/2021-Central Tax dated _____, the refund application under section 77 of CGST Act/ section 19 of IGST Act can be filed before the

expiry of two years from the date of issuance of this notification. i.e. from

4.3 Application of sub-rule (1A) of rule 89 read with section 77 of CGST Act / section 19 of the IGST Act is explained through following illustrations.

A taxpayer “A” has issued the invoice dated 10.03.2018 charging CGST and SGST on a transaction and accordingly paid the applicable tax (CGST and SGST) in the return for March, 2018 tax period. The following scenarios are explained hereunder:

Sl.no.	Scenario	Relevant Date for filing the refund claim
1	Having realized on his own that the said transaction is an inter-State supply, “A” paid IGST in respect of the said transaction on 10.05.2021 .	Since “A” has paid the tax in the correct head before issuance of notification No. XX/2021-Central Tax, dated YYYYYY, the relevant date of filing refund in FORM GST RFD-01 would be September , 2023 (two years from date of notification)
2	Having realized on his own that the said transaction is an inter-State supply, “A” paid IGST in respect of the said transaction on 10.11.2021 i.e. after issuance of notification.....	Since “A” has paid the correct tax on 10.11.2021, in terms of rule 89 (1A) of the CGST Rules, the relevant of filing refund in FORM GST RFD-01 would be 09.11.2023 (two years from the date of payment of tax under the correct head, i.e. integrated tax)
3	Proper officer or adjudication authority or appellate authority of “A” has held the transaction as an inter-State supply and accordingly, “A” has paid the IGST in respect of the said transaction on 10.05.2019	Since “A” has paid the tax in the correct head before issuance of notification No. XX/2021-Central Tax, dated YYYYYY, the relevant date of filing refund in FORM GST RFD-01 would be September , 2023 (two years from date of notification)
4	Proper officer or adjudication authority or appellate authority of “A” has held the transaction as an inter-State supply and accordingly, “A” has paid the IGST in respect of the said transaction on 10.11.2022 i.e. after issuance of notification....	Since “A” has paid the correct tax on 10.11.2022, in terms of rule 89 (1A) of the CGST Rules, the relevant of filing refund in FORM GST RFD-01 would be 09.11.2024 (two years from the date of payment of tax under the correct head, i.e. integrated tax)

The examples above are only indicative one and not an exhaustive list. Rule 89 (1A) of the CGST Rules would be applicable for section 19 of the IGST Act also, where the taxpayer has initially paid IGST on a specific transaction which later on is held as intra-State supply and the taxpayer accordingly pays CGST and SGST on the said transaction. It is also clarified that any refund applications filed, whether pending or disposed off, before issuance of notification No. XX/2021-Central Tax, dated YYYYYY, would also be dealt in accordance with the provisions of rule 89 (1A) of the CGST Rules, 2017.

4.4 Refund under section 77 of the CGST Act / section 19 of the IGST Act would not be available where the taxpayer has made tax adjustment through issuance of credit note under section 34 of the CGST Act.

5. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

6. Difficulty, if any, in implementation of this Circular may please be brought to the notice of

the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Agenda Item 3(x): Transfer of CGST /IGST cash ledger balance between ‘distinct persons’ (entities having same PAN but registered in different states)

Various representations have been received from trade and industry wherein they have requested to allow transfer of balance lying in electronic cash ledger under CGST head between distinct persons i.e. entities having same PAN. A brief note on such proposal along with their analysis in light of legal provisions under GST is presented below.

2 Transfer of CGST / IGST cash ledger balance between ‘distinct persons’ (entities having same PAN but registered in different states)

2.1 Presently, each registration under GST is considered unique. Entities situated in different states but having same PAN are required to obtain registration in each such state from where they make taxable supplies. As such, these ‘distinct persons’ are independent of each other as far as compliance under GST is considered. Their electronic ledgers, both cash and credit, operate independently from each other. Therefore, transfer of electronic cash / credit balance between distinct entities is not permissible. Due to this, companies with pan-India presence face the challenge of capital blockage where excess cash ledger balance remains unutilized in one state while there is insufficient cash balance in another state. In order to overcome this problem, it has been proposed that there should be a mechanism to allow transfer of **cash** balance from one state to another in case of ‘distinct persons’.

2.2 GST law already allows refund of unutilized balance in electronic cash ledger and once the amount is refunded, company has freedom to use it in whatever manner it wants to. As per the present mechanism, the refund has to be claimed, in respect of unutilized balance in electronic cash ledger, by the concerned distinct person. Such refund claim is processed by the jurisdictional proper officer. Only after getting the refund amount, such amount can be used by the other distinct person, who requires the said amount. However, there is some time lag in processing and sanctioning of refund (of unutilized cash ledger balance) whereas the need for sufficient cash balance may be often immediate. Allowing the transfer of cash ledger balance between ‘distinct persons’ would obviate the need for filing of refund as the requisite cash balance can be directly transferred to the entity that needs it. To examine this proposal, it is necessary to understand the features and operation of the electronic cash ledger.

2.3 For payment of tax, regular taxpayers are first required to generate challan using **FORM GST PMT-06** in order to deposit money in their electronic cash ledger. The balance in electronic cash ledger, in combination with the balance in electronic credit ledger, can be used to discharge tax liability through **FORM GSTR-3B**. For accounting purpose, any payment towards CGST cash ledger is treated as credit to the Consolidated Fund of India and any payment towards SGST cash ledger is treated as credit to the Consolidated Fund of that particular state. It is noteworthy that while Consolidated Fund of India is a **single account** of the Government of India, each state has its own Consolidated Fund. Since each state’s Consolidated Fund is different from another, transfer of SGST cash balance between distinct persons (located in different states), at present is not allowed.

2.4 It is pertinent to mention that the introduction of **FORM GST PMT-09** [in terms of rule 87(13) of CGST Rules, 2017] has enabled taxpayers to transfer any amount of tax, interest, penalty etc. that is available in electronic cash ledger, to the appropriate tax / cess head under IGST, CGST and SGST / UTGST. Hence, if a taxpayer has excess balance lying under interest head of SGST cash ledger but he needs to discharge penalty under IGST head, he can transfer the amount from SGST interest head to IGST penalty head. Essentially, **FORM GST PMT-09** gives the taxpayer complete

freedom to transfer cash ledger balance within different tax / cess heads (CGST/SGST/IGST/UTGST) and sub-heads (tax, interest, penalty, late fees), without need for filing a refund claim in respect of the same. While this facility addresses the problem of capital blockage for taxpayers to some extent, this has implications both for the settlement between Centre and States as well as accounting treatment. This is because, to and fro transfer between CGST and SGST cash ledger is akin to transfers between respective Consolidated Funds, thereby affecting revenue settlement between Centre and states. Accordingly, section 53A was inserted to CGST Act, 2017 *vide* Finance (No. 2) Act, 2019 w.e.f. 01.01.2020 that provided for settlement between Centre and State in case cash ledger balance is transferred from CGST head to SGST head or *vice versa*. Sub-section (10) and (11) of section 49 were also inserted *vide* Finance (No. 2) Act, 2019 to allow for transfer of cash ledgers by the registered person.

2.5 **As far as the proposal to allow transfer of CGST and IGST cash balance between ‘distinct persons’ registered in different states**, the amount deposited in cash ledger under CGST/IGST head and its sub-head, in any of the States, are all treated as credit to the Consolidated Fund of India. The Consolidated Fund of India being a single account, it appears that transfer of CGST cash balance between ‘distinct persons’ may not have any impact in settlement of funds between States and Centre. As such, there appears merit in the proposal to allow inter-state transfer of cash ledger balance as it would address the capital blockage issue for large companies having pan-India presence.

2.6 On the similar lines as discussed in para 2.4 above, transfer of SGST cash balance between ‘distinct persons’ registered in different states can be considered. The amount deposited in cash ledger under SGST head and its sub-head, in any of the States, are treated as credit to the Consolidated Fund of that particular state. Thus, transfer of SGST cash balance between ‘distinct persons’ registered in different states will simply mean transfer of funds from the Consolidated Fund of one state to Consolidated Fund of the other state. The process of settlement would be similar to the settlement done for **FORM GST PMT-09**

3.1 The Law Committee deliberated the matter in its meeting dated 11.08.2021. **The Law Committee recommended that unutilized balance in CGST and IGST cash ledger only may be allowed to be transferred between distinct persons, subject to the condition that such transfer will not be allowed if DRC-07 liability exists for the registered person transferring such cash balance.**

3.2 However, Member from Punjab gave the following note:

“Disagree. This is step towards centralized registration and shifting from State wise registration enshrined in section 22 of GST Act, 2017. This can be implemented only if section 22 of GST Act, 2017 is amended. Further, in case, transfer of cash balance between distinct persons is allowed, demand for transfer of credit balance will also arise in future.”

3.3 The comments of Member from Punjab have been examined. The following points merits consideration:

- i. Refund of un-utilized balance in un-utilized cash ledger, per say, is **not refund of tax**.
- ii. Need for refund provision for such unutilized cash balance arises only because of the accounting treatment of deposits in cash ledger, which is deemed as debit in Consolidated Funds of Centre or States.
- iii. Initial design of GSTR-3 allowed the taxpayer to take the refund of balance of cash ledger **through return only, without intervention of proper officer**.
- iv. However, because of non-implementation of GSTR-3 return mechanism, the refund of unutilized cash balance was provided through process of RFD-01 claim route and sanction by

- proper officer.
- v. The proposal is to allow taxpayer to transfer cash balance from one distinct person to other (similar to PMT-09 route already provided), without need for sanction of refund by proper officer, **which will help in reducing procedural compliances and improving liquidity of the taxpayers and ease of doing business.**
 - vi. The proposal, in no way, is linked to section 22 or to centralized registration.
 - vii. There is **no proposal to allow transfer of unutilized credit balance between distinct persons**, as refund of unutilized credit balance is presently also not allowed to any taxpayer, other than in cases of zero-rated supplies and inverted duty structure.
 - viii. **The proposal of allowing transfer of CGST/IGST cash ledger balance between ‘distinct persons’ will help in improving liquidity of all those taxpayers who have got multiple registrations in different states, without affecting revenue of either Centre of the states.**
4. Accordingly, the proposal of Law Committee to allow transfer of CGST/IGST cash ledger balance between ‘distinct persons’ may be approved by the Council. Further, Council may delegate Law Committee to draft the amendment in relevant sections which may be finalized in consultation with the Union Ministry of Law & Justice.
5. Accordingly, the issue is placed before the GST Council for approval.

Agenda Item 3(xi): Additional measures to tackle the menace of fake invoices: Amendment to rule 36(4) of the CGST Rules, 2017

Vide notification No. 49/2019-Central Tax dated 09.10.2019, sub-rule (4) was inserted in Rule 36 of the CGST Rules to restrict availment of input tax credit by a registered person in respect of invoices the details of which have not been furnished by the suppliers. Initially, availment of input tax credit in respect of invoices the details of which have not been furnished by the suppliers was permitted upto 20 percent of the eligible credit available in respect of invoices the details of which have been furnished by the suppliers in **FORM GSTR-1**. Subsequently, this limit was reduced to 10% w.e.f. 01.01.2020 and 5% w.e.f. 01.01.2021.

2.1 It may be noted that *vide* section 109 of the Finance Act, 2021 clause (aa) to the sub-section (2) of section 16 of the CGST Act, 2017 was inserted, so as to provide that input tax credit on invoice or debit note may be availed only when the **details of such invoice or debit note have been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient** of such invoice or debit note. The said clause reads as under:

“(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;”

2.2 It is also informed that **FORM GSTR-2B** was notified under sub-rule (7) of rule 60 of the CGST Rules vide notification No. 82/2020-CT dt. 10.11.2020, w.e.f. 01.01.2021, as auto-drafted statement containing the details of input tax credit, to be made available to the registered person through the portal, every month. Accordingly, once clause (aa) to the sub-section (2) of section 16 of the CGST Act notified, furnishing of details of invoices / debit notes by the suppliers in their respective **FORM GSTR-1** or **IFF** and communication of such details in **FORM GSTR-2B** to the registered person (recipient) shall become the eligibility criteria for availing ITC.

2.3 In contrast, the existing rule 36(4) allows availment of input tax credit in respect of invoices the details of which have not been furnished by the suppliers upto 5 percent of the eligible credit available in respect of invoices the details of which have been furnished by the suppliers in **FORM GSTR-1** or **IFF**. Further, the said rule does not prescribe communication of the details of invoice or debit note in **FORM GSTR-2B** as a condition for availment of ITC.

2.4 It is also informed that with effect from 12.12.2020, GSTN has made available auto-population of ITC and liabilities in **FORM GSTR-3B** (Payment return) from **FORM GSTR-2B** (auto-generated inward supply statement) and **FORM GSTR-1** (Outward supply statement) which has simplified the return filing. Presently, taxpayers can edit the said auto-populated return, without any limit/ restriction on such editing. GSTN has developed the functionality to restrict the editing in **FORM GSTR-3B**, both on liability side as well as on ITC side. **In order to have legal backing for such limitation/ restriction on editing in respect of ITC in GSTR-3B on the basis of GSTR-2B, it may be desirable to amend Rule 36(4) to link availment of ITC in GSTR-3B with details communicated to the taxpayer through GSTR-2B.**

2.5 Accordingly, it is proposed that the said rule 36(4) of the CGST Rules, 2017 may be amended, once section 109 of the Finance Act, 2021 related to insertion of clause (aa) to the sub-section (2) of section 16 of the CGST Act, 2017 is notified. Such amendment may cover the following

aspects:

- (i) removing the relaxation regarding availment of ITC in respect of invoices, the details of which have not been furnished by the suppliers in respective **FORM GSTR-1 / IFF**; and
- (ii) prescribing communication of the details of invoice or debit note in **FORM GSTR- 2B** as a condition for availment of ITC.

