



**Minutes of the 39<sup>th</sup> GST Council Meeting held on 14<sup>th</sup> March, 2020**

The 39<sup>th</sup> meeting of the GST Council (hereinafter referred to as 'the Council') was held on 14<sup>th</sup> March 2020 at New Delhi under the Chairpersonship of Hon'ble Finance Minister, Smt. Nirmala Sitharaman (hereinafter referred to as the Chairperson). A list of the Hon'ble Members/Ministers of the Council who attended the meeting is at **Annexure 1**. A list of officers of the Centre, the States, the GST Council, the Goods and Services Tax Network (GSTN) who attended the meeting is at **Annexure 2**.

2. The following agenda items were listed for the discussion in the 39<sup>th</sup> Meeting of the Council:

1. Confirmation of the Minutes of 38<sup>th</sup> GST Council Meeting held on 18<sup>th</sup> December 2019
2. Update by Infosys (through GSTN)
3. Review of Revenue Position
4. Issues recommended by the Fitment Committee for the consideration of the GST Council (Recommendations by the Committee of Officers on Revenue Augmentation)
  - i. Fitment Agenda for Goods: Inverted Rate Structure in GST- Correction of inverted rates on certain key sectors
  - ii. Fitment Agenda for Services
5. Issues recommended by the Law Committee for the consideration of the GST Council
  - A. Issues recommended by the Law Committee for the consideration of the GST Council
    - i. Taxability of 'economic surplus' earned by brand owners of alcoholic liquor for human consumption
    - ii. Challenges faced in apportionment of ITC in cases of business reorganization under section 18 (3) of CGST Act read with rule 41(1) of CGST Rules

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- iii. Issue regarding waiver of penalty and interest on previous period due to removal of pre-import condition under Advance Authorization scheme
- iv. Levy of interest under the provisions of section 50 of the CGST Act, 2017 for delay in payment of tax
- v. Proposal for waiver of filing of FORM GSTR-1 by taxpayers who have availed the special composition scheme under notification No. 2/2019-Central Tax (Rate) dated 07.03.2019.
- vi. Filing of GSTR-9 (Annual Return) and GSTR-9C (Reconciliation Statement)
- vii. Proposals for amendment in the CGST Rules, 2017
- viii. Proposals for amendment in the CGST Act, 2017 and the IGST Act, 2017
- ix. Scheme of 'Know Your Supplier'
- x. Notifying NPCI, Transunion CIBIL Ltd. and Association of Mutual fund of India under section 150(1)(p) and Banking Information return under Section 150(1)(e)
- xi. Proposal for Notification / Rule change for enabling AADHAAR based authentication in GST
- xii. Clarification in respect of appeal in regard to non-constitution of Appellate Tribunal
- xiii. Exemption for certain class of registered persons from having e-invoicing along with extension of dates for implementation of e-invoicing
- xiv. Exemption for certain class of registered persons from capturing dynamic QR code along with deferment of implementation of QR Code
- xv. Agenda note for GST Council regarding extension of date of GSTR 3B filing for the month of Jan, 2020 till 31st March 2020

  
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- xvi. Agenda note for GST Council regarding continuation of the existing system of furnishing FORM GSTR-1 and FORM GSTR-3B till the month of September, 2020
- xvii. Transition Plan in view of merger of Union Territories of Dadra & Nagar Haveli and Daman & Diu
- xviii. Deferring e-Wallet scheme and extending duty exemption for exporters

B. Deliberations of the Law Committee in the matter of the representation by Construction Federation of India on the orders of the Hon'ble High Court of Delhi

- 6. Creation of State and Area Benches of the Goods and Services Tax Appellate Tribunal (GSTAT) for the State of Uttar Pradesh
- 7. Quarterly Report of the NAA for the quarter October to December 2019 for the information of the GST Council
- 8. Deemed ratification by the GST Council of Notifications, Circulars and Orders issued by the Central Government
- 9. Decisions of the GST Implementation Committee (GIC) for information of the Council
- 10. Decisions/Recommendations of the IT Grievance Redressal Committee for information of the Council
- 11. Any other agenda item with the permission of the Chairperson
  - i. An incentive scheme for consumers to increase invoice compliance in B to C supply
  - ii. Issuance of Circular clarifying certain refund related issues
  - iii. Physical verification and KYC of persons willing to take registration within first six months and corresponding spike rule
  - iv. Proposed amendments in the CGST Act, 2017
  - v. Proposal to issue notification and circular clarifying issues related to corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016

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- vi. Proposal to issue Removal of difficulty order for extending the time limit for revocation of cancellation of registration
  - vii. Status update on conversion of Goods And Services Tax Network (GSTN) into 100% Government owned Company
  - viii. Judgment of Hon'ble Supreme Court of India in Chief Commissioner of Central Excise and Service Tax &Ors. Vs. M/s Ranchi Club Ltd. and State of West Bengal vs. Calcutta Club Limited laying down that from 2005 onwards, Finance Act, 1994 does not purport to levy service tax on member clubs in incorporated form
  - ix. Order of Hon'ble High Court of Rajasthan in the matter of Rajasthan Tax Consultants Association vs UoI and Ors. (D. B. Civil Writ No. 15239/2017)
  - x. Agenda Note for refund of ITC of the tax paid on capital goods, in cash, for registered taxpayers with annual aggregate turnover up to 15 crores
  - xi. Time bound disposal of long pending change request arising out of changes made in Law/Rules through one time special measure.
  - xii. Ad-hoc Exemptions Order(s) issued under Section 25 (2) of Customs Act, 1962 to be placed before the GST Council for Information
12. Date of the next meeting of the GST Council

**Preliminary discussion**

3. The Hon'ble Chairperson invited the Union Revenue Secretary and ex-officio Secretary to the GST Council (hereinafter referred to as the Secretary) to begin the proceedings. The Secretary welcomed everyone to the 39<sup>th</sup> GST Council meeting. He, on behalf of the Council, welcomed Shri Rameshwar Oraon, Hon'ble Minister for Planning cum Finance, Commercial Taxes, Food, Public Distribution & Consumer Affairs, nominated from the State of Jharkhand. On behalf of the Council he also placed on record the appreciation for contribution made by Shri C.P. Singh, the then Hon'ble Minister for



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Urban Development, Housing and Transport, Jharkhand. The Secretary also welcomed Shri Nandan Nilekani from Infosys Bangalore who had come from Bangalore to apprise the GST Council regarding various steps taken and those proposed to be taken by Infosys vis a vis the challenges being currently faced in the implementation of GST as well as the implementation status of various decisions taken by the GST Council for the ease of taxpayers.

3.1. After preliminary discussions, the Hon'ble Chairperson asked the Secretary to take up the individual Agenda Items for consideration of the Council.

3.2. The Secretary informed that though the 1<sup>st</sup> Agenda item, as usual, was the confirmation of the Minutes of Meeting of the 38<sup>th</sup> GST Council (hereinafter referred to as Minutes) held on 18<sup>th</sup> December, 2019 at New Delhi; however, since Shri Nandan Nilekani had been invited to make the presentation about the present status of various issues faced at GST Portal, which was to be taken up at Agenda item 2; therefore, he might be asked to make the presentation first & discussion on it be held and thereafter regular agenda items might be taken up. The Council agreed to the above proposal and accordingly, Secretary invited Shri Nandan Nilekani to make the presentation.

