

Minutes of the 43rd GST Council Meeting held on 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 Chairmanship 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-Profitcreing Authority) for the 3rd 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

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- 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, gulkha, 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

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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:

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|------------------------|--------------------------------|
| a. 11:00 AM to 1:00 PM | Meeting starting with Agenda I |
| 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. Armit 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



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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-I, 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



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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.

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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.



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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-Profitteering 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-Profitteering 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 137 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



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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	10 th 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	05 th October 2020	Request from Shri GajendraHaldea for exemption from import duties on import of life saving drug Romidepsin for personal use.	
AEO No. 01 of 2021	09 th February 2021	Request from Shri MihirKamatfor 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	11 th 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	15 th April 2021	Request from Shri RajdipsinhRathodfor 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 GST on imports of specified COVID-19 relief material donated from abroad, up to 30th June, 2021.	JS,TRU CBIC


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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

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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-VT) 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

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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 BIF A 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 (AAATO).
- (ii) For other taxpayers:
 - a. For taxpayers having AAATO 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 AAATO 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 AAATO 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)


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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 Rule 80. 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 30 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.

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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.

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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 benefiting 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

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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 UOI & 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 I.O 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.

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(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-04 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 agenda9A(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

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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 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.
- (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:
- 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;
 - 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:**
- 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.
 - All the states may carry out the corresponding amendments in SGST Acts, relating to various amendments done through the Finance Act, 2021, by 5th 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.


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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

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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



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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 attract 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 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 substantially related to FFC.

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.



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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

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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.


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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 for 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 revenue, 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 so far, cost of vaccine 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 by floating a 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 Amphotericin 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, revenue may 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

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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

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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 WTO; its rate shall be brought down from 12% to 5%. Re-import of goods sent abroad for repair attract IGSST on the value addition only. However, Tribunal has interpreted that IGSST 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 (IRU) in his presentation.

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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-Profitteering 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

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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,



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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(JRU), 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 Nipon 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 a 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



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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 apprized 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 handicapped. 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 IS(TRL) 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.



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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 avail 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 reasons 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 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 Finnet 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 (JTC 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 Finnet 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

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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 TTC 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 (TRIF) to make a presentation (Annexure-IV) regarding the inverted rate structure on textiles and footwear.

16.2 JS (TRIF) 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 TTC overflows, which in turn causes hardship to domestic manufacturer vis-a-vis imports. Further, domestic manufacturers get refund accumulated TTC on inputs goods only. Refund of accumulated TTC 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.

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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 opportuno 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



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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



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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(IRU) 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 kind 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

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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 11th 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


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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 from ENA 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 requested that the Council should allow it and keep



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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.

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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.

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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 13: 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.

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(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

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recommended and 78 cases falling under category B where technical glitches were not found were rejected by the FIGRC. 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 JTCHRC 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 FIGRC.

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.

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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 month of May 2021 as compared to April 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 CoM 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.


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22.16. The Hon'ble Member from Gujarat stated that since the compensation and loan for the year 2020-21 is already given, the decision for the year 2020-21 may also be taken. He requested for devising a mechanism through RBI or any other suitable manner for loans in the current financial year. He said that remaining amount of compensation may also be considered for payment through loan in the coming years.

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

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related to these sectors. Accordingly, two GoMs were constituted vide OMs 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.

23.3 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.

23.4 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'.

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



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Annexure-I

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 Huggana Rajendranath	Finance Minister
4	Arunachal Pradesh	Shri Chowma 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 Manvin 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

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18	Maharashtra	Shri Ajit Pawar	Deputy Chief Minister
19	Manipur	Shri Yunshan Joykumar Singh	Deputy Chief Minister
20	Meghalaya	Shri Conrad K. Sangma	Chief Minister
21	Mizoram	Shri Lalfcharliana	Minister for Taxation, Home, Disaster Management & Rehabilitation
22	Nagaland	Shri Metsobo Jamir	Minister for Rural Development
23	Odisha	Shri Niranjan Pujari	Minister, Finance & Excise
24	Punjab	Shri Manpreet Singh Badal	Finance Minister
25	Rajasthan	Shri Shabri 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 Thiagarajan	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 & Medical Education
31	Uttarakhand	Shri Sabodh Uniyal	Minister for Agriculture, Agricultural Marketing, Agricultural Processing, Agricultural Education, Garden and Fruit Industries, Silk Development
32	West Bengal	Dr. Anil Mitra	Finance Minister