2.6. The rule 36(4) of the CGST Rules, 2017 may be substituted as follows:

*“(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes, the details of which have not been furnished by their suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using the invoice furnishing facility, and the details of which have not been communicated to the said registered person under sub-rule (7) of rule 60 in **FORM GSTR-2B**. ”*

The said rule may be notified only from a date as recommended by GST Council, after the said amendment in Section 16 (2) of the CGST Act through insertion of clause (aa) is notified.

3. The issue was deliberated by the Law Committee in its meeting held on 08.09.2021. The Law Committee agreed, in principle, that availment of ITC to be linked to GSTR-2B. Further, the Law Committee also approved the proposed formulation of rule 36(4) in para 2.6 above considering the formulation of section 16(2)(aa).

4. Accordingly, the agenda note is placed before the GST Council for approval.

Agenda Item 3(xii): Additional measures to tackle the menace of fake invoices: Amendment to rule 59(6) of the CGST Rules, 2017

There are number of cases in respect of taxpayers issuing fake invoices, where while the details of outward supplies are being furnished by taxpayers in **FORM GSTR-1** allowing the recipient to claim input tax credit, the taxpayer does not furnish the corresponding return in **FORM GSTR-3B**. Thus, while the input tax credit is passed on to the recipient, the tax is not paid by the supplier.

2. To tackle the issue of fake invoice, notification No. 94/2020-CT dt. 22.12.2020 and notification Number 01/2021-CT, dated 01.01.2021 were issued, which inter-alia, had inserted sub-rule (6) to rule 59 of the CGST Rules, 2017. It provides that a registered person shall not be allowed to furnish **FORM GSTR-1**, if he has not furnished the return in **FORM GSTR-3B** for preceding two months. Similar restriction was placed on taxpayers filing quarterly return, with a deviation that restriction on furnishing details of outward supplies in **FORM GSTR-1** shall be imposed if return in **FORM GSTR 3B** is not filed by the taxpayer for the preceding (one) tax period (3 months). It is further informed that blocking of **FORM GSTR-1** for non-furnishing of two **FORM GSTR-3Bs** has been started on portal since first week of Septemebr 2021.

3. It may be recalled that along with the proposal for law amendment , sequential filing of **FORM GSTR-1**, and requirement of mandatory filing of **FORM GSTR-1** before filing of **FORM GSTR-3B**, has already been approved by the Council in its 43rd meeting. This proposed amendment would regulate return filing and tax payment in GST, by making **FORM GSTR-1** and **FORM GSTR-3B** sequential. **In order to further strengthen the provisions against fake invoicing, it is proposed that the rule 59(6) of the CGST Rules may be amended to provide that a registered person shall not be allowed to furnish FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for the preceding month.** This will not only help in reducing the amount of credit passed on without filing of return and payment of tax thereon, but will also streamline the process of return filing in GST.

4. Accordingly, clause (a) of rule 59(6) of CGST Rules may be amended as shown in red below:
“(6) Notwithstanding anything contained in this rule, -
(a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1**, if he has not furnished the return in **FORM GSTR-3B** for **the preceding month** ~~two months~~;

Besides, in view of the proposed amendment, clause (c) of Rule 59(6) will become redundant, and therefore, we may consider deleting the said provision, once the amendment in clause (a) of Rule 59(6) is carried out.

4.1 Since, blocking of GSTR-1 on non-filing of two GSTR-3Bs is already starting on the portal from 01.09.2021, a call may be taken to amend rule 59(6) of the CGST Rules, as proposed above, from a date as may be agreed upon.

5. Law Committee deliberated on the above issue in its meeting held on 08.09.2021 and has recommended the above amendment, to be made effective from 01.01.2022.

6. Accordingly, the agenda note is placed before the GST Council for approval.

Agenda Item 3(xiii): Agenda Note for amendment in Section 54 of the CGST Act, 2017

1. Amendment in sub-section (2) of CGST Act, 2017 regarding time period for filing refund under section 55:

1.1 Reference is invited to sub-section (2) of section 54, which provides for refund of tax paid on inward supplies to the International Organisations and other persons eligible for refund under section 55 of the CGST Act, 2017. The said sub-section is reproduced as under:

“(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.”

1.2 On perusal of the said sub-section, it can be seen that it prescribes **a time limit of 6 months, for filing refund by such entities, from the last date of the quarter** in which the supply was received for claiming refund under Section 55. However, **the said time limit has been extended to 18 months vide Notification No. 20/2018-Central Tax dated 28.03.2018**. It is mentioned that the time limit for refunds under section (1) of section 54 of CGST Act, 2017 is two years from the relevant date.

1.3 Accordingly, **it is proposed that sub-section (2) of Section 54 of the CGST Act, 2017 may be amended so as to align it with sub-section (1) of Section 54**, as shown in **red** below:

*“(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of **two years** ~~six months~~ from the last day of the quarter in which such supply was received.”*

2. Amendment in sub-section (10) of CGST Act, 2017 to provide for withholding of refunds in respect of all types of refunds:

2.1 Reference is drawn to sub-section (10) of Section 54 of the CGST Act, 2017 which provides for withholding payment of refund to a person who is defaulter and which also provides for deduction of due amount from the refund. The relevant sub-section is reproduced below:

“(10) Where any refund is due under sub-section (3) to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—

(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

Explanation. —*For the purposes of this sub-section, the expression “specified date” shall mean the last date for filing an appeal under this Act.”*

2.2 On perusal of said sub-section, it is observed that the said sub-section provides for withholding of refund in case of refunds under sub-section (3) only. i.e. in case of refund of unutilised Input Tax Credit only. However, Section 79(1)(a) of CGST Act provides that the proper officer shall proceed to recover the amount payable by a person by deducting the amount from any money owing to such person which may be under the control of the proper officer or such other specified officer thereby meaning that recovery of the amount payable by a person can be made from any type of refund which is due to him. Therefore, **it is proposed to amend the sub-section (10) of the Section 54** as shown in **red** below:

“(10) Where any refund is due ~~under sub-section (3)~~ to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—

-----”

3. **Relevant date for filing refund claim of accumulated ITC in respect of zero-rated supplies made to SEZ without payment of duty**

3.1 It is submitted that sub-section (1) of section 54 provides that the refund application can be filed before the expiry of two years **from the relevant date**. Further, relevant date for different types of refund is provided at **Explanation (2) under Section 54**. On perusal of the provisions relating to relevant date, it is observed that **no relevant date has been specified for cases pertaining to refund of unutilised ITC on account of supplies made to SEZ**.

3.2 In this regard, it is pertinent to mention that it is not the case that the provision relating to relevant date for refund of unutilised ITC on account of supplies made to SEZ never existed in CGST Act. Initially, at the time of implementation of GST, the relevant date for refund of unutilised ITC on account of supplies made to SEZ was covered under the common clause for the relevant date for the refund of unutilised ITC on account of zero-rated supplies as well as refund of unutilised ITC on account of inverted duty structure. The original provision (e) under Explanation 2 under section 54 relating to relevant date in case of refund of unutilised ITC was as follows:

“(e) in the case of refund of unutilised input tax credit under sub-section (3), the end of the financial year in which such claim for refund arises;”

3.3 The aforesaid provision was amended vide the CGST (Amendment) Act, 2018 which was brought into effect from 01.02.2019 to link relevant date with the GSTR-3B return for the period for which refund claim arises. However, while making such amendment, the reference has been made to **clause (ii) of sub-section (3) of section 54, which relates to refund on account of inverted duty structure**, due to which all refund of unutilised ITC on account of zero-rated supplies got excluded from the said provisions. The amended provision (e) under Explanation 2 under section 54 relating to

relevant date in case of refund of unutilised ITC is as under:

“(e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;”

3.4 However, as relevant date for export of goods and services has been clearly laid down, cases of **refund on account of exports** get covered under those provisions. Further, the cases **where supplies to SEZ are made with payment of tax** gets covered under the provisions where relevant date has been specified as the date of payment of tax, thereby leaving only those cases of supplies to SEZ, which are made without payment of tax, out of purview of the definition of relevant date in Explanation 2 under section 54.

3.5 Due to absence of any relevant date, in respect of supplies made to SEZ without payment of duty, in Explanation 2 under section 54 in pursuant to the aforesaid amendment, the cases of refund of unutilised ITC on account of supplies made to SEZ without payment of tax can technically be filed any time, even more than 2 years after the supply was made, thereby resulting in disparity between the time period allowed for filing refund claim on account of exports and supplies to SEZ, when both are made without payment of tax, which is unjustifiable. In fact, disparity has arisen even in cases pertaining to supplies made to SEZ with payment of tax and without payment of tax. In this regard, it appears that the absence of relevant date in respect of the supplies made to SEZ without payment of duty, has resulted inadvertently, due to insertion of specific clause i.e. clause (ii) of sub-section (3), which is pertaining to refund on account of inverted duty structure, in clause (e) of the Explanation 2. Further, the decision to prescribe time period of two years from relevant date for filing application of refund is a conscious policy decision of the government and it appears that government does not intend to discriminate between the different types of refund claims as far as prescribing the time period for filing the application for refund is concerned

3.6 Accordingly, in order to maintain uniformity with respect to relevant date in cases of all supplies made to SEZ, it is proposed to insert a new provision relating to relevant date in Explanation 2 under section 54, in case of supplies to SEZ, as under:

“(ba) in case of zero rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or inputs services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;”

4. The issue was deliberated by the Law Committee in its meeting held on 08.09.2021 and the Law Committee approved the above proposals.

5. Accordingly, the agenda note is placed before the GST Council for approval.

Agenda Item 3(xiv): Clarification on doubts related to scope on “intermediary”

It may be recalled that Circular No. 107/26/2019-GST dated 18.07.2019 (clarification on doubts related to supply of Information Technology enabled Services) was rescinded vide Circular No. 127/46/2019-GST dated 04.12.2019 after the approval given by GIC in its 34th meeting held on 02.10.2019. The same was placed for information before GST Council in its 38th meeting held on 18.12.2019.

2. It was decided in the said meeting that -
 - i. policy issues decided may be resolved first;
 - ii. Appropriate changes in the law may be proposed during the budget session to explicitly state the legal intent, with approval of the GST Council;
 - iii. Circular No. 107/26/2019-GST dt. 18.07.2019 may be rescinded;
 - iv. no new circular may be issued on intermediary urgently without further deliberation on the policy issues involved.

3.1 The issue has been examined. It may be appreciated that while there may be a need to have a relook at the definition of intermediary in the IGST Act and also the provisions pertaining to Place of Supply in respect of intermediary in the said Act, after examination of the international practices in this regard, however any such exercise, being a law amendment, is a long-drawn process and would ONLY be prospective in nature.

3.2 It has emerged during examination of the issue that there have been disputes about the scope of intermediary for a long time. Besides, there are large number of representations and references, including Parliament Question and PMO references, highlighting the difficulties being faced by trade and industry, in view of divergent practices in field formation about interpretation of scope of intermediary as per the present provisions of the IGST Act. Accordingly, in order to avoid legal disputes on the issue and as a responsive tax administration, there is an imminent need to clarify, the scope of intermediary, in terms of the present provision of IGST Act, without waiting any further for law amendments regarding definition of intermediary and Place of Supply provisions.

3.3 The problem appears to have the following solution -

(i) The scope of ‘intermediary services’ as per the present provisions of the law need to be clarified through a Circular, as a first step to address the difficulties being faced by trade and industry due to divergent practices in field formations on interpretation of the said provision. **It is expected that, this step alone will resolve the difficulties being faced on the issue to a large extent.**

(ii) On a long-term basis, issues of amendment in definition of intermediary and Place of Supply provisions pertaining to intermediary may be examined by the Law Committee in due course, based on the international practices on the issue. The issue of exercising powers under section 13 (13) of the IGST Act, 2017 to prevent (apparent) double taxation or non-taxation of any specific supply by *notifying its PoS as a special case may also be examined, if needed, by the Law Committee* in due course.

4. Accordingly, it may be desirable to issue a circular at the earliest to address the issue of difficulties being faced due to divergent practices of interpretation of scope of the ‘intermediary

services' as per the present provisions of the IGST Act. A draft circular has been prepared and is enclosed as **Annexure A** to this agenda note. The Law Committee deliberated the issue in its meeting dated 08.09.2021 and has approved the draft Circular.

5. Accordingly, the agenda note, along with draft circular (Annexure A), is placed before the Council for approval please

F.No. CBIC-20006/26/2021-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the , 2021

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/
Commissioners of Central Tax (All)

The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on doubts related to scope of “Intermediary”–reg.

Representations have been received citing ambiguity caused in interpretation of the scope of “Intermediary services” in the GST Law. The matter has been examined. In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues in succeeding paragraphs.

Scope of Intermediary services

2.1 ‘Intermediary’ has been defined in the sub-section (13) of section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST” Act) as under–

“Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.”