**Agenda Item-2: Update by Infosys: Presentation by Shri Nandan Nilekani, Infosys.**

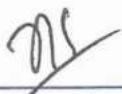
4. Shri Sushil Modi, Deputy Chief Minister, Bihar intervened and stated that he was heading a Group of Ministers on the implementation of IT (hereinafter referred to as IT-GoM), therefore he wanted to inform the Council about the status, being relevant to the agenda and as came to his notice during the IT-GoM meetings and that he would like to raise a few issues in the next two minutes for the information of the Council as well as Shri Nandan Nilekani. He would expect Shri Nandan Nilekani to update the Council on those issues as well. He further stated that IT-GoM had been formed to oversee and resolve the IT challenges faced in the implementation of the GST. The IT-GoM, since then had held 13 meetings from time to time and 47 functionalities were required to be implemented in the beginning. Out of these, IT-GoM had prioritized the functionalities to be implemented

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out of turn for which Infosys took more than one year to develop and implement. The issues faced during the peak days of filing of GSTR-3B such as slowness of the Portal, system and application errors preventing smooth filing, system hitting the circuit breaker so as to limit the people filing the return at the same time etc. were identified and informed to Infosys for resolution from time to time. Similarly, during the filing of GSTR-1, a number of issues were noticed such as, errors of "Summary Generation in Progress", GSTR-2 generation and download being slow etc. were also communicated from time to time for resolution by the Infosys team. He further stated that in the meeting held on 23<sup>rd</sup> December, 2019, a plan was submitted by Infosys to tackle the issues including on how to resolve slowness of the System. However, no improvement had come to the notice of IT-GoM till date.

4.1. He further stated that, as regards the number of Change Requests (hereinafter referred as CR) pending with the Infosys, it was decided by IT-GoM, after taking inputs from Infosys, that no CR would be kept pending beyond 12 weeks and Infosys would deploy additional resources to tackle the early implementation of change requests, so that the time-line decided could be adhered. However, in the meeting dated 23.12.2019, it was noted that just 49 CR out of 84 CR could be resolved. He also raised the issues of slow progress in the development and implementation of "Business Intelligence" (hereinafter referred as BI) reports and stated that so far only 2 out of the 17 use cases identified could be developed by Infosys, hampering the anti-evasion work. Further the modules relating to MIS, appeal, audit, enforcement, etc. remained largely undelivered. Similarly, as regards helpdesk tickets, it was decided with the concurrence of Infosys, that either no ticket or only negligible tickets should remain pending beyond time limit of 30 days. Whereas, the perusal of ticket baskets as on 30<sup>th</sup> January, 2020 showed that there were more than 806 tickets pending beyond 30 days. He, thereafter, asked Shri Nandan Nilekani to cover above points, as highlighted by him, in his presentation before the Council, supported with the data.

4.2. Shri Nandan Nilekani expressed his gratitude to the Chairperson and other members of the Council for being invited to the Council and being given an opportunity to make the presentation. The presentation is annexed as **Annexure 3**. He stated that his presentation included the status of the system issues, remediation plan along with road map for the GST

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return filing and it also included the factors contributing to the issues hampering return filing on 20<sup>th</sup> January, 2020. He further, stated that in the existing GST return system, GSTR3B return was to be filed by 20<sup>th</sup> of the month. About 65% of the people filed return by the due date and out of this 35% of the total tax payers came to file the return on last three days while the return filing percentage further increased to about 90% by the end of the month. In the month of January, 19<sup>th</sup> January was a Sunday due to which there was very low return filing and bulk of the people came for return filing on 20<sup>th</sup> January, 2020. In addition, there was additional rush for filing GSTR-1 due to the expiry of amnesty scheme timeline on the 17<sup>th</sup> January 2020. Further, the time for filing GSTR-9 and GSTR-9C for 2017-18 was also coming to an end. As a result, the system which was designed to handle 1.25 lakh concurrent users, hit the circuit breaker as more than 1.5 lakh people had hit the server for return filing. Load on the server, more than the design, led to further slowness of the system which was compounded by an issue in delivery of OTP by mail. This led to further load on the server as people tried again and again to get the OTP leading to failure of the system.

4.3. In short term, these issues were handled by staggering the last date of filing for different regional users i.e. 20<sup>th</sup>, 22<sup>nd</sup> and 24<sup>th</sup> January and at the same time the issue in delivery of OTP by e-mail was also fixed. As a result, the return filing in the month of February was quite smooth as evident from the main source of complaint i.e. the GSTN tickets, calls and twitters complaints.

4.4. Long term solution however, was to increase the capacity of the system to 3 lakh concurrent users for which the discussion was held with the GSTN & the Ministry and the permission had been granted to upgrade the system on February 3<sup>rd</sup> 2020. In this regard, order had already been placed to Chinese suppliers but due to COVID19 outbreak, the supplies from China had been affected and hence, instead of 6-8 weeks, it could take about 3 months. Thus, in the next 3 months, it was suggested that staggered filling of returns might be continued along with the close monitoring of the system between 15<sup>th</sup> to 24<sup>th</sup> of the month specially when the system would be burdened and would be near the circuit breaker. The above steps would take care of the concerns raised by the Council as well as by the Hon'ble Prime Minister. Thus, with the supply of hardware in place, performance issues of the system on the capacity front would be taken care of.

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4.5. In addition, certain policy changes in respect of CR implementation were also required. He further, stated that the current process of CR implementation by the GSTN involved preparation of each individual CR, its communication to application team, finalization of the change plan by the application team and its approval which also involved an element of agreement between the two teams, its approval, as well as final implementation and hence, the entire process was time consuming. He, therefore, suggested to adopt the process of Time and Material (hereinafter referred as T&M) model for implementation of CR. In this model, he would create a pool of qualified and dedicated 60 personnel who would be regularly in touch at each stage and work on the priority areas identified by the Govt. leading to faster delivery. In T&M model, the priority had to be decided by the GSTN and Govt. while the work would be delivered by the dedicated resource tool. He informed the Council that the same model had been adopted by UIDAI successfully.

4.6. He, thereafter, presented the road map for GST returns and stated that the current GST compliance model implemented, was based on two returns model where the supplier declared his outward supplies at invoice/ tax rate level including the exports and deemed export suppliers by the 10<sup>th</sup> of the month in GSTR-1 return. Further, a GSTR-3B return had to be filed where he had to compute & re-enter the output GST liability and also compute & enter the Input Tax Credit (hereinafter referred to as ITC) claimed and thereafter arrive at net tax liability which had to be offset through a challan. The issue in this system was that taxpayer not only had to do duplicate efforts in computing for the returns, taxpayer had to manually claim the ITC also. These issues were compounded by the challenge in the number of filings of various types of returns. Further, while approximately one crore tax payers file GSTR-3B return in a month, only about 60% filed the corresponding GSTR-1 return. Out of one crore taxpayers i.e. those who were required to file GSTR-1 return, 22% of the people filed 'Nil' tax liability returns, 12% of tax payers only had B2C supplies and hence, were not passing on the ITC, and hence invoice details/ detailed GSTR-1 in these cases were also not required. The balance tax payers could be divided into two categories i.e. those having turnover less than Rs. 1.5 crore required to file a quarterly return while those above Rs.1.5 crore to file monthly return.