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Annexure-II

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. Krishnaswamy 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(Investigation), CBIC
6	Govt. of India	Shri Vivek Johari	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 Nukul	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 Prasad Kumar	Director, TRU
19	GST Council	Shri Arjun Meena	Joint Commissioner
20	Govt. of India	Shri Rakesh Dahiya	OSD, TRU-II, CBIC

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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	Superintendent
34	GST Council	Shri Abhishek Kumar	Superintendent
35	GST Council	Shri Manoj Kumar	Superintendent
36	GST Council	Shri Krishan Kumar Verma	Superintendent
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

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44	Arunachal Pradesh	Shri Kanki Darang	Commissioner
45	Arunachal Pradesh	Shri Tapas Dotia	SNO (GST)
46	Assam	Shri Rakesh Agarwala	Principal Commissioner of State Tax
47	Assam	Md. ShakeelSaudullah	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 Mundip 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. RanuSahu	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	Shri 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 Turawane	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

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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	Shaukat 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

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90	Maharashtra	Ms. VishakhaBorse,	Joint Commissioner of State Tax
91	Maharashtra	Shri Kiran Sbinde	Deputy Commissioner of State Tax
92	Manipur	Shri YunnamIndrakumar Singh	Assistant Commissioner of Taxes
93	Meghalaya	Smt S. A. Synrem	Commissioner & Secretary, Excise, Registration, Taxation & Stamps
94	Meghalaya	Shri ArunkumarKhombuvi	Commissioner, SGST
95	Mizoram	Shri VantaiChhuanga	Commissioner and Secretary
96	Mizoram	Shri KailianaKalte	Commissioner of State Tax
97	Mizoram	Shri Hrangthamawia	Assistant Commissioner of Taxes
98	Nagaland	Shri KesoryuYhame	Secretary Finance & Commissioner of State Taxes
99	Nagaland	Shri Y MhalthungMurry	Special Commissioner of State Taxes
100	Nagaland	Shri WochamaOlyuo	Additional Commissioner of State Taxes
101	Odisha	Shri Ashok K. K. Meena	Principal Secretary, Finance
102	Odisha	Shri Sushil Kumar Lohari	Commissioner, Commercial Taxes & GST
103	Odisha	Shri N.K.Rautray	Special Secretary, Finance
104	Puducherry	Shri. Shuabit Singh	Commissioner-cum-Secretary to Govt. (Finance)
105	Puducherry	Shri. L. Kumar	Commissioner (ST), Commercial Taxes Department
106	Punjab	Shri V. K. Gaeg	Advisor (Financial Resources) to Chief Minister
107	Punjab	Shri A. VenuPrashad	Additional Chief Secretary (Taxation)
108	Punjab	Shri Nilkanth S. Avhad	Commissioner of State Taxes
109	Punjab	Shri RavneetKhurana	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