2.2 The concept of ‘intermediary’ was borrowed in GST from the Service Tax Regime. The definition of ‘intermediary’ in the Service Tax law as given in Rule 2(f) of Place of Provision of Services Rules, 2012 issued vide notification No. 28/2012-ST, dated 20-6-2012 was as follows:

“intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the ‘main’ service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account;”

2.3 From the perusal of the definition of “intermediary” under IGST Act as well as under Service

Tax law, it is evident that there is broadly no change in the scope of intermediary services in the GST regime vis-à-vis the Service Tax regime, except addition of supply of securities in the definition of intermediary in the GST Law.

3. **Primary Requirements for intermediary services**

The concept of intermediary services, as defined above, requires some basic pre-requisites, which are discussed below:

3.1 Minimum of Three Parties: By definition, an intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons. It is thus a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. An activity between only two parties can, therefore, NOT be considered as an intermediary service. An intermediary essentially “arranges or facilitates” another supply (the “main supply”) between two or more other persons and, does not himself provide the main supply.

3.2 Two distinct supplies: As discussed above, there are two distinct supplies in case of provision of intermediary services;

(1) Main supply, between the two principals, which can be a supply of goods or services or securities;

(2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals. This ancillary supply is supply of intermediary service and is clearly identifiable and distinguished from the main supply.

A person involved in supply of main supply on principal to principal basis to another person cannot be considered as supplier of intermediary service.

3.3 Intermediary service provider to have the character of an agent, broker or any other similar person: The definition of “intermediary” itself provides that intermediary service provider *means a broker, an agent or any other person, by whatever name called....*. This part of the definition is not inclusive but uses the expression “means” and does not expand the definition by any known expression of expansion such as “and includes”. The use of the expression “arranges or facilitates” in the definition of “intermediary” suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediary is only supportive.

3.4 Does not include a person who supplies such goods or services or both or securities on his own account: The definition of intermediary services specifically mentions that intermediary *“does not include a person who supplies **such** goods or services or both or securities on his own account”*. Use of word “**such**” in the definition with reference to supply of goods or services refers to the main supply of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary. It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal to principal basis, the said supply cannot be covered under the scope of “intermediary”.

3.5 Sub-contracting for a service is not an intermediary service: An important exclusion from intermediary is sub-contracting. The supplier of main service may decide to outsource the

supply of the main service, either fully or partly, to one or more sub-contractors. Such sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary. For instance, 'A' and 'B' have entered into a contract as per which 'A' needs to provide a service of, say, Annual Maintenance of tools and machinery to 'B'. 'A' subcontracts a part or whole of it to 'C'. Accordingly, 'C' provides the service of annual maintenance to 'A' as part of such sub-contract, by providing annual maintenance of tools and machinery to the customer of 'A', i.e. to 'B' on behalf of 'A'. Though 'C' is dealing with the customer of 'A', but 'C' is providing main supply of Annual Maintenance Service to 'A' on his own account, i.e. on principal to principal basis. In this case, 'A' is providing supply of Annual Maintenance Service to 'B', whereas 'C' is supplying the same service to 'A'. Thus, supply of service by 'C' in this case will not be considered as an intermediary.

3.6 The specific provision of place of supply of 'intermediary services' under section 13 of the IGST Act shall be invoked **only when** either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India.

4. Applying the abovementioned guiding principles, the issue of intermediary services is clarified through the following illustrations:

Illustration 1

'A' is a manufacturer and supplier of a machine. 'C' helps 'A' in selling the machine by identifying client 'B' who wants to purchase this machine and helps in finalizing the contract of supply of machine by 'A' to 'B'. 'C' charges 'A' for his services of locating 'B' and helping in finalizing the sale of machine between 'A' and 'B', for which 'C' invoices 'A' and is paid by 'A' for the same. While 'A' and 'B' are involved in the main supply of the machinery, 'C', is facilitating the supply of machine between 'A' and 'B'. In this arrangement, 'C' is providing the ancillary supply of arranging or facilitating the 'main supply' of machinery between 'A' and 'B' and therefore, 'C' is an intermediary and is providing intermediary service to 'A'.

Illustration 2

'A' is a software company which develops software for the clients as per their requirement. 'A' has a contract with 'B' for providing some customized software for its business operations. 'A' outsources the task of design and development of a particular module of the software to 'C', for which 'C' may have to interact with 'B', to know their specific requirements. In this case, 'C' is providing main supply of service of design and development of software to 'A', and thus, 'C' is not an intermediary in this case.

Illustration 3

An insurance company 'P', located outside India, requires to process insurance claims of its clients in respect of the insurance service being provided by 'P' to the clients. For processing insurance claims, 'P' decides to outsource this work to some other firm. For this purpose, he approaches 'Q', located in India, for arranging insurance claims processing service from other service providers in India. 'Q' contacts 'R', who is in business of providing such insurance claims processing service, and arranges supply of insurance claims processing service by 'R' to 'P'. 'Q' charges P a commission or service charge of 1% of the contract value of insurance claims processing service provided by 'R' to 'P'. In such a case, main supply of insurance claims processing service is between 'P' and 'R', while 'Q' is merely arranging or facilitating the supply of services between 'P' and 'R', and not himself providing

the main supply of services. Accordingly, in this case, 'Q' acts as an intermediary as per definition of sub-section (13) of section 2 of the IGST Act.

Illustration 4

'A' is a manufacturer and supplier of computers based in USA and supplies its goods all over the world. As a part of this supply, 'A' is also required to provide customer care service to its customers to address their queries and complains related to the said supply of computers. 'A' decides to outsource the task of providing customer care services to a BPO firm, 'B'. 'B' provides customer care service to 'A' by interacting with the customers of 'A' and addressing / processing their queries / complains. 'B' charges 'A' for this service. 'B' is involved in supply of main service 'customer care service' to 'A', and therefore, 'B' is not an intermediary.

5. The illustrations given in para 4 above are only indicative and not exhaustive. The illustrations are also generic in nature and should not be interpreted to mean that the service categories mentioned therein are inherently either intermediary services or otherwise. Whether or not, a specific service would fall under intermediary services within the meaning of sub-section (13) of section 2 of the IGST Act, would depend upon the facts of the specific case. While examining the facts of the case and the terms of contract, the basic characteristics of intermediary services, as discussed in para 3 above, should be kept in consideration.

6. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

7. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Agenda Item 3(xv): Agenda Note for notifying supplies and class of registered person eligible for refund under IGST route

Vide section 123 of the Finance Act, 2021, sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the “IGST Act”) has been substituted with sub-sections (3) and (4) as below:

“(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed. 42 of 1999.

(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify—

(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;

(ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.”

Further, in terms of clause (b) of sub-section (2) of section 1 of the Finance Act, 2021, the said amendment shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. **It is proposed that the said section of the Finance Act, 2021 is notified at the earliest.**

2. The amendment has basically restricted the zero rated supply on payment of integrated tax only to a notified class of taxpayers or notified supplies of goods or services and has made the export under LUT as the default route. Before taking any policy decision on notifying the class of supplies or class of taxpayers who can export on payment of IGST and claim refund of such tax, it would be pertinent to examine the intent behind the amendment in section 16 of the IGST Act. The issue which was deliberated in the 39th meeting of the GST Council for the said amendment is as below:

“Various instances, especially in export of few specific commodities, of frauds have come to notice, wherein refunds on payment of IGST have been availed using fraudulent credit. It may be noted that section 16 of the IGST Act, 2017 provides that a person making zero-rated supplies can avail two modes of refund (LUT / IGST), and this appears to be the real reason creating distortions.

Further, it has been observed that internationally, zero-rated supplies are taxed at zero-rate and credit of inputs in respect of such supplies are refunded. The refund of IGST

paid on export is not available internationally, and it is felt that the process can also be implemented under the GST laws in India. This is expected to remove distortions and bring uniformity.

Accordingly, it is proposed to amend the provisions of the IGST Act to make the export of goods and services without payment of integrated tax, under LUT/Bond as the default route for exports and to take an enabling power under section 16 to empower the Commissioner to notify the specific supplies of goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, that may be made eligible for supply on payment of integrated tax.”

3. In view of the above, it appears that the said amendment was proposed to prevent the misuse of the IGST route as proper officer of customs do not have access to the GST portal and therefore, may not be in a position to verify the refund claim properly. Whereas in case of refund of unutilised ITC in case of exports made under LUT route, the jurisdictional GST officers processing the refund have access to all returns and other documents available on GST portal and are in better position to verify such refund claim in details. Thus, it was decided that IGST refund route for goods may be kept open only for some specified class of supplies or class of exporters in respect of which the probability of misuse of the scheme are minimal. Therefore, it is proposed that while notifying the class of supplies or class of suppliers who would be eligible for making export with payment of tax and thereafter, getting refund under IGST route, only such supplies or class of taxpayers may be notified where, either the refund application is scrutinised by the jurisdictional GST officers or where the bona fide of exporter is already verified or the identify the exporter is known/verifiable i.e. the exporter is not a fly by night exporter.

Notifying goods or services that may be exported on payment on integrated tax

4. It may be noted that, at present, refund of integrated tax paid on export of services is processed by the central / state tax officers similar to the refund of unutilised ITC. Further, the refund on account of export of services is filed by the applicant in **FORM GST RFD-01** only after the receipt of export remittances in free foreign exchange. Therefore, it is proposed that **all services may be notified under clause (ii) of sub-section 4 of section 16 of the IGST Act, as class of supplies which may be exported on payment of integrated tax and the supplier of such services may claim the refund of tax so paid.**

Notifying class of persons who may make zero rated supply on payment of integrated tax

5. As regards notifying class of suppliers for zero-rated supply on payment of integrated tax, the methodology should be such:

- i. Which can be implemented on portal;
- ii. Which ensures, to the maximum extent, that exporters are genuine;
- iii. The exporters know before hand that he can export on payment of IGST;
- iv. Which ensures least human interface.

Therefore, the following classes of suppliers of goods or services or both, which appear to fulfil the above criteria to a large extent, can be considered for eligibility for making zero-rated supplies on payment of integrated tax and thereafter getting refund of the tax paid.

6. Category I

6.1 The first category could be such exporters who have been granted Authorised Economic Operator (AEO) certificate under the SAFE Framework of World Customs Organisation.

6.2 Under the **SAFE Framework of World Customs Organisation**, the exporters/importers are provided 3 types of certifications under AEO programme i.e. AEO Tier 1, AEO Tier 2 & AEO Tier 3. There is a rigorous process and prescribe standards to obtain such certification. The details of SAFE Framework of WCO and the AEO certification may be accessed through the link [https://www.cbic.gov.in/htdocs-cbec/home_links/india-aeo-prgm]. The total number of AEO certified entity, as on **01.09.2021**, is as below:

Sl. no	AEO CERTIFIED ENTITY AS ON 01.09.2021
Tier 1	3240
Tier 2	573
Tier 3	41
Total	3854

[The list of AEO certified entity is available on the above referred URL]

6.3 As AEO certification is granted to the Importer/Exporters only after a detailed verification procedure as per international standards prescribed by WCO under SAFE Framework, AEO certificate holders may be considered for notifying as class of suppliers who may make zero-rated supply on payment of integrated tax and claim refund of such tax.

7. Category II

7.1 The second category could be such exporters who have been granted star exporter/status holder certification by DGFT.

7.2 The exporters are provided rating as per their export performance during the current and previous three financial years. An exporter is required to achieve the required export performance in atleast 2 out of the 4 years for grant of status holder certificate. A Status Holder is eligible for privileges as specified by the Foreign Trade Policy. The required export performance for status holder certificate as per Foreign Trade Policy and the number of exporters who have been granted such status, are as under:

S. No.	Status Category	Export Performance FOB / FOR (as converted) Value (in US \$ million)	Number of Exporter who have been granted the status holder certification as mentioned in col. (2) (as on 01.09.2021)
1.	One Star Export House	3	8947
2	Two Star Export House	25	2017
3.	Three Star Export House	100	627
4.	Four Star Export House	500	113

5.	Five Star Export House	2000	42
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7.3 It is further informed that as per FTP, three star and above Export House are entitled to get benefit of Accredited Clients Programme (ACP) as per the guidelines of CBEC which is now converted into AEO programme. Further, manufacturers who are also status holders (Three Star/Four Star/Five Star) are also allowed to self-certify their manufactured goods as originating from India under preferential trade agreements (PTA), Free Trade Agreements (FTAs), Comprehensive Economic Cooperation Agreements (CECA) and Comprehensive Economic Partnership Agreements (CEPA). Accordingly, it was proposed that three or more-star export houses may be considered for notifying as class of suppliers who may make zero-rated supply on payment of integrated tax and claim refund of such tax.

7.4 This issue was deliberated in the Law Committee meeting held on 08.09.2021 wherein Law Committee deliberated whether all exporters who have been granted star exporter status certification may be included in the proposal regarding notifying class of suppliers. After deliberation, Law Committee took a view that one-star export houses may not be considered for notifying as class of suppliers, as during the verification of certain exporters identified on the basis of data analytics, adverse reports have been received from field formations in respect of number of one star export houses. Therefore, **Law Committee recommended that two or more-star export houses may be considered for notifying as class of suppliers who may make zero-rated supply on payment of integrated tax and claim refund of such tax.**

7.5 Accordingly, it is proposed that **two or more-star export houses** may be considered for notifying as class of suppliers who may make zero-rated supply on payment of integrated tax and claim refund of such tax.

8. Category III

8.1 As there is no doubt about authenticity of Government Departments, Public Sector Undertakings, local authorities and statutory bodies, we may consider notifying Government Department, Public Sector Undertaking, local authority and statutory body as class of suppliers who may make zero-rated supply on payment of integrated tax and claim refund of such tax.