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4.7. Further, GSTR-1 was not connected with the GSTR-3B and there was no way to check if the tax paid by the tax payer was equal to the tax liability declared by him in GSTR-1. The original return filing design involved these linkages with invoices having back and forth movement between sellers and buyers and there was a flow of return amongst GSTR-1, GSTR-2 and ending with GSTR-3. However, it could not be implemented. It was noticed that the system of GSTR-1, 2 & 3 was complicated and hence, it was decided to limit the implementation of GST with GSTR-1 and GSTR-3B. As a result, though, it had become easier for compliant tax payers to run their business, yet, there was no connection between GSTR-1 and GSTR-3B with no control on ITC availed and it had become a source of various frauds. As a result, there was under-declaration of liabilities by the taxpayers in 97,853 cases of Rs. 31,247 crores. Similarly, tax payers in 42,618 cases had claimed Rs. 38,771 crore excess ITC. Further, there were cases where the registration had been taken on all fake documents with intent to de-fraud the exchequer and at the same time fake invoice scams were also being reported. Significant amount of revenue would also be involved in these two modes of evasion but it was difficult to quantify and detect through the system and had to be plugged using policy measures.

4.8. He continued the presentation that to address these 4 modes of evasion as enumerated above, new return system was designed which took care of the first two modes of evasion, in his opinion. It had been designed and rolled out for beta testing mode since May 2019 to familiarize people with this system; on which more than 900 feedbacks were received regarding certain difficulties or about suggestions on how to improve the new return system. On New Return, 72 workshops were held in 32 cities and 9 webinars had been held during Oct'19 to Mar'20. However, this model seemed to be complicated and once introduced in one go would lead to disruption in GST operations for following reasons:

- a. It had been tested by not even 1.5% of the eligible tax payers
- b. The number of documents & hence the load on taxpayers would go up with ANX-I, ANX-II and RET.
- c. Hardware also had not been upgraded.

4.9. Accordingly, incremental approach towards the rollout of the returns system was suggested rather than implementing 'New Return system' in big bang fashion which might

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be counter-productive and hence, as an implementer of large systems (not as the Infosys representative), he would suggest to adopt incremental improvement approach to reach the same goal with present returns instead of large-scale disruption. He, thereafter, explained the details of incremental roll-out with the idea to get to the same end result and at the same time reduced risk in adoption by the public. He, further, stated that as of today the first need was to match the liabilities declared by suppliers between GSTR-1 and GSTR-3B and the second need was to match the ITC of the buyers from the suppliers' GSTR-1 containing his supplies i.e. matching the 2A of the buyer with his ITC declared in 3B. He suggested the following roadmap:-

- a. Therefore, in the first stage the tax liability would be generated from invoice wise details filed by him in GSTR-1 where initially he could be given chance to amend it by a small margin such as, by 10%.
- b. This would address a lot of issues, as in case of 22% tax payers out of about one crore tax payers, 'Nil' return was filed which could be implemented through SMS and in case of another 12% tax payers having B2C supplies and passing no ITC, a simplified return could be worked out. Thus, this would be a simple change in system which could be easily carried out while it would be a large change for taxpayers as now GSTR-3B liability would be auto populated, which was independently filled by them based on their calculation. This would address first problem of difference in output tax liability declared by the taxpayers in the two returns as discussed earlier.
- c. He further suggested, though not as a taxation but more of an economic issue, to enable GSTR-1 invoice data details as eligible data for lending by financial institutions to MSME. As per RBI report, the credit flow to MSME was the need of the hour since growth in MSME sector created jobs and GST data could be effectively used for making the easy credit flow possible. The Govt. certified invoices would reduce risk of lender as well as it would be a tool in the hands of the taxpayer to get access to credit / loan. Hence, it would make a small business more compliant due to the carrot in the form of proper filing of returns so as to be eligible to borrow hassle free and at the same time stick in the form of the tax to be paid on



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whatever was declared. In his view, enabling this facility would not be an add on but natural flow and incentive for MSME to be compliant leading to increased GSTR-1 filing. This required API based access of GSTN data to BHIM (lending platform) as well as the concurrence of tax payers to share his data for credit purposes to make it happen. However, the policy decision in this regard, would have to be taken by GSTC whether to proceed or not to proceed.

- d. The second stage in the incremental implementation would be to make ITC computation automated as well as to provide a tool for matching. This would require arranging ITC details buyer-wise from GSTR-1 details of invoices of suppliers (as reflected in GSTR-2A) and reflecting the automatically computed ITC in the each buyer's account.
  - e. Once the ITC computation became automated, both the risks of under declaration of tax liability and over declaration of ITC on the compliance front would get covered.
  - f. The spin-off of this incremental approach would be that it would allow the data as enabler for lending and in view of 75 lakh MSMEs below Rs. 50 crore turnover getting the benefit of easy lending. As one MSME employer created on an average one job, approximately 75 lakh jobs would be added to the economy.
- 4.10. He explained the benefits of the incremental approach as follows:
- a. Nearly 34% of the tax payers would not have to file detailed GSTR-1 as either they were 'Nil' filers or they had no B2B supplies.
  - b. For tax administration the ITC would be reconciled automatically.
  - c. For tax payers GSTR-3B would be fully auto drafted.
  - d. It could also provide flexibility as in the current system the option to file quarterly return could only be exercised once in an year whereas the flexibility to opt for quarterly or monthly anytime was requirement of the day from the point of view of the tax payer. Further, from the tax administration point of view, as explained earlier, 34% tax payers do not need GSTR-1 to be filed while 40% of the tax payers

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filed monthly returns any way. This left about 25% tax payers who only needed this flexibility.

- e. The incremental approach would lead to a situation where the return would be more accurate since it avoided calculation and transcription error and at the same time bring transparency in each return with ITC backed by invoice details.

4.11. He thereafter, explained the timelines for the incremental roll out for effective change management as follows:

- a. By May, 2020, the SMS based filing of 'Nil' returns would be introduced.
- b. By June, 2020, linking GSTR-3B liability for monthly filers to their GSTR-1 would be done.
- c. By September, 2020, Infosys would provide matching tools for ITC as well as the linkage of liability of GSTR-1 to the GSTR3B of quarterly filers.
- d. By January, 2021, the linkage of GSTR-1 outward supplies and its tax payment by the suppliers would be linked with the ITC of the recipient.

4.12. He concluded his presentation by stating that spike rule would be developed as add-on module to detect unusual behavior which would indicate fraud. Further, the rules had to be specified by the department to deal with suppression of fake invoices and ruling out fake registrations in the system. These implementations would significantly stop the leakages and revenues would increase.