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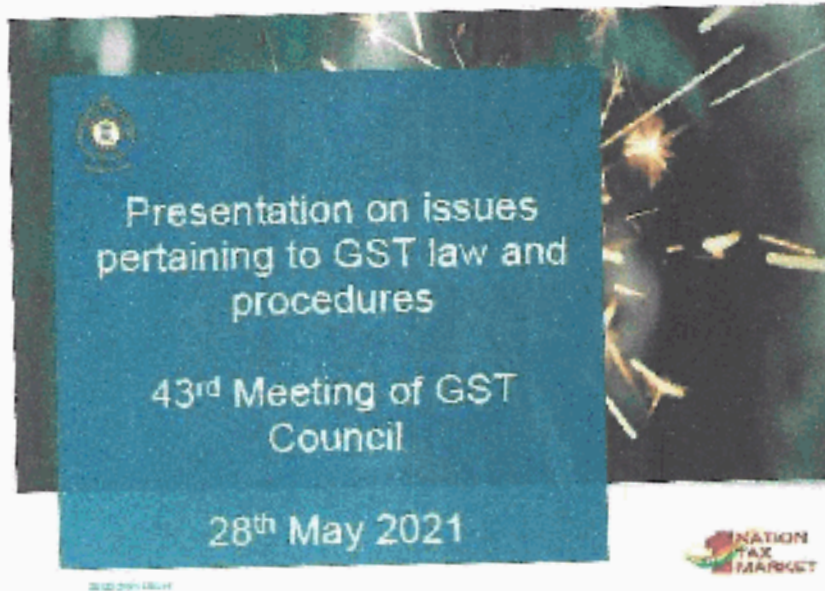
113	Rajasthan	Shri Ketan Sharma	Special Commissioner (GST)
114	Sikkim	Shri V. B. Pathak	Additional Chief Secretary, Finance & Planning
115	Sikkim	Shri J.D. Bhutia	Commissioner, Commercial Taxes & GST
116	Tamil Nadu	Shri S.Krishnan	Additional Chief Secretary to Government
117	Telangana	Shri Somesh Kumar	Chief Secretary
118	Telangana	SmtNeetu Prasad	Commissioner of Commercial Taxes
119	Telangana	Shri N. Sai Kishore	Additional Commissioner (ST) (Legal)
120	Telangana	SmtRupaSowmya	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 Daidya	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 Sumita Pandey	Joint Commissioner, State Tax
131	Uttarakhand	Shri Ajay Kumar	Joint Commissioner, State Tax
132	Uttarakhand	Shri S Stirwa	Deputy Commissioner, State Tax
133	Uttar Pradesh	Shri Sanjeev Mittal	Additional Chief Secretary, State Tax
134	Uttar Pradesh	SmtMinistry S.	Commissioner, Commercial Tax
135	Uttar Pradesh	Shri Brijesh Kumar Tripathi	Additional Commissioner(GST), Commercial Tax HQ

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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 Paul	Principal Secretary, Finance
141	West Bengal	Shri Smarak 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

Annexure-III



**Deemed Ratification of
Notifications and Circulars**

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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. 79/2020 to 25/ 2020 and 3/2021 to 15/2021) & 1 Central Tax (Rate) Notification No. 5/2020 dated 16.10.2020 issued	7 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 001/2021 - UT dated 31.05.2021 & 00/2020 - 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 (04/2020 - Integrated Tax dated 15.10.2020, 04/2021 - Integrated Tax dated 01.05.2021 & 05/2020 - Integrated Tax (Rate) dated 05.10.2020)	To notify the number of BSN digits required to tax invoices & 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. 14272/2020 dated 09.10.2020 to Circular No. 14804/2021 dated 18.05.2021)	Classification of issues relating to application of rule 70(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, classification of issues related to issuance of B2C invoices with dynamic QR code, refund related issues, SOP for implementation of extension of use- 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 reliefs 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 7 year time limit for filing refund under sub-section (3) 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 FOCs 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 17% 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).

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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

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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 respective 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.

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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.


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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.

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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 80,92,064 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

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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.

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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 29th 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 availed 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 :

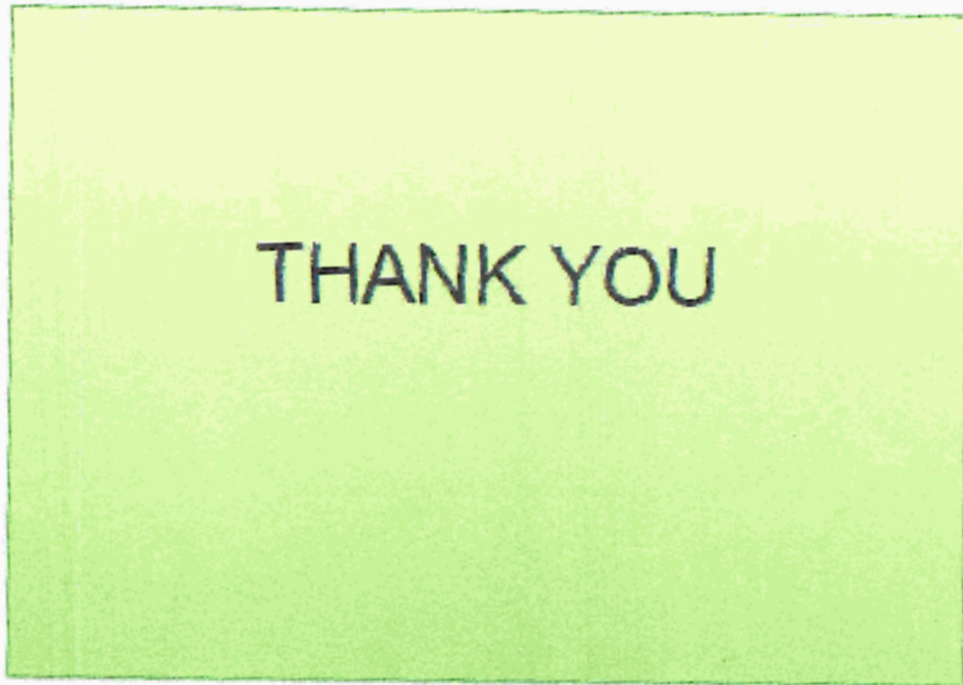
- Any time limit for completion or compliance of any action, by any authority or by any person, under the GST Act, which falls during the period from 15th April, 2021 to 29th June, 2021 (with suitable exemptions as in the notification) extended upto 30th June 2021, or far as the same is not covered by order of Hon'ble Supreme Court dated 27.04.2021, which has extended timelines till further order, for appeal 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.