9. In view of above discussion, it is proposed that:

- a. **Class of supplies: All services may be notified under clause (ii) of sub-section 4 of section 16 of the IGST Act, as class of supplies which may be exported on payment of integrated tax and the supplier of such services may claim the refund of tax so paid; and**
- b. **Class of suppliers: The following classes of suppliers of goods or services or both, may be notified under clause (i) of sub-section 4 of section 16:**
 - I. **Exporters who have been granted AEO certification under WCO SAFE Framework;**
 - II. **Exporters who have been granted Status Holder certification of 2 star or more under FTP;**
 - III. **Government Department, Public Sector Undertaking, Local Authority and Statutory Body.**

10. The issue was deliberated by the Law Committee in its meeting held on 08.09.2021. The Law Committee had recommended the proposal given in para 9 above.

11. Notification under clause (i) & (ii) of sub-section (4) of section 16 of the IGST Act, 2017 as per the proposal given in Para 9 above would be required to be issued once Section 123 of the Finance Act, 2021 is notified. Further, implementation of the proposal requires preparedness at the systems level- both at GSTN and ICEGATE. Accordingly, Section 123 of the Finance Act, 2021 may be notified, along with the notifications under clause (i) & (ii) of sub-section (4) of section 16 of the IGST Act, 2017 as per the proposal given in Para 9 above, in consultation with GSTN and DG Systems (ICEGATE). It is desirable that the system preparedness may be completed so as to notify the provisions preferably by 01.01.2022.
12. Accordingly, the agenda note is placed before the GST Council for approval.

Agenda Item 4: Nominations from State Governments on Board of GSTN

There are three representatives of States on the GSTN Board and officers from State are nominated by the Council on rotation basis from time to time. While officers from different States have been on the Board, there is no definite policy for nominating officers from State to the Board. Officers are also not nominated for any fix tenure on the Board and once nominated; an officer has normally been replaced only after he is transferred out from the post to another post that is not connected with GST administration.

2. It is proposed that we may have a policy of nominating officers of the State to the GSTN Board. For this purpose, the States have been divided into three groups (based on the census code and then alphabetically arranged). It is proposed that officers from State in each of the three groups may be nominated on the Board in alphabetical order for a period of one year.

Group-I		Group-II		Group-III	
1	Bihar	11	Arunachal Pradesh	21	Andhra Pradesh
2	Delhi	12	Assam	22	Chhattisgarh
3	Haryana	13	Manipur	23	Goa
4	Himachal Pradesh	14	Meghalaya	24	Gujarat
5	Jammu and Kashmir	15	Mizoram	25	Karnataka
6	Jharkhand	16	Nagaland	26	Kerala
7	Punjab	17	Odisha	27	Madhya Pradesh
8	Rajasthan	18	Sikkim	28	Maharashtra
9	Uttar Pradesh	19	Tripura	29	Puducherry
10	Uttarakhand	20	West Bengal	30	Tamil Nadu
				31	Telangana

3. Currently, we have officers from Uttar Pradesh in Group-I and Maharashtra in Group-III on the Board, both already for a period of more than a year. The nominee from UP, Shri Alok Sinha, has since then been transferred from his place. It is, therefore, proposed that officers from Uttarakhand, Arunachal Pradesh and Puducherry may be nominated on the Board with effect from 1.10.2021 for a period of one year till 31.09.2021 and then, we may follow the alphabetical order in each group.

Agenda Item 5: Performance Report of the NAA (National Anti-Profitteering Authority) for the 1st quarter (April to June, 2021) for the information of the Council

In terms of provisions of clause (iv) of Rule 127 of the CGST Rules 2017, National Anti-Profitteering Authority (NAA) is required to furnish a performance report to the GST Council by 10th of the closing of each quarter. Anti-profitteering provisions are contained under Section 171 of the CGST Act, 2017 which empowers NAA to determine as to whether benefit of reduced rate of tax or the Input Tax Credit (ITC) has been passed on to the recipient by way of commensurate reduction in the prices and in case of failure, NAA may order reduction in prices, commensurate benefit to recipient, impose penalty and cancel registration, in suitable cases.

2. Anti-profitteering mechanism under GST is a multi-tier mechanism. The methodology of examination of the complaints to determine profiteering is asunder:

- i. State Level Screening Committee (SLSC) examines State level complaint and recommends to the Standing Committee (SC);
- ii. SC, in addition to complaints recommended by SLSC, also receives complaint directly in respect of suppliers having pan India or presence in more than one State/UT;
- iii. SC examines and sends recommendation to the DG, Anti-profitteering (DGAP);
- iv. DGAP then completes investigation, within a period of 3 months, and furnishes a report of its findings to NAA;
- v. Based on the report from DGAP, NAA determines all aspects relating to profiteering, passes its order regarding reduction in prices; return of amount to recipient; imposition of penalty; and cancellation of registration.

3. Accordingly, the performance report of anti-profitteering for the 1st quarter (April to June, 2021) of Financial Year 2021—22 at various levels, is as under:

3.1. Performance of **National Anti-Profitteering Authority**:

Opening Balance	No. of Investigation Reports received from DGAP during the quarter	Disposal of Cases (during Quarter)				Closing Balance
		Total Disposal during quarter	No. of cases Where Profiteering established	No. of cases Where Profiteering not established	No. of cases referred back to DGAP	
Quarter 1 st April, 2021 to 30 th June, 2021						
127	12	0	0	0	0	139

3.2. Performance of DG (**Anti-profitteering**):

Opening Balance (No. of cases)	Receipt	Disposal	Mode of disposal of cases		Closing Balance (No. of cases)
			Report to NAA confirming profiteering	Report to NAA for closure action	
Quarter 1 st April, 2021 to 30 th June, 2021					
83	0	3	3	0	80

3.3 Performance report of the **Standing Committee** on Anti-profitteering:

Opening Balance (No. of cases)	Receipt	Disposal	Closing Balance (No. of cases)
Quarter 1st April, 2021 to 30th June, 2021			
129	38	129	38

3.4. Performance report from the **State Level Screening Committee:**

Opening Balance (No. of cases)	Receipt	Disposal		Closing Balance (No. of cases)
		Cases referred to Standing Committee	Cases Rejected	
Quarter 1 st April, 2021 to 30 th June, 2021				
38*	66	33	3	68

* In earlier report (Qtr. Ending March 2021) Goa, Haryana and Punjab were not included since Reports were not received from them. Now these states are included in this report so the total Closing Balance of Qtr. ending March 21 and Opening Balance of Qtr. ending June 21 may differ by 3.

Note: A detailed performance of each State Level Screening Committee is enclosed at Annexure “A” (Quarter ending June, 2021).

4. During these quarters NAA has undertaken the following activities/initiatives-

- i. During the quarter April to June 2021, the functioning of the National Anti-Profiteering Authority (NAA) was severely impacted in the month of April 2021 by the second wave of Covid-19 pandemic as it resulted in serious health issues to several officers of the Authority, including one of its Technical Members.
- ii. The functioning of the Authority was also adversely affected in the months of May and June 2021 due to the lack of the minimum prescribed quorum of the Authority after the relieving of Sh. Navneet Goel, Technical Member, on 29.04.2021, pursuant to Office Order No. 37/2021 issued the CBIC, Department of Revenue, Govt of India. Further, Sh. B.N. Sharma, Chairman of the Authority resigned on 17.05.2021 to join his new assignment as Chairman, Rajasthan State Electricity Regulatory Commission.
- iii. Meanwhile, Sh. Amand Shah, Technical Member, was assigned the duties and responsibilities of the post of Chairman, National Anti-Profiteering Authority in addition to his existing responsibilities vide Order No. 78/2021 dated 31.05.2021 issued by the Department of Revenue, Govt of India and he has started discharging the functions of the Chairman since 02.06.2021 as additional charge. However, the Authority's quasi-judicial functions and proceedings will resume as soon as the minimum quorum of three Technical Members, required under Rule 134 (1) of the CGST Rules 2017, is restored.
- iv. Due to the above reasons, no cases could be disposed of in the quarter ending 30.06.2021. Currently, total 139 cases are pending for completion of quasi-judicial proceedings at the level of the Authority.
- v. With a view to get the quorum of the Authority resorted, the Department of Revenue has been requested by the acting Chairman, to appoint three Technical Members and the Chairman of the Authority.
- vi. 66 Anti-profiteering complaints received by the Authority (60 received on the NAA portal and 6 through email) during the quarter have been forwarded to the concerned State Level Screening Committee and / or the Standing Committee. Complaints related to enforcement

issues and where allegation relates to tax-evasion etc. have been forwarded to the Jurisdictional Chief Commissioners & concerned CCTs for necessary action at their end.

5. Accordingly, the quarterly performance report of the National Anti-Profiteering Authority for the period from April to June, 2021 is placed before the GST Council.

Annexure-A

Performance Report of the State Level Screening Committee for Quarter (April - June 2021)							
S.No.	States	Received/Not Received	Opening Balance	Receipt	Disposal		Closing Balance
					Standing Committee	Rejected	
1	Andhra Pradesh	✓	0	0	0	0	0
2	Arunachal Pradesh	✓	0	0	0	0	0
3	Assam	✓	0	0	0	0	0
4	Bihar	✓	0	2	0	2	0
5	Chhattisgarh	X					
6	Goa	✓	1	0	0	1	0
7	Gujarat	✓	0	1	0	0	1
8	Haryana	✓	1	2	0	0	3
9	Himachal Pradesh	✓	0	0	0	0	0
10	Jammu and Kashmir	✓	0	0	0	0	0
11	Jharkhand	✓	0	0	0	0	0
12	Karnataka	✓	0	0	0	0	0
13	Kerala	X					
14	Madhya Pradesh	✓	2	0	0	0	2
15	Maharashtra	✓	1	4	5	0	0
16	Manipur	✓	0	0	0	0	0
17	Meghalaya	✓	0	0	0	0	0
18	Mizoram	✓	0	0	0	0	0
19	Nagaland	✓	0	0	0	0	0
20	NCT of Delhi	✓	25	51	25	0	51
21	Odisha*	✓	0	0	0	0	0
22	Puducherry	✓	0	0	0	0	0
23	Punjab	✓	1	1	0	0	2
24	Rajasthan	✓	0	1	0	0	1
25	Sikkim	✓	0	0	0	0	0
26	Tamil Nadu	✓	1	0	0	0	1
27	Telangana	✓	0	0	0	0	0
28	Tripura	✓	0	0	0	0	0
29	Uttar Pradesh	✓	1	3	3	0	1
30	Uttarakhand	✓	0	0	0	0	0
31	West Bengal	✓	5	1	0	0	6
		29	38	66	33	3	68

* In earlier report (Qtr. Ending March 2021) Goa, Haryana and Punjab were not included since Reports were not received from them. Now these states are included in this report so the total Closing Balance of Qtr. ending March 21 and Opening Balance of Qtr. ending June 21 may differ by 3.

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

In the 26th GST Council meeting held on 10th March, 2018, it was decided that all ad hoc exemption orders issued with the approval of Hon'ble Finance Minister as per the guidelines contained in Circular No. 09/2014-Customs dated 19th August, 2014, as was the case prior to the implementation of GST, shall be placed before the GST Council for information.

2. The details of the ad hoc exemption order issued are as follows:

Order No.	Date	Remarks
AEO No. 06 of 2021	03rd June 2021	Request from Shri Yogesh Gupta for exemption from import duties on import of life saving drug Zolgensma for personal use. (Order copy enclosed).
AEO No. 07 of 2021	09 th June 2021	Request from Shri Sourabh Shinde for exemption from import duties on import of life saving drug Zolgensma for personal use. (Order copy enclosed).
AEO No. 08 of 2021	12 th July 2021	Request from Shri Nagumantri VSL Raman for exemption from import duties on import of lifesaving drug Zolgensma, for personal use. (Order copy enclosed).
AEO No. 09 of 2021	14 th July 2021	Request from Shri Satheesh Kumar for exemption from import duties on import of life saving drug Zolgensma for personal use. (Order copy enclosed).
AEO No. 10 of 2021	03 rd August 2021	Request from Shri Rafeeq for seeking exemption from payment of import duty for import of lifesaving drug Zolgensma, for personal use. (Order copy enclosed).
AEO No. 11 of 2021	29 th August 2021	Request from Shri Nazar P.K., for exemption from import duties on import of life saving drug Zolgensma for personal use. (Order copy enclosed).

3. This is placed for the information of GST Council.

F. No. 461/06/2021-Cus V
Ad-hoc Exemption Order no. 6 of 2021
Issued under section 25(2) of the Customs Act, 1962

Government of India
Ministry of Finance
Department of Revenue

Room no. 227A, North Block, New Delhi – 110001

Dated the 03rd June 2021

To,
The Chief Commissioner of Customs,
Mumbai –III
Mumbai

Sir,

Subject: Request for Special Exemption from payment of Customs Duty under Section 25 (2) of Customs Act, 1962 on import of Zolgensma– reg.

The undersigned is directed to refer to a request received from Mr. Yogesh Gupta, father of baby Ayaansh Gupta, seeking exemption from payment of duty in terms of Section 25 (2) of Customs Act, 1962, for import of Zolgensma, a drug for gene replacement therapy.