4.13. He further presented concept of GST payment Gateway as a new concept, which needed more discussion. He stated that the GST Payment Gateway could lead to elimination of fake invoices, link input tax credit with the invoice. The 'GST payment gateway' would ensure that payment made on invoice was linked to the ITC available on it. However, he would provide detailed proposal subsequently once it was approved in principle.

4.14. The Secretary thanked Shri Nandan Nilekani for making the presentation and stated that, with the implementation of GST, it was realized that the tax administrations needed to be very agile with reference to the IT platform and that the problems noticed should be immediately redressed; otherwise it would bring bad name to GST. He further stated that



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the PowerPoint presentation recognized that there was a problem which needed to be fixed but, he would not agree to the proposition that the problem was only in January, 2020. In fact, the ticket data suggested that the problem had been throughout and it needed to be minimized. He thereafter, submitted that Infosys in discussion with GSTN had provided 'T&M Model' for the 60 resources which had been placed before the Council as Table Agenda 11(xi). Further, the timelines indicated in the presentation upto January, 2021 and that the time line for spike rule implementation had not been given in the presentation do not seem to be agreeable. Moreover, when 60 persons were being agreed to and provided, the time line should come down. The twin issues of smooth experiences of tax payers and spike rule to cover fake invoices / fake ITCs and tax evasion should be addressed with agility as these loopholes were costing tax administration thousands of crores of rupees. Thus, these timelines needed to be advanced with appropriate resources and support of Government / Council. Another issue that he pointed out was relating to implementation of Aadhar and its linking with the GST registration and refunds, which also needed to be implemented on priority.

4.15. Shri Mauvin Godinho, Hon'ble Minister for Transport and Panchayat Raj from Goa, stated that the presentation by Shri Nandan Nilekani was good and informative and that he thought the 'T&M Model' proposal was agreeable in view of dire needs. He however, added that the Council was in urgent requirement of fixing the issues pointed out in the presentation and hence, he thought that the services be delivered on priority and approvals could be post-facto. In July GST would complete 3 years which was a good time to stabilize for any new change. Hence, it was high time to take decision urgently instead of waiting for some time. He further stated that the Council knew the existing problems of 'slowness', absence of 'spike rule' etc. Hence, in his opinion, whatever was achieved in the GST System, was good and it only needed to be improved and streamlined.

4.16. Dr. Thomas Issac, Hon'ble Minister of Finance & Coir from Kerala, stated that the suggestion given by Shri Nandan Nilekani were effective and useful and thanked him for lucid and useful presentation. He further stated that the idea of linking payment of tax on the invoice with the ITC was interesting and needed to be taken forward. However, he wanted to know the timeframe suggested by Infosys to reach the goal and if the same was achieved, what would be the impact on enforcement.

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4.17. Shri Sushil Modi Dy. Chief Minister of Bihar, enquired that the suggestion of having 60 persons to be deputed to stabilize the GST System was good but he would suggest personnel deployed to be qualified as required for the project and at the same time who understood GST. He also wanted to know whether the 'New Return System' as approved by GST Council would be implemented in incremental manner or he had a different suggestion.

4.18. Shri Nandan Nilekani responded that he recognized that GST System was a project of national importance and he would personally ensure best talent across the company would be deployed in the project. He further, explained the difference between what was planned in 'New Return system' and what was suggested by him in as much as, the original design was an elaborate process of filing of GSTR-1, 2 & 3 in a sequence which were also inter-linked with back and forth flow of invoices. However, the return system and linkage could not be established and the process had to be scrapped midway. However, if in the existing system of GSTR3B and GSTR-1 one linked the two returns, the problem of under declaration of liability as well as misuse of ITC would be stopped. Further, if implementation of ANX-I and ANX-II, was done, it would be releasing new forms for the public, which would be bigger challenge for the public to understand and adapt to these new forms and hence, he referred to it as a big bang reform approach. He instead, suggested to have an incremental approach to plug the loopholes using GSTR-1 and GSTR-3B, since taxpayers were already familiar with GSTR-1 and GSTR-3B; with final goal to improve the compliance. As regards the point raised by Hon'ble Minister from Kerala, he stated that suggestion to link payment to credit was radical and excellent because in that case there would be no fake invoices left in the system and since, the system based tax payment would be the basis of allowing ITC, and no 'spike rule' would therefore be required. However, it was a big step which needed proper consultation and he would come back with specific recommendation. Responding to the issues raised by the Secretary, he stated that implementation of the changes suggested by him required time as it was not merely a systems change, but required a lot of change in the behavior of the public for the reason that GSTR-1 would become the basic document to compute the liability (which would be auto populated, not entered) in the tax return and at the same time it would also be the basis of ITC.



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4.19. Shri Manish Sisodia, Hon'ble Dy. Chief Minister of Delhi wanted to know the feedback of the taxpayers on 'New Return System' and the slowness of the system, being hardware linked, would be resolved by what time on account of its linkage with the China. Shri Nandan Nilekani explained that the feedback of 'New Return System' was taken by the Govt. and agreed that the procurement of hardware might take time due to COVID19 issue. In the meantime, however, Infosys team would do close monitoring of the system and he would take extra efforts to avoid any issues.

4.20. Shri Nitin Bhai Patel, Hon'ble Deputy Chief Minister from Gujarat raised the issue of congestion and delays in the system which required that the capacity of the system should be increased. Further each time there was congestion near the due date of returns, due date had to be increased several times. Once the number of taxpayers went up, the system capacity had to be increased which was known before-hand to Infosys. Shri Nandan Nilekani clarified that though it was known, the number of concurrent users was not clearly known which had increased disproportionately. Dy. Chief Minister, Gujarat further stated that the decision to increase the capacity should be automatic rather than asking for extending the date each time. He further referred to the issues being faced by GST relating to fake bills and fake ITC claims; tackling which should be the first priority. Further, he concluded by saying that Govt. and the Council lost its face due to frequent changes in the due date of the return which should be addressed by Infosys. Shri Suresh Kumar Khanna, Hon'ble Minister Finance, Parliamentary Affairs, Medical Education of Uttar Pradesh stated that he agreed with the suggestion of Gujarat and that the new system should reduce fraud. He suggested that to achieve the simplification of GST and to achieve smooth functioning of GST System, there should be a permanent GoM on IT for addressing various issues and taking decisions that could be implemented.

4.21. Shri Niranjan Pujari, Hon'ble Finance & Excise Minister of Odisha stated that he was a member of the IT-GoM and there he had observed that the performance of Infosys was not upto the mark. He was thankful that Shri Nandan Nilekani had come to address the issues being faced at GSTN. He further stated that GST system implementation was a prestigious project which needed will of Infosys to implement and what the project needed was quality people to implement it. Instead he had seen complacent people sitting in the IT-GoM meetings. Shri Nandan Nilekani stated that he would ensure quality people across

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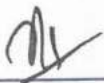
Infosys for the project as well as would ensure that he would personally attend the IT-GoM Meetings.