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THANK YOU

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Annexure -IV

Fitment agenda on goods and services
Agenda items 11(i)/11(ii)/11(iii)
43rd Council meeting

28th May, 2021

GST relief for Covid items

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



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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

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.

Recommendations for consideration of Council

On individual items:

Item	Present rate (%)	Proposed rate (%)	Fitment's view
Vaccine	5	5	It is at lower 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

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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 provide any significant relief
Other diagnostic kit like d-dimer, il-6, LDH	12	12	These are general purpose kit
RTI-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.

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
- SIP 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.

Other recommendation of Fitment on goods

Volume 3, pg 19-35

S. No.	Request	Fitment Committee views	Recommendations
1.	Diethylcarbamazine tablet (DEC) supplied to WHO, India by SEZ unit (12% to exempt)	DEC is used for treatment of endemic lymphatic filariasis. So deserves some concession as life saving drugs. Domestic units when make exempted or gift supplies required to reverse Input tax credit.	Reduce GST to 7%
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.

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CHAIRMAN'S INITIALS

MINUTE BOOK

S. No.	Request	Fitment Committee views	Recommendations
3.	Parts of the Sprinklers/Drip Irrigation system if supplied separately (CTH. 8424. GST Rate: 12%)	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 (CTH. 9503. GST Rate: 5%)	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 amendments.

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.

Recommendation of Fitment on Services

Volume 3, pg 36-67

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:

- o 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.
- o Service provided by similar other central or state **educational** Boards for conduct of examinations including entrance examination shall accordingly be exempt.
- o Other service provided like accreditation of medical colleges and **screening test for** registration of doctors (having obtained education outside India) are taxable

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. .

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

1. 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. CST guaranteeing of loans by State Govt.: Fitment Committee discussed the request of Haryana Shehri Vikas Pradhikaran (HSVP) seeking clarification reg 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.

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.

CHAIRMAN'S
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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 3% 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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CHAIRMAN'S
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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.

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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:
 - o Imposed GST has the effect of dividing the society amongst the disabled and the able by placing a tax burden on the disabled
 - o This levy violates fundamental rights of disabled as envisaged under Article 14, 15, 19, 21 and 21A of the Constitution
 - o It is also a deviation from the international practice
- Supreme Court Order, dated 26.10.2020:
 - o 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/Apppliances (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 (UIDID)
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 Provides Scholarship Schemes
14. Scheme for providing Financial Assistance under the National Fund for Persons with Disabilities
15. Exhibitions/workshops to showcase the products including paintings, handicraft, etc. made by the PwDs.
16. 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.
17. 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.
18. Indian Spinal Injury Centre (ISIC)
19. The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation & Multiple Disabilities
20. National Handicapped Finance and Development Corporation (NHFD)C
21. National Awards for the Empowerment of Persons with Disabilities
- 22.

**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]**

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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.

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.**

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Correction of inverted rate structure

Agenda item 12: Volume 3, pg 75-80

43rd Council meeting

28th May, 2021

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 Madcaps
Generators/inverters
Job work
Aggarbatti
Agri machinery