2. He has informed that:

- (i) his son, Ayaansh Gupta, has been diagnosed with Spinal Muscular Atrophy, type 1, a severe, rare, early-onset genetic disorder that affects a child's nervous system and eventually kills the baby as the condition progresses.
- (ii) they raised money (INR 16 crores) to cover costs for a revolutionary gene replacement therapy, Zolgensma, priced at USD \$2.125 million, to save his life, through crowd funding.
- (iii) they have obtained approval from DGCI to import this life saving medicine for personal use.
- (iv) the drug Zolgensma needs to be imported from USA and as per the doctor's advice and the infant's weight, 60 ml of the drug would be required for the treatment.
- (v) The drug is expected to be imported as 1 package with 60 ml doses of medicine.

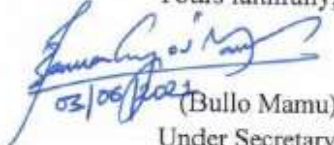
2.1 They have requested for waiving off the customs duties and GST on the import of this lifesaving drug Zolgensma.

3. In view of the exceptional circumstances as mentioned above, the Central Government in exercise of the powers conferred by sub-section (2) of Section 25 of the Customs Act, 1962 (52 of 1962), being satisfied that it is necessary in the public interest so to do, hereby exempts 60 ml of Zolgensma, from the whole of the Integrated Tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975, subject to the condition that the imported goods will be used for the treatment of Baby Ayaansh Gupta and will not be put to other use. The said drug is already exempt from payment of BCD under Sl. No. 607 of Notification 50/2017- Customs dated 30th June, 2017, subject to conditions therein.

F. No. 461/06/2021-Cus V
Ad-hoc Exemption Order no. 6 of 2021
Issued under section 25(2) of the Customs Act, 1962

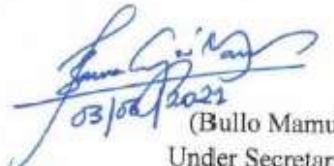
4. An undertaking that the goods covered by this Order will be used solely for the treatment of Baby Ayaansh Gupta and shall not be put to any other use shall be submitted by the applicant to the jurisdictional Commissioner of Customs of the port of import for claiming benefit of exemption under this Order.
5. Any infringement of conditions of this Order should be brought to the notice of the Commissioner of Customs of the port of import for taking further necessary action such as realization of Customs duty on the subject goods, penal action for such violations, etc.
6. This order is valid for imports made up to 02.09.2021

Yours faithfully,


03/06/2021
(Bullo Mamu)
Under Secretary

Copy to:

- Mr, Yogesh Gupta A- 1208, Aparna Cyber Life, Nalagandala, Lingampalli, Hyderabad, Telengana Pincode - 500019.
- Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi-110 002.
- Guard File.


03/06/2021
(Bullo Mamu)
Under Secretary

F. No. 461/07/2021-Cus V
Ad-hoc Exemption Order no.7 of 2021
Issued under section 25(2) of the Customs Act, 1962

Government of India
Ministry of Finance
Department of Revenue

Room no. 227A, North Block, New Delhi – 110001

Dated the 09th June 2021

To,
The Chief Commissioner of Customs,
Mumbai –III
Mumbai

Sir,

Subject: Request for Special Exemption from payment of Customs Duty under Section 25 (2) of Customs Act, 1962 on import of Zolgensma– reg.

The undersigned is directed to refer to a request received from Mr. Sourabh Shinde, father of baby Kumari Vedika Shinde, seeking exemption from payment of duty in terms of Section 25 (2) of Customs Act, 1962, for import of Zolgensma, a drug for gene replacement therapy.

2. He has informed that:

- (i) his daughter, Kumari Vedika Shinde, has been diagnosed with Spinal Muscular Atrophy, type 1, a severe, rare, early-onset genetic disorder that affects a child's nervous system and eventually kills the baby as the condition progresses.
- (ii) they raised money (INR 16 crores) to cover cost for a revolutionary gene replacement therapy, Zolgensma, priced at USD \$2.125 million, to save his life, through crowd funding.
- (iii) they have obtained approval from DGCI to import this life saving medicine for personal use.
- (iv) the drug Zolgensma needs to be imported from USA and as per the doctor's advice and the infant's weight, 74.7 ml of the drug would be required for the treatment.
- (v) The drug is expected to be imported as 1 package with 74.7 ml doses of medicine.

2.1 They have requested for waiving off the customs duties and GST on the import of this lifesaving drug Zolgensma.

3. In view of the exceptional circumstances as mentioned above, the Central Government in exercise of the powers conferred by sub-section (2) of Section 25 of the Customs Act, 1962 (52 of 1962), being satisfied that it is necessary in the public interest so to do, hereby exempts 74.7 ml of Zolgensma, from the whole of the Integrated Tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975, subject to the condition that the imported goods will be used for the treatment of Baby Vedika and will not be put to other use. The said drug is already exempt

F. No. 461/07/2021-Cus V
Ad-hoc Exemption Order no.7 of 2021
Issued under section 25(2) of the Customs Act, 1962

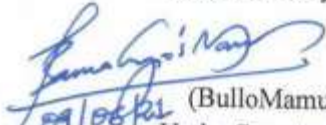
from payment of BCD under Sl. No. 607 of Notification 50/2017- Customs dated 30th June, 2017, subject to conditions therein.

4. An undertaking that the goods covered by this Order will be used solely for the treatment of Baby Vedika Shinde and shall not be put to any other use shall be submitted by the applicant to the jurisdictional Commissioner of Customs of the port of import for claiming benefit of exemption under this Order.

5. Any infringement of conditions of this Order should be brought to the notice of the Commissioner of Customs of the port of import for taking further necessary action such as realization of Customs duty on the subject goods, penal action for such violations, etc.

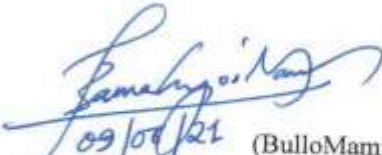
6. This order is valid for imports made up to 08.09.2021

Yours faithfully,


09/08/21 (BulloMamu)
Under Secretary

Copy to:

- Mr. Sourabh Shinde, Survey No. 10/2/6, Sai Sadan, Vikas Colony, Landewadi, Bhosari, Pune, Maharashtra -411039.
- Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi-110 002.
- Guard File.


09/08/21 (BulloMamu)
Under Secretary

F. No. 461/10/2021-Cus V
Ad-hoc Exemption Order no. 8 of 2021
Issued under section 25(2) of the Customs Act, 1962

Government of India
Ministry of Finance
Department of Revenue

Room no. 227A, North Block, New Delhi – 110001

Dated the 12th July 2021

To,
The Chief Commissioner of Customs,
Bengaluru Zone
Bengaluru

Sir,

Subject: Request for Special Exemption from payment of Customs Duty under Section 25 (2) of Customs Act, 1962 on import of Zolgensma– reg.

The undersigned is directed to refer to a request received from Mr. Nagumantri VSL Raman, father of baby Nagumantri Venkata Khyati, seeking exemption from payment of duty in terms of Section 25 (2) of Customs Act, 1962, for import of Zolgensma, a drug for gene replacement therapy.

2. He has informed that:

- i. his daughter, Nagumantri Venkata Khyati, has been diagnosed with Spinal Muscular Atrophy, type 1, a severe, rare, early-onset genetic disorder that affects a child's nervous system and eventually kills the baby as the condition progresses.
- ii. they have raised money (INR 16 crores) to cover costs for a revolutionary gene replacement therapy, Zolgensma, priced at USD \$2.125 million, to save her life, through crowd funding.
- iii. they have obtained approval from DGCI to import this life saving medicine for personal use.
- iv. the drug Zolgensma needs to be imported from USA and as per the doctor's advice and the infant's weight, 30.4 ml of the drug would be required for the treatment.
- v. The drug is expected to be imported as 1 package with 30.4 ml doses of medicine.

2.1 They have requested for waiving off the customs duties and GST on the import of this lifesaving drug Zolgensma.

3. In view of the exceptional circumstances as mentioned above, the Central Government in exercise of the powers conferred by sub-section (2) of Section 25 of the Customs Act, 1962 (52 of 1962), being satisfied that it is necessary in the public interest so to do, hereby exempts 30.4 ml of Zolgensma, from the whole of the Integrated Tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975, subject to the condition that the imported goods will be used for the treatment of baby Nagumantri Venkata Khyati and will

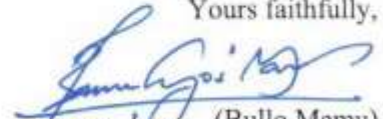
not be put to other use. The said drug is already exempt from payment of BCD under Sl. No. 607 of Notification 50/2017- Customs dated 30th June, 2017, subject to conditions therein.

4. An undertaking that the goods covered by this Order will be used solely for the treatment of baby Nagumantri Venkata Khyati and shall not be put to any other use shall be submitted by the applicant to the jurisdictional Commissioner of Customs of the port of import for claiming benefit of exemption under this Order.

5. Any infringement of conditions of this Order should be brought to the notice of the Commissioner of Customs of the port of import for taking further necessary action such as realization of Customs duty on the subject goods, penal action for such violations, etc.

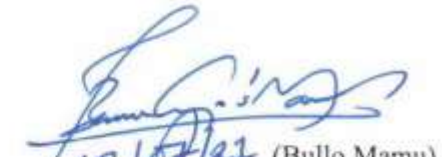
6. This order is valid for imports made up to 11.10.2021

Yours faithfully,


12/07/22 (Bullo Mamu)
Under Secretary

Copy to:

- Mr. Nagumantri VSL Raman, Flat no 213, Malibu Rosita Apartment, Rajbhavi Road, Opp Sub registrar off, Varthur Post, Bangalore 560087.
- Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi-110 002.
- Guard File.


12/07/22 (Bullo Mamu)
Under Secretary

F. No. 461/11/2021-Cus V
Ad-hoc Exemption Order no. 9 of 2021
Issued under section 25(2) of the Customs Act, 1962

Government of India
Ministry of Finance
Department of Revenue

Room no. 227A, North Block, New Delhi – 110001

Dated the 14th July, 2021

To,
The Chief Commissioner of Customs,
Bengaluru Zone
Bengaluru

Sir,

Subject: Request for Special Exemption from payment of Customs Duty under Section 25 (2) of Customs Act, 1962 on import of Zolgensma– reg.

The undersigned is directed to refer to a request received from Mr. Satheesh Kumar, father of baby K.S. Mithrra, seeking exemption from payment of duty in terms of Section 25 (2) of Customs Act, 1962, for import of Zolgensma, a drug for gene replacement therapy.

2. He has informed that:

- (i) his daughter, K.S. Mithrra, has been diagnosed with Spinal Muscular Atrophy, type 1, a severe, rare, early-onset genetic disorder that affects a child's nervous system and eventually kills the baby as the condition progresses.
- (ii) they have raised money (INR 16 crores) to cover costs for a revolutionary gene replacement therapy, Zolgensma, priced at USD \$2.125 million, to save his life, through crowd funding.
- (iii) they have obtained approval from DGC1 to import this life saving medicine for personal use.
- (iv) the drug Zolgensma needs to be imported from USA and as per the doctor's advice and the infant's weight, 55 ml of the drug would be required for the treatment.
- (v) The drug is expected to be imported as 1 package with 55 ml doses of medicine.

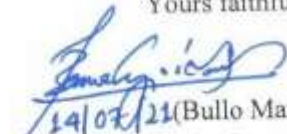
2.1 They have requested for waiving off the customs duties and GST on the import of this lifesaving drug Zolgensma.

3. In view of the exceptional circumstances as mentioned above, the Central Government in exercise of the powers conferred by sub-section (2) of Section 25 of the Customs Act, 1962 (52 of 1962), being satisfied that it is necessary in the public interest so to do, hereby exempts 55 ml of Zolgensma, from the whole of the Integrated Tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975, subject to the condition that the imported goods will be used for the treatment of Baby K.S. Mithrra and will not be put to other use. The said drug is already exempt from payment of BCD under Sl. No. 607 of Notification 50/2017- Customs dated 30th June, 2017, subject to conditions therein.

F. No. 461/11/2021-Cus V
Ad-hoc Exemption Order no. 9 of 2021
Issued under section 25(2) of the Customs Act, 1962

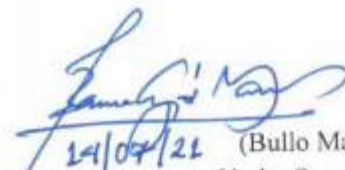
4. An undertaking that the goods covered by this Order will be used solely for the treatment of Baby K.S. Mithra and shall not be put to any other use shall be submitted by the applicant to the jurisdictional Commissioner of Customs of the port of import for claiming benefit of exemption under this Order.
5. Any infringement of conditions of this Order should be brought to the notice of the Commissioner of Customs of the port of import for taking further necessary action such as realization of Customs duty on the subject goods, penal action for such violations, etc.
6. This order is valid for imports made up to 13.10.2021

Yours faithfully,


14/07/21 (Bullo Mamu)
Under Secretary

Copy to:

- Mr. K. Satheeshkumar 5/68-23, Thirukumaran Street, Gandhinagar, Komarapalayam, Namakkal, Tamil Nadu- 638183.
- Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi-110 002.
- Guard File.


14/07/21 (Bullo Mamu)
Under Secretary

F. No. 461/16/2021-Cus V
Ad-hoc Exemption Order no. 10 of 2021
Issued under section 25(2) of the Customs Act, 1962

Government of India
Ministry of Finance
Department of Revenue

Room no. 227A, North Block, New Delhi – 110001

Dated the 03rd August 2021

To,
The Chief Commissioner of Customs, Central Goods & Service tax
Thiruvananthapuram Zone

Sir,

Subject: Request for Special Exemption from payment of Customs Duty under Section 25 (2) of Customs Act, 1962 on import of Zolgensma- reg.