4.22. Shri V. Narayansamy, the Chief Minister of Puducherry, stated that while the Council was focusing on the implementation of GST and the need to simplify the compliance; the unscrupulous taxpayers were making fake invoices and taking fake ITC to cover up their tax liability. Therefore, whenever the Council made changes to cover tax evasion, the genuine taxpayers suffered each time. He stated that the presentation of Nandan Nilekani had at least given the idea that GST implementation would be better in future. However, it should be kept in mind that every time the Council simplified certain things in GST, cycle started where system changes would take some time and thereafter, the State tax officers would go on educating the trade. It should also be noted that tax officers can't go on teaching/educating taxpayers all the time and hence, frequent/ large scale modifications should be avoided.

4.23. Shri T.S. Singh Deo, Hon'ble Minister Commercial Tax from Chhattisgarh stated that from the presentation he had observed that GST could save upto Rs. 76,000 crores in terms of fake invoice credit and suppressed outward tax liability. In comparison, the cost of hardware would be negligible. Therefore, in his opinion, the Council should spend that amount and take some time to implement the changes and save the leakages rather than keep on changing the system for next 10 years.

4.24. Dr K. Subramanian, Chief Economic Adviser to the Union of India stated that from the presentation, it was the welcome idea to allow the finance to the MSME based on GST invoices which should be taken forward. In his opinion, rather than having static spike rules, the system should extensively use data analytics to point out misuse of ITC and evasion of GST. He further stated that it would be useful to have analysis of potential revenue loss based on the data about transactions lost in entire revenue chain.

4.25. Shri Anurag Singh Thakur, Hon'ble Minister of State for Finance, Union of India stated that he as well as Union Finance Minister had been meeting several trade organizations in the past few days and the severe backlash of public had been observed solely due to negative work of Infosys while the public never pointed out flaws in the GST Law. He therefore, wanted to know as to whether the decision to increase the capacity was



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delayed at their end or at the end of Govt. Secondly, he also would like to know whether hardware upgrade would solve the issues and whether it could be sourced from some other country than China. Shri Nandan Nilekani admitted that Infosys should have looked at the capacity issues earlier and that going forward, Infosys would err on the side of caution. As far as, hardware procurement from China was impacted from COVID 19 issue, he stated that Infosys being large procurer of hardware should not face much of a problem. As regards 'spike rules', he stated that, it could be both rule based as well as artificial intelligence based on data. Further, incremental approach to implementation of linking of return had been discussed with Department of Revenue, GSTN and the Government was agreeable to it. Hon'ble Minister from Chhattisgarh wished to know if, the system could link with sales with purchases also to which Shri Nandan Nilekani responded that the system could link ITC with sales and tax paid by suppliers.

4.26. Hon'ble Union Finance Minister Ms. Nirmala Sitharaman, stated that there were 4-5 suggestions which had cropped up during discussions and she would like to summarize them as below for further discussion:

- a. IT-GoM need to be empowered enough to take decisions
- b. It was not the case that the taxpayers faced the problem in return filing during the months of January / February'20 only. Instead there were other months also where the capacity of the system had affected the GST implementation.
- c. There should be synergy between Infosys and its vendors such as Tech Mahindra and the issues should get resolved at their level rather than reaching the doors of PM / FM/ MoS/ Ministers in the State for them to respond to these situations.
- d. GST Council to take the call on implementation of 'New Return system' and other associated issues
- e. For next three meetings of GST Council, Nandan Nilekani should be present when the system issues would be taken up.

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4.27. Shri Nandan Nilekani agreed that for next three meetings, he would personally be present before the GST Council. He also considered holding a joint meeting between Tech Mahindra, Infosys and GSTN and stated that having empowered Group of Ministers advising Infosys on the priority issues would help in smooth implementation. He further suggested that at present, there were two or more than two changes being released to public per week which needed to be avoided whereas it should be once in a fortnight or once in a month about which he would discuss with the GSTN and the Secretary separately.

4.28. At this juncture, the Secretary thanked Shri Nandan Nilekani, for the presentation and informed him that the Council would like to deliberate on this issue and the decision would be communicated to Infosys through GSTN in due course of time. Shri Nandan Nilekani, thanked the Council for the opportunity given to him to give presentation and thereafter left the meeting.

4.29. The Secretary apprised the Council that a Table Agenda on the issue of time bound implementation of long pending Change Requests (CRs) arising out of changes in Law/ Rules through one-time special measure i.e. a similar issue related to this had also been placed before the Council as Table Agenda 11(xi). The Secretary proposed that the issues arising out of the presentation made by Shri Nandan Nilekani may be taken up for discussion along with Table Agenda 11(xi). The Council agreed to the proposal.

5. For **Agenda item 2**, the Council :

- i. Took note of the presentation made by Shri Nandan Nilekani
- ii. Agreed to the proposal that Shri Nandan Nilekani would attend the next three meetings of the GST Council and update the Council of the status of implementation of the decisions taken by the Council.

**Agenda Item 1: Confirmation of the Minutes of 38<sup>th</sup> GST Council Meeting held on 18<sup>th</sup> December 2019:**

6. The Secretary introduced the Agenda item and stated that the draft minutes of the 38<sup>th</sup> GST Council Meeting held on 18<sup>th</sup> December 2019 were circulated in advance and comments were received from the State of Tamil Nadu suggesting following changes:



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- i. In paragraph 8.13 of the Minutes to add after the last line (The Hon'ble Deputy Chief Minister of Gujarat stated that as most of the States had less liquidity, whatever compensation Cess was collected, should be distributed among the States.) 'The Hon'ble Council Member from Tamil Nadu in his written speech (circulated during the Meeting) suggested that the compensation to the States may be continued even after the mandatory five-year period, although the rate at which such compensation is to be provided and other modalities could be worked out by this august Council, in the time to come.'
- ii. In paragraph 12.1 of the Minutes to add after the last line (The Secretary stated that these issues could be discussed in the Fitment Committee.) 'The Hon'ble Council Member from Tamil Nadu in his written speech also urged the august Council to consider the remaining representations forwarded to the Council on the ground of rationalisation of tax, items of essential use by common man, items for the benefit of farmers and fishermen, items made by small artisans, items relating to religious sentiments, early.'
- iii. In paragraph 14 of the Minutes to add after the last line (He also clarified that as for Composition tax payers, the return was filed annually, the same means that this could only be resorted to after the due date for such return.) 'The Hon'ble Council Member from Tamil Nadu in his written speech also mentioned that they did not support the suggestion of allowing filing of return with short payment of tax as the taxpayers will be burdened with huge cash crunch; the recipient would take ITC on full credit of input tax, thereby causing loss to exchequer; and refund could also be claimed and granted for short payment by the suppliers.'
- iv. In paragraph 20 of the Minutes to add after the last line (Finally, the Special Secretary stated that the two GoMs, namely GoM on IGST Settlement and GoM on movement of Gold and precisions Stones had been constituted recently and their reports were yet to be placed before the Council.) 'The Hon'ble Council Member from Tamil Nadu in his written speech mentioned that a timeframe for the GoM on IGST settlement may be fixed for resolving the issue of unsettled IGST accumulated amount for the year 2017-18

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- v. After para 35.4 of the Minutes to add the following paragraph “ 35.5. The Hon’ble Council Member from Tamil Nadu in his written speech suggested that a general rule may be introduced to enable manual issue of notice, filing of objection, grant of time and personal hearing and passing of orders and communication of any decision by the proper officer with their signature and serve the same through the method of service as per Section 169 of the CGST/SGST Act, till such time all the business processes are made available electronically by the States and Centre. It was also suggested that steps may be taken for establishing helpdesks in other languages also, in addition to the existing Hindi and English languages and that they were ready to bear the cost of creating Tamil Helpdesk in GSTN.”