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

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

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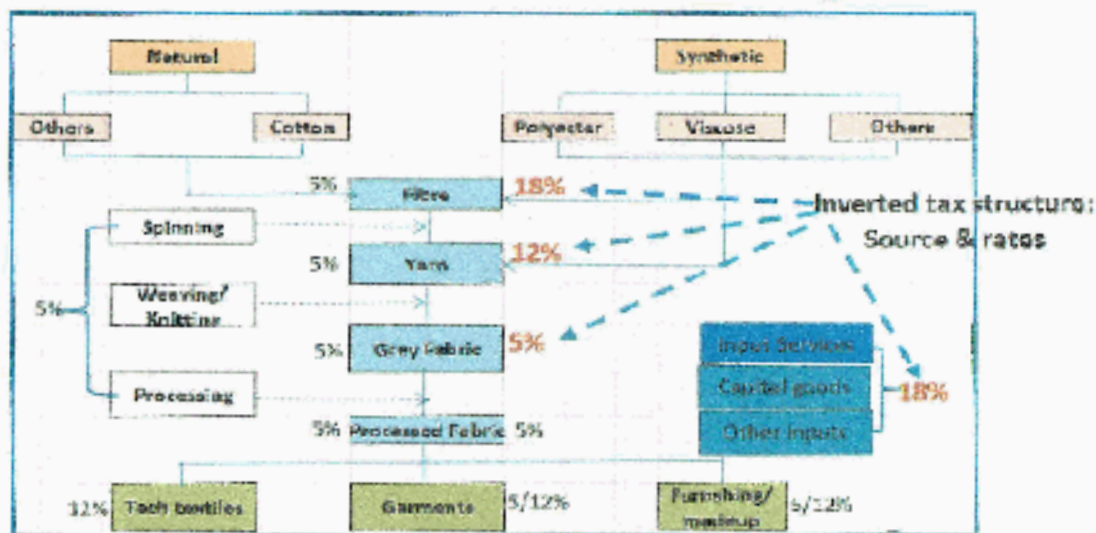
Inverted rates on Manmade Textiles segment

Evolution of Rate Structure	Implications and suggestions
<p>Initial rate: 18% on fibre & yarns, 5% on fabrics with no refund on fabrics</p> <p style="text-align: center;">↓ 2%</p> <p>GST on yarns to 12% [Sep 2017]</p> <p style="text-align: center;">↓ 2%</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 NITL, 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 CST 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

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 footweares

- 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 footweares having price upto Rs 1,000 per pair

Other significant items having inversion

Item	Approximate refund in a year
Renewable energy equipment, cells, panel, inverter, generators, windmill	Rs 1500 cr
Pharma	Rs 900 cr
Tractors	Rs 400 cr
Specified Railways parts	No refund allowed. Corrected partially by raising rate to 12%.
Wooden craft	Rs 400 cr
Agarbatti, water pumps, agri machines, utensil, ink	Rs 350 cr
Ords	Inversion on account of services being at 18%.
Others (medical equipment, bicycles, LED, Pen, animal feed)	

Taxability of ENA in GST

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

43rd Council meeting

28th May, 2021

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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).
- CST 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

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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.

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/IL)
 - 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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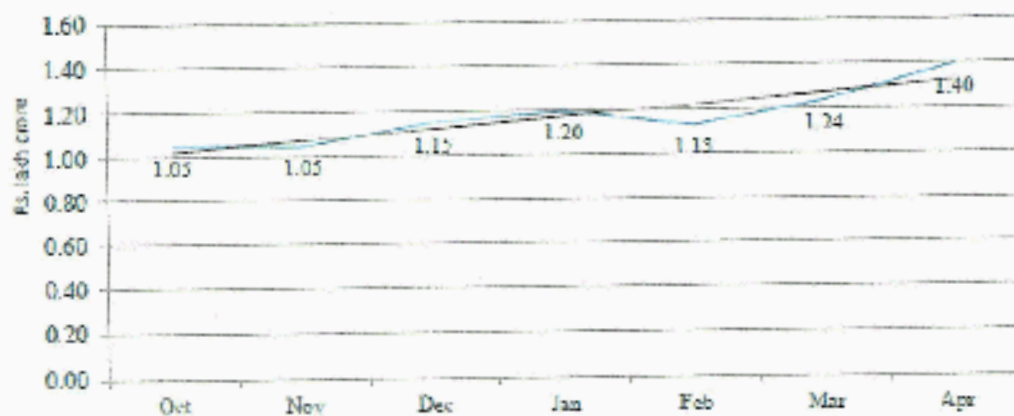
Annexure-V



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Review of Revenue Position

Trends in monthly gross GST Revenue

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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	19,389	21,805	21,937	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
Domestic	29,165	29,913	30,375	32,869	30,871	31,745	38,847
Imports	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
Domestic	7,079	7,432	7,608	7,739	8,865	7,822	8,464
Imports	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