The undersigned is directed to refer to a request received from Mr. Rafeeq, father of baby Muhammad, seeking exemption from payment of duty in terms of Section 25 (2) of Customs Act, 1962, for import of Zolgensma, a drug for gene replacement therapy.

2. He has informed that:

- (i) his son, Muhammad, has been diagnosed with Spinal Muscular Atrophy, type 1, a severe, rare, early-onset genetic disorder that affects a child's nervous system and eventually kills the baby as the condition progresses.
- (ii) they are raising the money (INR 16 crores) to cover costs for a revolutionary gene replacement therapy, Zolgensma, priced at USD \$2.125 million, to save his life, through crowd funding.
- (iii) they have obtained approval from DGCI to import this life saving medicine for personal use.
- (iv) the drug Zolgensma needs to be imported from USA and as per the doctor's advice and the infant's weight, 74.3 ml of the drug would be required for the treatment.
- (v) The drug is expected to be imported as 1 package with 74.3 ml doses of medicine.

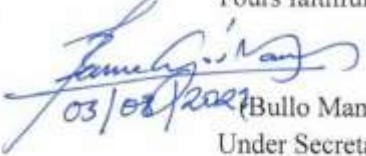
2.1 They have requested for waiving off the customs duties and GST on the import of this lifesaving drug Zolgensma.

3. In view of the exceptional circumstances as mentioned above, the Central Government in exercise of the powers conferred by sub-section (2) of Section 25 of the Customs Act, 1962 (52 of 1962), being satisfied that it is necessary in the public interest so to do, hereby exempts 74.3 ml of Zolgensma, from the whole of the Integrated Tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975, subject to the condition that the imported goods will be used for the treatment of Baby Muhammad and will not be put to other use. The said drug is already exempt from payment of BCD under Sl. No. 607 of Notification 50/2017- Customs dated 30th June, 2017, subject to conditions therein.

F. No. 461/16/2021-Cus V
Ad-hoc Exemption Order no. 10 of 2021
Issued under section 25(2) of the Customs Act, 1962

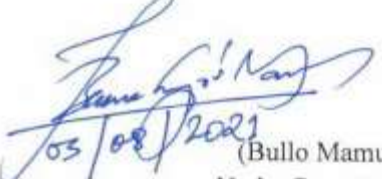
4. An undertaking that the goods covered by this Order will be used solely for the treatment of Baby Muhammad and shall not be put to any other use shall be submitted by the applicant to the jurisdictional Commissioner of Customs of the port of import for claiming benefit of exemption under this Order.
5. Any infringement of conditions of this Order should be brought to the notice of the Commissioner of Customs of the port of import for taking further necessary action such as realization of Customs duty on the subject goods, penal action for such violations, etc.
6. This order is valid for imports made up to 02.11.2021

Yours faithfully,


03/08/2021 (Bullo Mamu)
Under Secretary

Copy to:

- Mr. Rafceq P K, Pakrinte Chalil House, Mattool Central P O Mattool 670302, Kannur, Kerela
- Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi-110 002.
- Guard File.


03/08/2021 (Bullo Mamu)
Under Secretary

F. No. 461/16/2021-Cus V
Ad-hoc Exemption Order no.11 of 2021
Issued under section 25(2) of the Customs Act, 1962

Government of India
Ministry of Finance
Department of Revenue

Room no. 227A, North Block, New Delhi – 110001

Dated: 29th August 2021

To,
 The Chief Commissioner of Customs,
 Bengaluru Zone
 Bengaluru

Sir,

Subject: Request for Special Exemption from payment of Customs Duty under Section 25 (2) of Customs Act, 1962 on import of Zolgensma- reg.

The undersigned is directed to refer to a request received from Mr. Nazar P.K., father of Baby Ishal Maryam, seeking exemption from payment of duty in terms of Section 25 (2) of Customs Act, 1962, for import of Zolgensma, a drug for gene replacement therapy.

2. He has informed that:

- i. his daughter, Ishal Maryam, has been diagnosed with Spinal Muscular Atrophy, type 1, a severe, rare, early-onset genetic disorder that affects a child's nervous system and eventually kills the baby as the condition progresses.
- ii. they are raising the money (INR 16 crores) to cover costs for a revolutionary gene replacement therapy, Zolgensma, priced at USD \$2.125 million, to save his life, through crowd funding.
- iii. they have obtained approval from DGCI to import this life saving medicine for personal use.
- iv. the drug Zolgensma needs to be imported from USA and as per the doctor's advice and the infant's weight, 27.5ml of the drug would be required for the treatment.
- v. The drug is expected to be imported as 1 package with 27.5ml doses of medicine.

2.1 They have requested for waiving off the customs duties and GST on the import of this lifesaving drug Zolgensma.

3. In view of the exceptional circumstances as mentioned above, the Central Government in exercise of the powers conferred by sub-section (2) of Section 25 of the Customs Act, 1962 (52 of 1962), being satisfied that it is necessary in the public interest so to do, hereby exempts 27.5ml of Zolgensma, from the whole of the Integrated Tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975, subject to the condition that the imported goods will be used for the treatment of Baby Ishal Maryam and will not be put to other use.

The said drug is already exempt from payment of BCD under Sl. No. 607 of Notification 50/2017- Customs dated 30th June, 2017, subject to conditions therein.

4. An undertaking that the goods covered by this Order will be used solely for the treatment of Baby Ishal Maryam and shall not be put to any other use shall be submitted by the applicant to the jurisdictional Commissioner of Customs of the port of import for claiming benefit of exemption under this Order.

5. Any infringement of conditions of this Order should be brought to the notice of the Commissioner of Customs of the port of import for taking further necessary action such as realization of Customs duty on the subject goods, penal action for such violations, etc.

6. This order is valid for imports made up to 25.02.2022

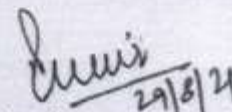
Yours faithfully,



(Komila Punia)
Deputy Secretary

Copy to:

- Mr, Nazar P.K., House No. 42/6, Chandrapa Layout, Bangalore North, Jalahalli East S.O., 15- Karnatka- 560013
- Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi-110 002.
- Guard File.



(Komila Punia)
Deputy Secretary

Agenda Item 7: Report of Group of Ministers (GoM) on levy of Covid Cess on Pharma and Power in Sikkim

Proposal of Sikkim

1. Hon'ble Chief Minister of Sikkim sent a detailed note to the Union Finance Minister on mobilising additional resources from the seeking concurrence of the GST Council to impose 'Covid Cess' in Sikkim. The proposal states that the Covid pandemic and its impact on overall economy and resources together with additional expenditure commitments has significantly altered all the parameters of revenue and expenditure of the State. Sikkim has mentioned that their assessment of resources indicates that their revenue receipts during FY 2020-21 may have shortfall of around 30% from base estimates as outlined in the Budget for 2020-21. Since three-fourths of the State's revenue consists of tax transfers and grants in aid from the Centre, a decline in these resources would have significant impact on State's revenue. Given that the expenditure commitments would see an increase over and above what has been budgeted for 2020-21 and a significant revenue shortfall would be inevitable, there is need to identify possible resource generating options.

2. It was further mentioned in the proposal that the structure of economy of Sikkim is significantly different from the rest of the country. Manufacturing and power sector contribute nearly 55-57 per cent gross value added in the State. Within manufacturing, there has a dominance of pharma companies in Sikkim. Pharma is one of the sectors which has not been adversely affected during this period of lockdown. Based on the data available for 2017-18, Annual Survey of Industries, it is estimated that revenue of Rs. 164 crore may accrue to the State by imposing covid cess on pharma sector at the rate of 1% of the turnover. A 1% covid cess for a specified period may not in any way affect the profitability and competitiveness of this sector. Similarly, overall generation of revenue for State from Covid Cess on power sector is estimated to be around Rs. 95 crore in one year, if levied at 0.1% per unit. Sikkim has hydro power potential and significant hydro power generation. These sectors, which will be the few of the least affected sectors, could provide additional resources. Accordingly, Govt. of Sikkim has requested GST Council's concurrence for imposing a Covid Cess on their output for current year and subsequent two years, upto 2022-23.

CONSTITUTION OF GOM

3. The proposal of Sikkim was discussed in the 43rd GST Council meeting held on 28.05.2021. Accordingly, on the recommendations of GST Council, this **Group of Ministers (GoM) on levy of COVID Cess** has been constituted with the following composition to examine the said proposal (a copy of the Office Memorandum No. S-31011/12/2021-DIR(NC)-DOR dated 11th June 2021 is placed at Annexure-1):

Name	Designation and State	
1. Sh. Basavaraj Bommai	Minister for Home Affairs, Karnataka	Convener
2. Sh. Manish Sisodia	Deputy Chief Minister, Delhi	Member
3. Sh. T S Singh Deo	Minister for Commercial Taxes, Chhattisgarh	Member
4. Sh. K. N. Balagopal	Minister for Finance, Kerala	Member
5. Sh. Niranjan Pujari	Minister for Finance, Odisha	Member
6. Sh. B. S. Panth	Minister for Tourism & Industries, Sikkim	Member
7. Sh. Suresh Kumar Khanna	Minister for Finance, Uttar Pradesh	Member

TERMS OF REFERENCE OF GOM

4. The terms of reference (ToR) for the **GoM on levy of COVID Cess** is to examine the proposal moved by Government of Sikkim that a COVID Cess at the rate of—

- (a) 1 per cent of the turnover of pharmaceutical sector (excluding the unorganised sector) is imposed for the current year and subsequent two years, up to 2022-23; and
- (b) Rs. 0.1 per unit of power generated is imposed for the current year and subsequent years, up to 2022-23

in light of the relevant provisions of the Constitution and the relevant legislation. The GoM may also examine other aspects that are relevant for the proposal.

Constitutional/Legal Provisions & Supreme Court Judgment relevant for the proposal

5. It is important to examine various constitutional and legal provisions with respect to levy of Goods and Services Tax and evaluate the feasibility and limitations with regard to the proposal of Sikkim. The provisions for levy of GST were introduced in the Constitution through the Constitution (101st Amendment) Act, 2012⁷. The Statement of Objects and Reasons of the Amendment Act read as follows:

The Constitution is proposed to be amended to introduce the goods and services tax for conferring concurrent taxing powers on the Union as well as the States including Union Territory with Legislature to make laws for levying goods and services tax on every transaction of supply of goods or services or both].

6. GST is levied by Centre and States by the powers vested in them under Article 246A of the Constitution of India, which reads as follows:

246A. Special Provisions with respect to Goods and Services Tax

(1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation. – *The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.*

7. It is evident from the provisions above that Centre and States have the power to levy GST on supply of good and services or both and the power to levy GST on intra-state supply is with Centre as well as with the States but the power to levy GST on interstate supply is solely with the Centre. Accordingly sub-section (1) of section 9 of the CGST Act levies tax on intra-state supply of goods or services or both (Section 9 of the GST Acts of all the States has the same language). It reads as under:

9. Levy and collections.— *(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the state goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding*

twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

8. Further, clause (1) of Article 269-A, which deals with levy and collection of GST on inter-state supplies, reads as under:

269A. Levy and collection of goods and services tax in course of inter-State trade or commerce. – (1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Explanation. – For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

9. With respect to special provisions for special rate or rates in case of natural calamities, the Sub-clause (f) of clause (4) of Article 279A of the Constitution states that:

(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on—

(f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;

10. The power of Governments to levy cess after introduction of GST has been examined by the Hon'ble Supreme Court Judgment in case of M/s Mohit Mineral pvt Ltd Vs Union of India & others wherein the Constitutional validity of GST (Compensation to States) Act, 2017 and the levy of compensation cess has been challenged in the Supreme Court wherein the petitioner contested that

- (a) on the same event, two taxes cannot be levied namely GST and Cess;
- (b) Article 246-A of the Constitution does not provide power to Parliament to levy cess;
- (c) Constitution has been amended subsuming all the cesses and surcharges into the GST and therefore, Parliament does not have locus standi to levy cess which violates the Constitution.

11. After hearing the arguments, Hon'ble Supreme Court held that levy of cess is an increment to Goods and Services Tax which is permissible under law and also held that Parliament which has the power to levy tax can also enjoy the power to levy cess. Therefore, GSTC has the power to recommend for levy of cess to raise additional resources during any natural calamity or disaster and there is no any legal impediment for the levy of cess either by Union or States. Cess is also a tax but the only difference is, it is levied for particular purpose and specific period.

12. The above provisions and the judgement of the Supreme Court clearly indicate that while the States have the power to levy cess, any such cess can be levied on supply of goods and/or services and only on intra-state supply of goods and/or services. GST being a destination-based tax, cess under the GST framework cannot be imposed by any State on supplies originating from that State but getting consumed in another State.

Recommendation of GoM constituted on revenue mobilization in case of natural calamities and disasters on proposal from Kerala for imposing flood cess

13. A similar request was received from Govt. of Kerala after the 2018 floods for levy of cess to mobilize the additional revenue. The issue was discussed in the GST Council and ‘**GoM on Revenue Mobilization**’ was constituted to examine the request of Kerala.

14. The GoM, inter alia, recommended that that Council may consider allowing levy of a cess on intra-state supply of goods and services within the State of Kerala at a rate not exceeding 1% for a period not exceeding two years. The GoM discussed the pros and cons of two ways of mobilizing revenue for natural disasters, viz increase in SGST rate and cess on supply of goods and services. While the GoM agreed that imposition would require a separate legislation, to ensure uniformity in SGST rates across the country, cess would be better way to mobilise revenue for natural disasters. It will ensure that the revenue so realized could be clearly earmarked and would be outside the compensation arrangement. GoM noted that as per the Constitutional provisions, this will have to be recommended for a particular case of natural calamity for a specified period.