The Secretary noted that the changes were discussed in the officers meeting held on 13<sup>th</sup> March 2020 and the same may be accepted and Minutes be confirmed.

6A. The Hon’ble Minister from Goa reminded the Hon’ble Chairperson that the draft Minutes of the 39<sup>th</sup> GST Council meeting did not reflect that it was agreed to instruct the GST Intelligence Unit, Hyderabad not to initiate action against the casinos in the State of Goa till it was decided whether GST was required to be levied on the full amount or on the gross gaming revenue as has always been done in the pre GST era. This was for the reason that casinos in Goa were on the verge of closure. That they were a very important source of revenue for the State and that Law and Fitment Committees had decided the issue and that the issue could be brought directly to the GST Council.

7. For **Agenda item 1**, the Council approved the Minutes with the following changes :

- i. In paragraph 8.13 of the Minutes to add after the last line (The Hon’ble Deputy Chief Minister of Gujarat stated that as most of the States had less liquidity, whatever compensation Cess was collected, should be distributed among the States.) ‘The Hon’ble Council Member from Tamil Nadu in his written speech (circulated during the Meeting) suggested that the compensation to the States may be continued even after the mandatory five-year period, although the rate at which



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- such compensation is to be provided and other modalities could be worked out by this august Council, in the time to come.’
- ii. In paragraph 12.1 of the Minutes to add after the last line (The Secretary stated that these issues could be discussed in the Fitment Committee.)‘The Hon’ble Council Member from Tamil Nadu in his written speech also urged the august Council to consider the remaining representations forwarded to the Council on the ground of rationalisation of tax, items of essential use by common man, items for the benefit of farmers and fishermen, items made by small artisans, items relating to religious sentiments, early.’
  - iii. In paragraph 14 of the Minutes to add after the last line (He also clarified that as for Composition tax payers, the return was filed annually, the same means that this could only be resorted to after the due date for such return.)‘ The Hon’ble Council Member from Tamil Nadu in his written speech also mentioned that they did not support the suggestion of allowing filing of return with short payment of tax as the taxpayers will be burdened with huge cash crunch; the recipient would take ITC on full credit of input tax, thereby causing loss to exchequer; and refund could also be claimed and granted for short payment by the suppliers.’
  - iv. In paragraph 20 of the Minutes to add after the last line (Finally, the Special Secretary stated that the two GoMs, namely GoM on IGST Settlement and GoM on movement of Gold and precisions Stones had been constituted recently and their reports were yet to be placed before the Council.)‘ The Hon’ble Council Member from Tamil Nadu in his written speech mentioned that a timeframe for the GoM on IGST settlement may be fixed for resolving the issue of unsettled IGST accumulated amount for the year 2017-18
  - v. After para 35.4 of the Minutes to add the following paragraph “ 35.5. The Hon’ble Council Member from Tamil Nadu in his written speech suggested that a general rule may be introduced to enable manual issue of notice, filing of objection, grant of time and personal hearing and passing of orders and communication of any decision by the proper officer with their signature and serve the same through the method of service as per Section 169 of the CGST/SGST Act, till such time all the business processes are made available electronically by the States and Centre. It

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was also suggested that steps may be taken for establishing helpdesks in other languages also, in addition to the existing Hindi and English languages and that they were ready to bear the cost of creating Tamil Helpdesk in GSTN.”

**Agenda Item 3: Review of Revenue Position**

8. The Secretary invited Shri Ritvik Pandey, Joint Secretary (Revenue) to brief the Council on the subject.

8.1. Joint Secretary (Revenue) initiated the discussion with a presentation on this Agenda item. The presentation is attached as **Annexure 4**. He started the discussion by showing the revenue collections under CGST, SGST, IGST and compensation cess during the three months of December 2019, January 2020 and February 2020. He stated that in the last three months the collections have been robust. He stated that the collections since November 2019 have been more than in the previous two financial years. He stated that the growth rate trend of gross GST revenues in the current Financial Year opened with a good growth rate of 10% which slowly came down to 5% in June, 6% in July, 5% in August and went into the negative in the months of September and October. The growth rate picked up in November and has been hovering around 8-9% ever since. While the compensation requirements have increased from Rs. 41,146 crore in 2017-18 to Rs.69,275 crore in 2018-19, the amount of compensation cess collected during these two years was Rs.62,612 crore and Rs.95,081 crore in 2017-18 and 2018-19 respectively. As against this, in the year 2019-20 the amount of compensation cess collected till January 2020 was Rs.79,200 crore while the compensation cess amount released till November 2019 was 1,20,498 crore. Thus, excess amount of compensation cess has been released to States/UTs vis-à-vis what has been collected. In the current financial year, the GST compensation has been provisionally calculated and released fully for April to September 2019 and partly for Oct-Nov, 2019. Resultantly, the GST compensation balance of Rs.14,036 crore for Oct-Nov, 2019 is still to be released. Further, it is submitted that GST compensation for Dec, 2019-January, 2020 cycle has also become due in the month of February, 2020 as per GST (Compensation to States) Act, 2017. Therefore, the total amount required in current FY to meet the



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compensation for Dec., 2019 - Jan, 2020 & the balance for Oct-Nov, 2019 is approximately Rs.48,000 crore.

8.2. He also drew the attention of the Council to the percentage revenue gap during April to February in the current financial year vis-à-vis the previous financial year and submitted that the same had increased. The revenue gap is the difference between the protected revenue and the post settlement gross SGST revenue (including ad-hoc settlement). He also drew attention of the Council to the return filing (GSTR-3B) till the due date and till 31<sup>st</sup> January, 2020 for the return periods April 2019 to December 2019. He stated that the filing percentage has reached 68% till due date in month of November. The filing percentage in December slightly fell due to technical issues. He stated that the filing percentage reaches 80% by the month end and reaches 90% over a period of time. Next, he drew attention to IGST account for the current year. As had been the practice, the IGST settlement is done at the month end to ensure that the balance at the end of the month reaches almost zero. He stated that by the end of month of February, the balance was only Rs 225 Crore for the current year.