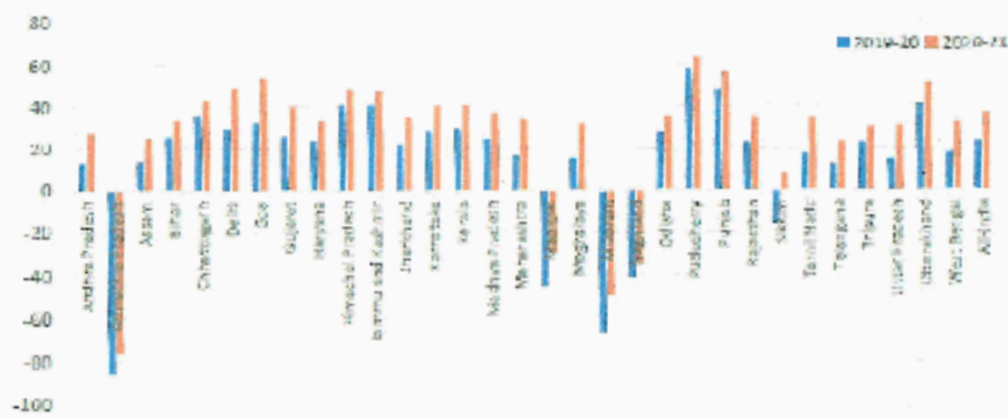
Compensation Fund

	Rs. Crore				
	2017-18	2018-19	2019-20	2020-21	2021-22*
Opening Balance		21,456	47,272	55,737	3,940
Compensation	62,612	95,081	95,551	85,191	9,100
Less collected (Net)					
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 CPI to Compensation Cost Fund as part of an exercise to apportion balance IGST pertaining to FY 2017-18

* till 30.04.2021

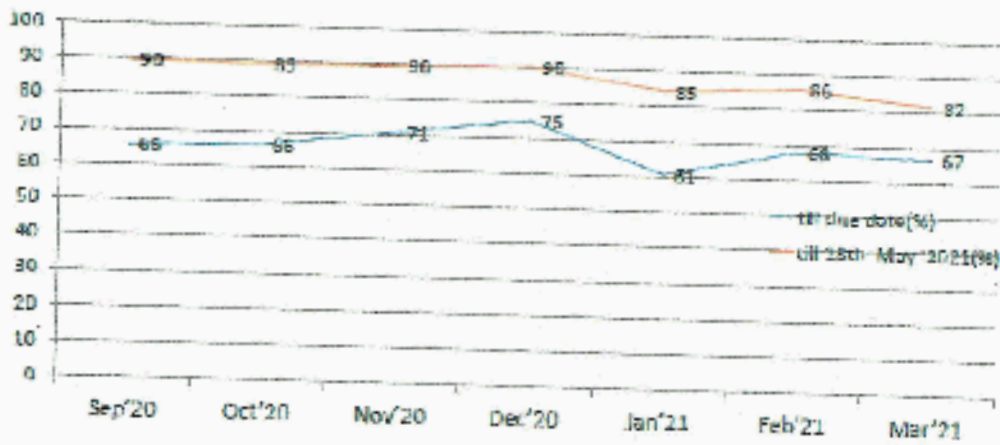
Revenue Shortfall



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Trend in GSTR-3B Return filing



GST Compensation Cess

Estimates for 2021-22

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Background

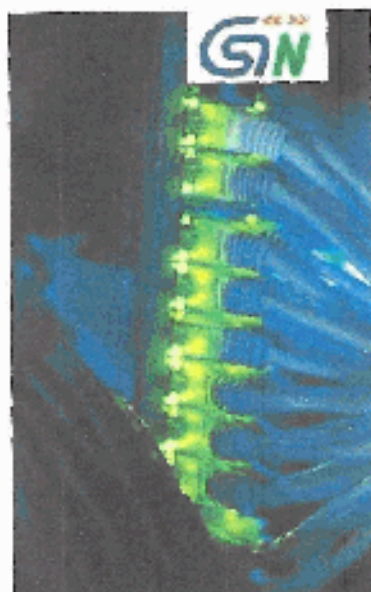
- Shortfall in compensation due to 14% increase in protected revenue y-o-y, dip in SGST revenue as well as compensation cess collection due to pandemic
- Issue was discussed in detail in 41st and 42nd - legal provisions and the opinion of I.d. AGI were discussed in detail
- Two models for raising resources through debt to meet a part of shortfall
- Calculated based on the normative approach – 7% growth on 2019-20 revenues
- **During 2020-21, GoI 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%**


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2021-22

- If the same model as last year is adopted, Govt 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

Annexure-VI



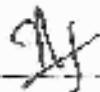
GST COUNCIL MEETING 28TH MAY, 2021

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).