15. As is clear, while GoM recommended that Kerala be allowed to levy cess but only on intra-state supply of goods and/or services.

Presentation by Sikkim

16. Consultant, GST and Finance to Government of Sikkim in his presentation gave an overview of the State Finance of Sikkim. He mentioned that though Sikkim is a tiny State, it is politically and strategically very important because of its location. He further stated that Sikkim is a hilly-terrain facing recurrent natural disasters, poor connectivity and infrastructure and faces difficulties in service delivery to dispersed population. About 30% of the work force depends on tourism and allied activities which is not revived until now due to COVID pandemic. Budget 2020-21 was prepared on the basis of the interim report of the 15th Finance Commission and the actual transfer by Centre to Sikkim was short of 460 crore for FY 2020-21. Decline in Central transfers along with the stagnant tax collection for the past three years and COVID 19 impact further added to the fiscal constraints of the State. Revenue received in 2020-21 is enough to meet the expenditure commitments of the State but COVID pandemic has increased the expenditure of the State. Revenue deficit would persist for another two to three years, even there is acceleration in the economic growth which means State needs additional resources to meet its expenditure commitments. These additional resources are required to meet the life and livelihood of the local population under the New Revival Plan. There is a continuous increase in the revenue expenditure of the State since 2018 and therefore, the revenue receipts of the State have been insufficient to meet the commit expenditure. Recently Sikkim received some grants from the Centre but those are meant for some specific schemes except for the allocation of budget deficit grant.

17. Due to growing capital and revenue expenditure of the State, State needs to find out additional revenue mobilization to meet the revenue deficit created by COVID pandemic. Sikkim gets major revenue from the tourism which is not revived subsequent to the COVID pandemic. Therefore, fiscal deficit was raising higher than the limits prescribed under the FRBM. Sikkim has many private investment majority in pharma and electricity generation. Annual survey of Industry has reported that pharma and power sector have achieved the highest profitability located in Sikkim. GSDP has been increasing from the manufacturing and power generation. Both pharma and power sectors have been insulated from the impact of the COVID pandemic and therefore, levy of cess on these two sectors will not impact their profitability. Sikkim is proposing levy of cess on these sectors only for two years upto 2023-24 and the expected revenue will be Rs.250 crore every year. The proposal of COVID cess is expected to reduce the financial stress in view of low revenue receipt, raising expenditure and additional expenditure in view of COVID 19. In view of the above, he requested Hon’ble Chairman and Members of the GoM to consider favourably the proposal of Sikkim to levy 1% cess on turnover of pharma and 0.1% per unit on power generation in Sikkim.

18. The presentation made by Sikkim is placed at Annexure -2.

Deliberations in the GoM

19. The meeting of the Group of Ministers (GoM) on levy of COVID Cess on power and pharma sector in Sikkim was held under the Chairmanship of Shri Basavaraj Bommai, Hon'ble Minister for Home Affairs, Karnataka on 17th June, 2021 at 10:30 AM through Video conferencing. Hon'ble Members of the GoM unanimously agreed with the need of Sikkim for additional resources to meet its rising capital and revenue expenditure due to COVID pandemic.

20. GoM went through all the constitutional, legal provisions and court judgments relevant for the proposal presented by Joint Secretary (Revenue). The presentation made by Joint Secretary (Revenue) is enclosed at Annex-3.

21. The GoM observed that while Sikkim can levy cess on SGST of intra-State supply of goods and/or services, but it cannot levy cess on the inter-State supplies. GoM also noted that Goods and Services Tax is a destination based tax and the taxable event is a supply, but in case of Sikkim's proposal, they want to levy the cess on the turnover of pharma and generation of power which is not permissible under GST framework.

22. Hon'ble Minister for Tourism and Industries, Sikkim stated that the levy of cess or taxes on either supply of goods or services or both which are inter-State character, levied by the Parliament and Article 246-A is not relevant here, as the subject proposal is to levy cess on output of the pharma produced and unit of power generated within the boundaries of Sikkim. Since the cess is not proposed to be levied on specific items but on total turnover, therefore, there is no cascading effect. The Annual Survey of Industries published by MoSPI mentioned that output with respect to investment is better in these two sectors. Sikkim is a tiny State and there is hardly any scope to increase the tax and non-tax revenue as additional source of revenue to protect the life and livelihood of the people. The necessity to levy cess has arisen because of the reduction in the transfers from the Centre to Sikkim. Had Sikkim received Central transfers to the tune received in the financial year 2018-19, the necessity for levy of cess would have not been arisen.

23. The Finance Minister of Kerala shared the experience of the levy of flood cess last year and informed that their cess is being levied only on intra-State supplies and is limited to B2C transactions, that too on the costly items which attracts GST at 12% and above. He felt that since there are some legal impediments in agreeing to the proposal of Sikkim for levy cess on pharma and power, Centre can provide some kind of specific assistance/ special grants to State of Sikkim. He also pointed out that Entry 53 of the State List II provides levy of tax on the consumption or sale of electricity which is not totally subsumed into GST. State of Sikkim can explore the possibility of levying tax on these items.

24. Finance Minister, Odisha stated that electricity does not fall within the purview of GST and therefore, GST Council do not have locus standi to recommend for levy of any tax on electricity.

25. GoM was informed that in many court judgments, it has been held that electricity is goods and accordingly, GST can be levied on electricity. As per GST rate notification, electricity is exempt under GST like many other goods and services. Under Entry 53 of State List, State has authority to levy tax on consumption or sale of electricity, but it needs to be examined whether tax can be levied on generation of the electricity. Either way, this subject would not come under the purview of the GST Council and, therefore, GoM would not go into this issue.

26. Deputy Chief Minister, Delhi pointed out that subsequent to the implementation of GST, States have surrendered their taxations power to the Centre. In such a scenario, if any State faces financial crisis, it is the responsibility of the GST Council to support the States which are facing financial crisis by allowing them to generate additional financial resources. GoM may recommend to

GST Council that Sikkim will be allowed to levy cess on the intra-State supply of goods and services. He stated that it may be legally examined whether Centre can levy cess on the IGST on the supplies originated from Sikkim and consumed in other States, and the cess so collected by the Centre can be transferred to Sikkim after netting out the share of States. He suggested that opinion of learned Attorney General of India may be taken on this issue. However, the GoM noted that the amount that would remain with Centre after netting out the share of States will be very small.

27. Minister for Commercial Tax, Chhattisgarh expressed that taxation principle of GST that envisages taxation of supply at the point of consumption rather than production which goes against the interest of many mineral-rich States because they are producing States and not consuming States. He felt that under GST, supply of goods and services within the State (intra-State) and between the States (inter-State) have been clearly demarcated and, therefore, levying 1% cess on SGST is not an issue. However, levying 1% cess on inter-State supply is not falling within the framework of law. Therefore, Government of India should come forward, sanction additional grants to some States like north-eastern States, smaller States, Union Territories which are losing their revenue after implementation of GST. He felt that it is high time to think to modify the taxation structure under the GST regime taking into account the need came from Sikkim so that equitable and justifiable distribution of resources where the goods are being produced.

28. Finance Minister, Uttar Pradesh stated that the Covid pandemic is a nationwide problem and is not limited to Sikkim only. Therefore, the Kerala proposal cannot be shown as the precedence in the present case as only Kerala was affected by a severe flood which was declared as natural disaster by the Centre. If Sikkim is allowed to levy 1% cess on pharma sector, the price of the pharma products will go up and it will affect the entire nation. If Sikkim is allowed to levy cess to generate additional revenue due to COVID pandemic, similar demands would also come from the other States which would not be a good example. Sikkim can explore levy of VAT, Excise, Cess on petroleum products to mobilize additional revenue.

29. Minister for Tourism and Industries, Sikkim requested members of GoM that if Sikkim's proposal is not legally tenable, GoM can recommend extending special package to the State of Sikkim till 2024 of Rs.300 crore per annum. Sikkim has already explored the possibility of levying VAT, Excise on petroleum products which resulted in collection of only Rs.43 crore per annum. He stated that levying a cess only on intra-state supplies would not yield enough revenue from them and they would not be interested in pursuing the matter for levy of cess only on intra-state supplies.

Recommendations of GoM

30. After detailed deliberations and discussions, Members of the GoM unanimously agreed that State finances of Sikkim have been strained with increase in revenue deficit, fiscal deficit and loans thereof etc. due to COVID pandemic. GoM noted that Sikkim is a small State with less consumption base and the scope for raising tax and non-tax revenue to meet the increasing revenue and capital expenditure due to Covid pandemic is very much limited.

31. Taking into account the legal provisions, the GoM recommended that:

- (a) Sikkim may be allowed to levy cess on intra-State supply of pharma items in line with the recommendation of the GoM on revenue mobilization in case of flood cess in Kerala while the legal issue involved in levy of cess on inter-State supply may be referred to the Learned Attorney General of India for comments;
- (b) As far as electricity is concerned, tax consumption or sale of electricity under entry 53 of State List of the Seventh Schedule of the Constitution is out of the purview of GST. Government of Sikkim may examine the issue independently and take appropriate action that is allowed under the Constitutional framework;
- (c) Sikkim sought a special package of assistance by Government of India to help them tide over the financial stress caused due to the Covid pandemic. The GoM noted the same and the Government of India may examine the request of Sikkim.

S-31011/12/2021-DIR(NC)-DOR

Government of India
Ministry of Finance
Department of Revenue

New Delhi, dated 11th June, 2021

OFFICE MEMORANDUM

Subject: Constitution of Group of Ministers (GoM) on levy of Covid Cess on power and pharma sector in Sikkim– reg.

In pursuance of the decision taken in the 43rd GST Council Meeting held on 28th May, 2021, a Group of Ministers (GoM), who are also Members of the GST Council, is constituted to examine the proposal of the State of Sikkim for levy of COVID Cess on power and pharma sector in Sikkim. The GoM shall consist of the following members:


Sl. No.	Name	Designation and State	
1.	Sh. Basavaraj Bommai	Minister for Home Affairs, Karnataka	Convener
2.	Sh. Manish Sisodia	Deputy Chief Minister, Delhi	Member
3.	Sh. T S Singh Deo	Minister for Commercial Taxes, Chhattisgarh	Member
4.	Sh. K. N. Balagopal	Minister for Finance, Kerala	Member
5.	Sh. Niranjan Pujari	Minister for Finance, Odisha	Member
6.	Sh. B. S. Panth	Minister for Tourism & Industries, Sikkim	Member
7.	Sh. Suresh Kumar Khanna	Minister for Finance, Uttar Pradesh	Member

2. The GoM shall examine the proposal moved by Government of Sikkim that a COVID Cess at the rate of

- 1 per cent of the turnover of pharmaceutical sector (excluding the unorganised sector) is imposed for the current year and subsequent two years, up to 2022-23; and
- Rs. 0.1 per unit of power generated is imposed for the current year and subsequent years, up to 2022-23

in light of the relevant provisions of the Constitution and the relevant legislation. The GoM may also examine other aspects that are relevant for the

proposal. The Group may submit its report in 15 days. The secretarial assistance to the Group shall be provided by Joint Secretary (Revenue).


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

To
The Hon'ble Members of GoM

Copy to;

1. PS to Hon'ble Minister of Finance, Government of India, North Block, New Delhi
2. PS to Hon'ble Minister of State (Finance), Government of India, North Block, New Delhi.
3. The Nodal officers of the States of Karnataka, Delhi, Chhattisgarh, Kerala, Odisha, Sikkim and Uttar Pradesh, with the request to intimate the Hon'ble Ministers regarding their nominations as Members of the Group of Ministers on levy of COVID Cess on power and pharma sector in Sikkim.
4. Revenue Secretary, North Block, New Delhi
5. Chairman, CBIC, North Block, New Delhi
6. Joint Secretary (Revenue), Department of Revenue, North Block, New Delhi
7. GST Council Secretariat, New Delhi

Presentation of Sikkim

Introduction

- Sikkim is the one of the smallest states in India However it is of a **great political and strategic importance** for our country because of its location along several international boundaries.
- Sikkim has a total population of about **6.58 Lakhs**. It covers an area of **7096 sq kms** and has 4 districts & 16 subdivisions
- Most of its area falls under difficult **mountainous terrain**. Sikkim faces issues- recurrent **natural disasters**, **poor connectivity and infrastructure** and faces difficulties in **service delivery** to dispersed population
- Almost **30%** of workforce- Tourism & allied services
- Private investments- majority **Pharma & Hydro** companies



State Revenue Receipts (in Crore)

	2018-19	2019-20	2020-21 BE	2020-21 RE	2021- 22 BE
Own Taxes	898.0	970.4	1,241.9	928.5	1,195.5
Non-Tax Receipts	657.8	693.4	710.7	579.8	775.2
Central Tax Transfers	2,789.6	2,295.6	3,042.6	2,133.9	2,582.4
Total Receipts	4,345.4	3,959.4	4,995.2	3,642.1	4,553.1
Grants in Aid	1,575.0	881.9	2,978.1	3,296.8	3,189.6
<i>Of which Revenue Deficit Grants</i>			448.00	448.00	678.00
Total Revenue Receipt	5,920.40	4,841.30	7,973.30	6,938.90	7,742.70