8.3. Thereafter, the Hon'ble Chairperson invited comments from the Hon'ble Members of the Council. The Hon'ble Member from Punjab stated that revenue and timely & full compensation are the foremost issues. It was doubtful whether full compensation requirement would be released in the 3<sup>rd</sup> year of GST with respect to the States entitlement. He stated that there are two issues regarding compensation (a) what was the State's entitlement (b) what was the amount available for disbursement and in case there was a shortfall, how to collectively overcome the shortfall. The State of Punjab has a pending amount of about Rs.2000 crore. The Hon'ble Member from Punjab further stated that the time has become ripe to activate the dispute resolution mechanism envisaged in the Constitution under Article 279 A and requested that this Agenda may be brought in the next meeting of the Council. This had been suggested during the meeting of the GST Council in Goa on 20<sup>th</sup> of September, 2019. He further stated that Punjab had earlier submitted that IGST amount of about Rs.60,000 crore as on 31<sup>st</sup> March, 2018 was appropriated by GOI and for which purpose the Hon'ble Chairperson had constituted a GoM and one meeting of the said GoM had already taken place. If this amount was apportioned among

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the States then the compensation requirement of the current financial year of about Rs.48,000 crore could be financed from the kitty in the compensation cess account of the previous two financial years. He further stated that in the last budget NCCD cess on cigarettes had been increased which compromised the ability to enhance the compensation on cigarettes. Finally, he summed by formulating that the issues now are whether the Centre will honour the 14% year on year increase in compensation cess requirement of the States; whether the amount not released in the current financial year would be treated as arrears; whether the arrears of compensation cess would stretch beyond five years and, if so, whether the Compensation Cess Act be amended for this purpose. He further submitted that they have factored in 14% increase in their revenues in the current year in their budget.

8.4. The Hon'ble Member from Kerala stated that in the last GST Council meeting this issue had been discussed in great detail. Release of compensation is linked to collections in the compensation cess fund as was stated by the Hon'ble Chairperson. However, if the minutes of the earlier meetings are read carefully, it has been stated time and again that if the compensation cess fund was not found sufficient to meet compensation requirement then borrowing from the markets would be resorted to. Further, more than the Centre, the States' finances were in serious trouble because their own revenue had gone down. Because of other factors particularly Covid, expenditure on health sector is increasing as tracking, feeding, isolating is required, moreover there are recessionary trends. In such a situation it is important that states are not forced to cut their expenditure, it makes no macro-economic sense, this is happening in every state, every state is forced to cut the expenditure and in some states it very drastically; this will have very serious macro-economic implications. He felt that the GST Council should borrow from the market and pay to the States. The Hon'ble Member from Uttarakhand stated that in the pre-GST era, State of Uttarakhand was growing at the rate of 17% (in terms of revenue receipts) and was one of the top most State in the country; however, there has been sharp decline in their revenues in the GST period. In the year 2019-2020, April 19-Feb 20, the revenue gap of the State was 40% as compared to 35% in the said period of the preceding year indicating an increase of 5%. However, the national average for the same went up by 9% in the aforesaid period. In view of the increasing revenue gap and limited resources of the State, the amount due to the State as compensation was requested to be released at the earliest possible date so that the

  
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budgetary provisions kept on account of the anticipated receipts for the year are fulfilled. Compensation due for the month of October-November 2019 comes to Rs 668.73 crores out of which only Rs 379.38 crores have been received by the State so far. Thus Rs 289.35 crore remains balances for the said month and Rs 579.46 crores have also become due for December 2019-January 2020 to the State. It was therefore, once again requested that the total compensation amount of Rs 868.81 crores may kindly be released during the current month itself. The Hon'ble Member from Uttar Pradesh stated that regarding this agenda, he wanted to draw attention to the following issues: In the year 2019-20, the ad-hoc IGST settlement amount received was Rs 1125 crore against which Rs 1715.22 crore was recovered. He submitted that Rs 589.62 crore was recovered in excess. This amount may be granted to the State. Along with this, for the period Nov-Feb the State may be granted Rs 2335 crore. In this, the break up is for the period Oct-Nov Rs 747 crore and Dec-Jan Rs 1488 crore have to be granted to the State. The Hon'ble Member from Tamil Nadu stated that during the last meeting, Tamil Nadu and other States had raised the issue of pending compensation to be released by the Government of India. He expressed gratitude to the Government of India for the release of the compensation for the bi-monthly period of October-November 2019. It may be recalled that States had agreed to adopt the Goods and Services Tax regime on the assurance given by the Central Government that it would compensate for the loss on account of the transition for a period of five years. He emphasized that the Central Government had the obligation to deliver on this promise of compensation as per the agreed formula and this obligation should not be made conditional upon availability of resources from the collection of compensation cess. He, therefore, urged the Hon'ble Chairperson to give assurance to all States of the continued compensation without any break or dilution. Further, this Council may also deliberate on the ways to mobilize funds for meeting the revenue gap of the States that would occur after their entitlement to the compensation ends in June 2022. He also requested that adequate provision may be made in the supplementary estimates for making payment of compensation

8.5. The Hon'ble Chief Minister of Puducherry stated that the compensation cess rate fixation had been decided by the Council after a lot of deliberations. That compensation is a solemn commitment by GST Council to the States and the State budget has been planned

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keeping in view the 14% growth. Since this is the fag end of the Financial Year, most of the States are depending on the GST compensation as one of the revenue sources to meet the expenditures. Both small and big States are on the same pedestal. He stated that this issue should not be allowed to linger on. State Budgets are planned on the basis of GST compensation. The States will be in a better position to plan their budgets more accurately if they have an estimate of the available compensation. There were methods for meeting shortfall in GST revenues. The former Union Finance Minister had even committed to borrowings from the market to make good the cess requirements of the States. The IGST for the earlier years went to the Consolidated Fund of India. That should be corrected by going for a supplementary demand in the current financial year itself. If there has to be rethinking on compensation issue, it could be discussed, deliberated and a decision may be arrived by consensus. He finally requested the Chairperson to allocate one day for discussion with the State Finance Ministers on measures to augment GST revenues. The Hon'ble Deputy Chief Minister of Delhi stated that in the pre-GST regime both power and accountability were with the States. That 14% compensation cess requirement is based on pre-GST revenues of all the States. He said that there are shortcomings in the GST which should be removed. He further stated that for the country as a whole the revenue gap was about 25% vis-à-vis protected revenue. The solution to the cess deficit has to be found in this year's budget. As a result of the novel Corona virus the economy has headed to a slowdown which will further reduce GST earnings. Some of these sectors where shortfalls had fallen tremendously are restaurants, cinema theatres, shopping malls, etc. He wondered whether we could do something for the falling market and lamented that the Delhi government may not be able to pay salaries. He urged that the solutions for compensation, long term solution for revenue gap and loss of revenues due to the epidemic of Corona Virus should be deliberated. The Hon'ble member from Jharkhand stated that his State was entitled to Rs.448 crore on account of compensation cess. The Hon'ble Deputy Chief Minister of Gujarat stated that there were two ways to solve this problem. He said liquidity is required and market borrowing could be resorted to. Either the Gujarat Government can borrow and the interest can be paid for from the compensation cess or alternatively GST Council could borrow. That there was a requirement of about Rs.4,851 crore of Gujarat from compensation. The solution of borrowing will solve the revenue deficit for the States.