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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 Financement 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.

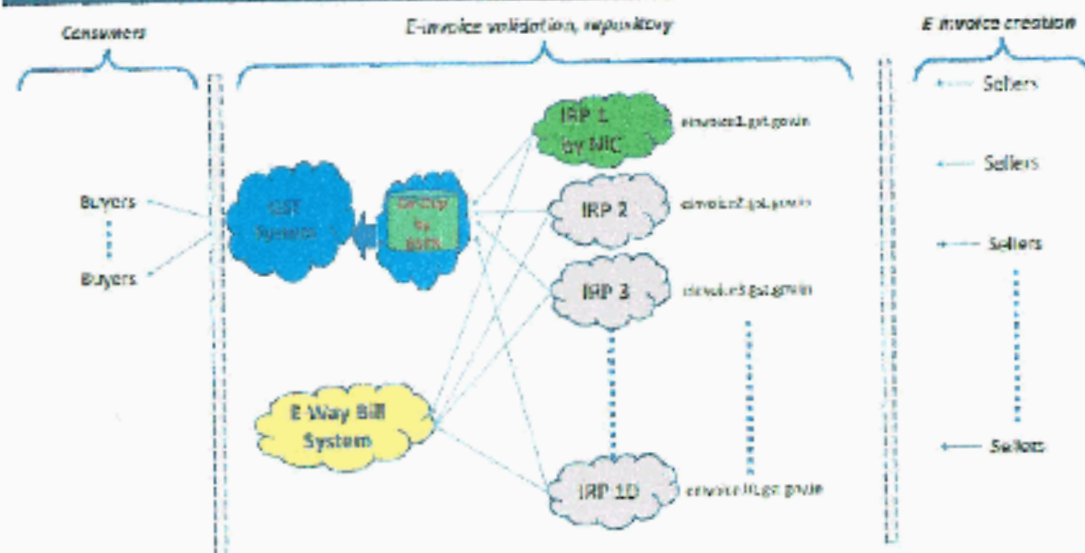
Proposal: Considering the new Developments & Change Requirements in GST System, GST Council may like to:

- 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 B2Bs eligible to generate e-invoice	No. of GSTNs eligible to generate e-invoice	% age of number of Total B2B Invoices Reported to GST-R3	% of value (ITD N would be similar) of B2B supplies of these GSTNs	e-invoice launched from	no of GSTNs generated e-invoice in Mar-21/Apr-21	Number of invoices generated in Mar-21/Apr-21
500 Cr plus	6,958	53,529	22.78%	41.24%	1 st of Oct, 20	35,579	6,24,11,777
100-500 Cr	33,399	91,583	8.80%	15.32%	1 st of Jan, 21	46,968	2,06,75,294
50-100 Cr	51,200	95,465	6.80%	9.98%	1 st of April, 21	38,186*	85,09,764*
25-50 Cr	68,703	96,855	5.56%	5.55%	To be decided	Not implemented	
10-25 Cr	2,10,094	2,53,348	18.14%	7.12%			
5-10 Cr	3,02,470	3,38,456	9.02%	4.90%			
1.5 - 5.00 Cr	9,98,803	10,65,521	17.36%	7.69%			
Below 1.5 Cr	68,76,061	70,52,583	20.01%	8.20%			
TOTAL	85,47,566	90,46,720	100.00%	100.00%		138,267	9,15,40,835

[Signature]
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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 (OTI) 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.

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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 10th Jan 2019.
- 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.

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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	Bihar	11	Kerala
3	Andhra Pradesh	12	Manipur
4	Bihar	13	Delhi
5	Himachal Pradesh	14	Jharkhand
6	Mizoram	15	Uttar Pradesh
7	Andhra Pradesh	16	Chhattisgarh
8	Haryana	17	Madhya Pradesh
9	Assam		

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.

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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.

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

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