Current State of Revenues

(Revenue Receipt show a sharp decline)

- ▶ Pandemic has affected revenue of the State from its internal sources and by Central Tax Transfers
- ▶ Own resources covering both the taxes and non-tax virtually remained **stagnant** in last three years
- ▶ Central tax transfers have declined and even in 2021-22 will not reach the 2018-19 levels
- ▶ In the Budget of FY 2020-21 which was prepared based on interim report of the 15th Finance Commission, the actual release by Central government was short of **Rs 460 crore**
- ▶ Increase in Grants from the Centre are for **programme specific purposes and therefore they can not be utilized for other purposes**, except for the allocation of Revenue deficit grants
- ▶ Revenue constraints may persist for another **two to three years** even if we see an accelerated growth in the economy

Revenue and Capital Expenditure (Rs crore)

	2018-19	2019-20	2020-21 BE	2020-21 RE	2021-22 BE
Revenue Expenditure	5,227	6,185	7,344	7,245	7,391
Salary, Wages, Interest & Pensions	3,438	3,438	4,492	4,735	4,628
Share of committed expenditure (per cent)	65.8	55.6	61.2	65.4	62.6
Revenue Surplus/Deficit	694	(1,344)	630	(306)	352
Capital Expenditure	1,338	738	1,676	1,697	2,077
Fiscal Deficit	642	2,081	1,046	2,003	1,725



Rising Expenditure Commitments & necessity of Resources Generation

(Expenditure are downwards sticky & increasing)

- ▶ Revenue Expenditure continues to increase, and is essential for the livelihood support of population
- ▶ Nearly **two thirds** of the revenue expenditure is committed and incurred on **Salary, Wages, Pensions and Interest Payments**. During **FY 2019-20 and 2020-21**, the revenue receipts of the State, has been insufficient to meet the committed expenditure obligations.
- ▶ Revenue Deficit grants only provides **partial relief**, and these will soon taper off by **FY 2023-2024**
- ▶ **Pandemic has increased commitments** and a '**New Revival Initiative**' for Livelihood support is necessary (Tourism impacted)
- ▶ Resource constraints is pressuring the State government to even fulfil necessities.



Fiscal Liabilities (Rs in crore) exceeds FRBM levels

Public debt & other liabilities	2018-19	2019-20	2020-21 (BE)	2020-21 RE	2021-22 BE
Outstanding Debt & other liabilities	6,335	7,401	8,592	9,008	10,733
Outstanding Guarantees	3,455	3,749	3,651	4,133	4,133
As per cent to GSDP					
Revenue Surplus	2.42	(4.14)	(1.81)	(0.98)	0.92
Fiscal Deficit	2.24	6.40	3.00	6.44	4.52
Debt, Other Liabilities	22.06	22.77	24.64	28.94	28.15
					(27.5)



Deficit is adding to debt burden

- ▶ Sikkim had a Revenue Surplus until 2018-19
- ▶ However, in **2019-20** the State has seen a sharp decline in transfers of taxes and Grants from the Centre (almost **30% reduction compared to BE in FY 2018-2019**) in transfers of taxes and Grants from the Centre. In addition, the reduction States own revenue receipt has resulted in a **Revenue Deficit**
- ▶ Revenue Deficit persisted in **2020-21** as pandemic affected both internal resources and tax transfers from Centre. While there has been a slight increase in grants, but it **remains largely insufficient** to fully provide for revenue expenditure
- ▶ In **2019-20 and 2020-21**, Fiscal Deficit was significantly higher than the limits prescribed under **FRBM**. **Fiscal Liabilities** of the State also increased substantially and **remain at elevated levels**



Additional internal resources needed

- › The Expenditure Commitments of the State for livelihood support is expected to remain high in next 2-3 years
- › Central Tax transfers are expected to increase, however will only provide limited cushion
- › Since most of the expenditure related to revival package can not be postponed, there is **need for immediate supplementary resources**
- › Sikkim has two sectors, which are vibrant and insulated from adverse impact of pandemic, could provide such resources- **Manufacturing & Electricity generation** as they contribute nearly **two-thirds of State Domestic Product**. The share of these two sectors may increase further, as these sectors are unaffected by the pandemic



Structure of Economy (Rs in crore)

	2015-16	2016-17	2017-18	2018-19	2019-20
GVA at Basic Prices	17,243	19,596	23,991	27,218	30,793
GSDP	18,034	20,687	25,971	28,723	32,496
Share of dominant sectors in Economy (per cent)					
Manufacturing	40.8	44.3	47.2	45.4	45.1
Electricity	14.2	13.1	13.0	13.3	13.4
Rate of growth (per cent)					
Manufacturing	20.0	23.3	30.6	9.1	12.3
Electricity	13.8	4.5	21.9	15.6	14.0
GSDP	17.1	14.7	25.5	10.6	13.1
Per Capita GSDP	15.8	13.5	24.2	9.6	11.9



While the employment intensive sectors- under stress

- ▶ While GSDP from **Manufacturing** and **Electricity Sector** is increasing, these sectors provide **employment to only around 10% of the workforce**
- ▶ The tourism and related sectors provide employment to nearly **30%** of workforce. This sector, being contact intensive, has suffered during pandemic
- ▶ The profitable and insulated organised Manufacturing, dominated by Pharma companies, and Electricity sector could support by providing resources for reviving these sectors
- ▶ Both Pharma and Hydro Electricity sector has significantly benefitted from State Industry supportive initiatives. The North-East Industrial and Investment Policy (NEIIP) has also significantly contributed to their growth and profitability.



Pharma sector is significant & profitable

	All Manufacturing	Pharma Companies	Pharma Share (per cent)
Number of Factories	82	32	39.0
Invested Capital (Rs Crore)	8909	8,315	93.3
Total Output (Rs in crore)	18,360	16,395	89.3
Value Added (Rs in crore)	11,416	10,560	92.5
Profits (Rs crore)	9,877	9,144	92.6

*The Data from Annual Survey of Industries **2017-18** indicate Pharma companies in Sikkim are highly profitable*

Since they have remained generally bouyant during pandemic, their output and profits may have increased further



Hydro electricity generation vibrant & resilient

Location	Installed Capacity	Designed Energy	2018-19	2019-20	2020-21
	MW	MU	Production/Target (MU)		
Central Sector	570	2,911	3,050	3,020	3,045
State Sector	1,200	5,214	4,258	5,213	5,300
Private Sector	399	1,853	1,713	1,822	1,811
Sikkim Total	2,169	9,978	9,021	10,055	10,156
Hydro Sector has progressed in Sikkim both because of its location and policies. Sector has been pandemic resistant and viable.					

Cess will not affect the profitability of these sectors **(Very marginal)**

- ▶ Sikkim proposes a **very marginal cess** on these two sectors
- ▶ It is just **one per cent of output** of Pharma sector
- ▶ Given the profitability ratio to output, the cess is **just around 2 per cent of their profits**
- ▶ Even for Hydro sector, Sikkim proposes a cess of **just Rs. 0.1** on each unit generated by the units
- ▶ Cess, neither affects the profitability, nor cause any significant increase in prices
- ▶ Both the sectors can very conveniently absorb this cess
- ▶ The resources generated would be used by the state for **revival of livelihood opportunities** and for **improving access** to basic infrastructure including **health and sanitation**

Period of CESS-

How long should the cess should continue?

- ▶ Sikkim request consideration of cess to be continued **until March 2024**
 - ▶ While economy is expected to rebound, but given the second wave of **pandemic** and anticipated **third wave**, recovery to the **contact intensive sectors** may be slow
 - ▶ Livelihood opportunities of more than a quarter of workforce of Sikkim is dependant on contact intensive sectors of tourism and allied services
 - ▶ Sikkim has already **overshot** its Fiscal liabilities and higher **borrowings** may **not** be **feasible**
 - ▶ Though cess would provide additional resources to the tune of **Rs 250 crore each year**, it would to that extent improve our internal resources and **reduce recourse to borrowings**
-



Why do we believe this proposal needs the recommendation of this esteemed Panel?

- ✓ Given the need of additional resources of the State, we Request the Panel today for your favorable consideration of this proposal
 - ✓ The cess is **minimal** and will barely have any impact on profitability of the two sectors of Pharma and Electricity
 - ✓ The cess will also **not add** to any pressure on **prices**
 - ✓ The cess **will facilitate** for initiating a strategy of **revival** of livelihood opportunities of the contact intensive sectors of Sikkim which provide **employment opportunities** to more than a quarter of our workforce
 - ✓ Cess would be for a **limited period** only
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Meeting of the GoM on Covid Cess

Group of Ministers

	Name	Designation and State	
1.	Sh. Basavaraj Bommai	Minister for Home Affairs, Karnataka	Convener
2.	Sh. Manish Sisodia	Deputy Chief Minister, Delhi	Member
3.	Sh. T S Singh Deo	Minister for Commercial Taxes, Chhattisgarh	Member
4.	Sh. K. N. Balagopal	Minister for Finance, Kerala	Member
5.	Sh. Niranjan Pujari	Minister for Finance, Odisha	Member
6.	Sh. B. S. Panth	Minister for Tourism & Industries, Sikkim	Member
7.	Sh. Suresh Kumar Khanna	Minister for Finance, Uttar Pradesh	Member
Terms of Reference:			
to examine the proposal moved by Government of Sikkim in light of the relevant provisions of the Constitution and the relevant legislation.			

Proposal of Sikkim

A COVID Cess at the rate of—

- (a) 1 per cent of the turnover of pharmaceutical sector (excluding the unorganized sector); and
- (b) Rs. 0.1 per unit of power generated

is imposed for the current year and subsequent years, up to 2022-23

Estimated revenue of Rs. 250 crore may accrue to State

Relevant Constitutional Provisions

246A. Special Provisions with respect to Goods and Services Tax—

(1) Notwithstanding anything contained in articles 246 and 254, Parliament, and subject to clause (2), the Legislature of every State have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

279A. Goods and Services Tax Council—

(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on—

- (f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;

Relevant Constitutional Provisions

269A. Levy and collection of goods and services tax in course of interstate trade or commerce.—

(1) Goods and services tax on supplies in the course of interstate trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council

Explanation.— For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of interstate trade or commerce.

Legality of levy of cess in GST

The **Compensation Cess** was challenged in Mohit Minerals Vs Union of India in the Supreme Court of India

Petitioners

- Challenged the constitutionality of the compensation cess
- Claimed that there is no power to levy a cess
- Conversely, GST has subsumed even existing cesses and surcharges

Supreme Court held that “ **Levy of Compensation to States Cess is an increment to goods and services tax which is permissible in law** ”

GoM on Revenue Mobilization in case of Natural Calamities and Disasters

Proposal of Kerala for levy of additional 10% cess on State Goods & Service Tax (SGST) in its state for flood relief.

GoM recommended that —

- cess would be better way to mobilise revenue for natural disasters, although imposition of cess would require a separate legislation
- it will ensure that the revenue so realized could be clearly earmarked and would be outside the compensation arrangement
- Council may consider allowing levy of a cess on intra-state supply of goods and services within the State of Kerala at a rate not exceeding 1% for a period not exceeding two years

Relevant Issues

GST is a tax on supply of Goods and Services

Statement of Objects and Reasons: The Constitution is proposed to be amended to introduce the goods and services tax for conferring concurrent taxing powers on the Union as well as the States including Union territory with Legislature to make laws for levying goods and services tax on every transaction of supply of goods or services or both.

Section 9 of the SGST (and CGST) Act

Subject to the provisions of sub-section (2), there shall be levied a tax called the [State] goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15, and at such rates, not exceeding twenty per cent., as may be notified by the Government, on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

Power of State to levy GST limited to intra-state supply of goods and services

Agenda Item 8: Closure of Group of Ministers (GoM) on concessions/ exemption from GST to COVID relief material.

In pursuance of the decision of the GST Council at its 43rd meeting on 28th May, 2021, a Group of Ministers (GoM) was constituted to examine the issue of GST concessions/ exemption to COVID relief material vide OM dated 19th May, 2021 issued by Department of Revenue (DoR) vide F. No. S-31011/12/2021-DIR(NC)-DOR. The GoM consisted of the following members:

Sl. No.	Name	Designation and State	
1	Shri Conrad Sangma	Chief Minister, Meghalaya	Convenor
2	Shri Nitinbhai Patel	Deputy Chief Minister, Gujarat	Member
3	Shri Ajit Pawar	Deputy Chief Minister, Maharashtra	Member
4	Shri Mauvin Godinho	Minster for Transport & Panchayati Raj, Housing, Protocol and Legislative Affairs, Goa	Member
5	Shri K. N. Balagopal	Minister of Finance, Kerala	Member
6	Shri Niranjan Pujari	Minister for Finance and Excise, Odisha	Member
7	Shri T. Harish Rao	Minister for Finance, Telengana	Member
8	Shri Suresh Kr Khanna	Minister for Finance, U.P.	Member

2. The GoM examined the need for GST concessions/exemptions and made recommendations on-
 - i. COVID Vaccines, drugs and medicines for COVID treatment, and testing kits for COVID detection;
 - ii. Medical grade oxygen, pulse oximeters, hand sanitizers, oxygen therapy equipment such as concentrators, generators and ventilators PPE kits, N 95 masks, surgical masks, temperature checking equipment; and
 - iii. any other items required for COVID relief.
3. The GoM submitted its report in the 44th GST Council Meeting held on 12.06.2021, consequently the GoM has completed its mandate. Accordingly, agenda for closure of the GoM is placed before the GST Council.