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The burden of interest payments will increase and for this compensation mechanism may be extended for two more years. The Hon'ble Member from Goa stated that his State required a compensation of Rs.243 crore. Each State had factored in the compensation cess in their budget. The tourism to Goa had gone to less than 30% on account of Corona Virus. Because of non-release of compensation amount they are borrowing to fill in the gap and they are heading towards a debt trap. He emphasised on the importance of response of the Council to tackle the various issues that were highlighted. The Hon'ble Member from Chhattisgarh stated that the tax collected before GST was about 33%; of which one-third was on account of Central Excise while the remaining was of the States. However, after GST this ratio has gone in favour of the Centre as now SGST and CGST are in the ratio of 50:50. If compensation cess @14% is not disbursed, then the States would suffer. Chhattisgarh had received only 56% of its share of cess for October-November 2019 and nothing for December-January. In total, Chattisgarh was entitled to Rs 1151 which has not been disbursed yet. He wanted to know whether the Compensation Act envisaged growth at the rate of 14% and whether we could resort to market borrowing in case of deficit.

8.6. The Hon'ble Deputy Chief Minister of Bihar stated that his State was entitled to 14,474 crore in the current financial year. He enquired from JS, DoR as to how the compensation collection in Table 1 was shown as 90,440 crore while the amounts shown as collected in Table 3 was 79,000 crore. To this JS, DoR replied that the gross collections during April-February was 9,0440 crore; however, after accounting for refunds etc. the net amount in the compensation cess kitty from the current year's collections till January 2020 was only Rs.79,000 crore. Therefore, only 79,000 crore was available for disbursement apart from the carry over from the earlier years. The Hon'ble Deputy Chief Minister of Bihar further stated that regarding the compensation cess, already Rs 5774 crore balance is present. This is till January 2020. After one more month of February, another Rs 9000 crore will be present. He felt that hardly Rs 2000 to 3000 crore will be refunds. So, they can get about Rs 8000-9000 crore and regarding this Rs 5774 crore balance, he thought that after the end of Feb, in the month of March, we can have more than Rs 25,000 crore in cess. He requested that this fund should be transferred in this month only and if a supplementary grant in this regard is required, we should go for it because the States require money in this financial year. All the amounts in the cess fund should be transferred to the States in this

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month itself which will benefit the State finances. The Dy. CM of Bihar also drew the attention of the Council to the State wise GSTR-3B return filings in Table 6 of the detailed Agenda note and requested that the state-wise break-up filing of returns the Central and State tax authorities should be shown separately. At the State level, the concerned minister monitors the performance of the State officials but it was not clear as to who was monitoring the central tax authorities. He wished to call the jurisdictional CGST officials along with the SGST officials for this purpose. He further stated that in the pre-GST era the growth of net revenue was over 9% as he was not present in the Council, he was not sure as to how the assurance of 14% was given. That Corona virus is having a huge impact on Indian economy and next year growth could be below 4%. Therefore, we have to find newer ways of meeting compensation cess requirements. He requested that in April-May, there may a day long meeting (need not be a GST Council Meeting) of the State Finance ministers to deliberate and find solutions to compensation cess issue, reviving economy, fighting the negative effects of Corona Virus on economy. He submitted that States should be allowed to borrow from the market and interest on which could be paid by the Central Government. The Hon'ble Dy. CM of Haryana stated that there was a shortfall of Rs.1900 crore upto Feb which would go upto Rs.2000 crore upto March. He observed that only 9 States are growing above or at 14%. States like Punjab, Goa Gujarat which rank high on manufacturing are still way behind. He further submitted that the Union Territory of Chandigarh should be involved in all these discussion because decisions on UT of Chandigarh affect Haryana's revenue. He was supported by the FM from Punjab on this. He submitted that UT of Chandigarh is under cutting both Punjab and Haryana in the price of petrol, liquor, registration fees etc which is discretionary. This is affecting the GST collections which are based on consumption, in both Punjab and Haryana. Finally, the Hon'ble Member from Haryana stated that COVID-19 is going to hit manufacturing which will hit cess collection and future compensation requirement of the State.

8.7. The Hon'ble Chairperson addressing the issue raised by State of Punjab stated that a GoM was constituted to look into it which had met once, JS, DoR had been specifically tasked to look into it. She agreed that there they have gone through the entire case and agree that there was a case for making good the loss suffered at that time due to wrong location of a certain amount which should have been accounted in one financial year but has been

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accounted in the year before that. This issue has been lingering since then. As was promised in the 37th GST Council Meeting at Goa, a GoM has looked into the issue and this error shall be corrected. The Business Rules require the CAG to certify that the amount was indeed wrongly accounted. Once this certification is obtained, then depending on revenue position, in one chunk or more, the amount shall be disbursed. Coming to the issue of compensation, she replied that she had made several suggestions regarding compensation cess and that the States are entitled to it and there is no question of them asking the Centre for it. It was the solemn commitment to the States. The Centre is duty bound to give compensation to the States. She agreed with the statement made by Hon'ble Chief Minister of Puducherry that at one point in time, the money was credited to the Consolidated Fund of India and that surplus could have been managed in a different account for easy disbursement of compensation to the States. She has been consciously working on the issue. She stated that till January 2020, the compensation cess collected was Rs 79,000 crore only. However, Rs 1,20,498 crores were paid because of the past balance. She had also mentioned in the parliament that the surplus amounts would also be given by following the proper procedure. She reiterated the commitment made by the then Chairperson of the GST Council that in case there are no adequate resources for giving compensation to the States, market borrowing may be resorted to. She also stated that as suggested by Dy CM of Bihar, after the Parliament session is over, may be if everyone so desire, she will work on whether the GST Council itself can borrow, the legality of such a borrowing and she will convene a meeting of all the State Finance Ministers to discuss contingencies in terms of compensation cess requirements; who would stand guarantee in case of market borrowing to fund the compensation requirements of the States, what impact FRBM Act and ways to counter the negative effects of Corona Virus pandemic on the economy. May be if possible she could also look into whether a supplementary grant may be made before the end of March 2020. Hon'ble member from Kerala stated that release of Rs 3000 crore compensation would ease their position if not solve their problem and wondered on the possibility of taking a short term loan for 3-5 months to tide over the expenditure requirements of March 2020. Thereafter, the Hon'ble Minister from Chhattisgarh enquired from the Secretary about the monthly outgo from compensation cess. The Secretary to the Council replied that the average collection under compensation cess was Rs.8,000 crore

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while the average monthly requirement was about 16,000 crore. That next year this deficit would become worse on account of negative effects on economy due to Corona Virus. He further replied that he was monitoring the GST collection in every state on a daily basis, He also stated that an important early indicator is the IGST on imports and during the last 15 days IGST collection on imports has come down by about 20-25%; the earlier daily collection of about Rs1000 crore under IGST on imports has given way to a daily collection of about Rs.750 crore. While the domestic GST collections have increased by 9%, the GST collections on imports have fallen. Total gross GST Collection growth is around 4-5%. Therefore, a revenue augmentation committee has been constituted which held series of discussions with State Officers. Revenue Augmentation need not necessarily be only through increase in rates. It can be done smartly in a structured manner. Finally, he submitted that the return filing by the Central tax payers is constantly monitored by CBIC Chairman on a weekly basis. The Hon'ble Deputy Chief Minister of Gujarat requested that there is need for amendment in the Central Sales Tax Act, 1956. Letter containing detailed note for amendment in the relevant section of the CST Act is already sent to the Govt. of India. Wrong use of C-Forms is causing loss of CST revenue to many states. Other states have also agreed to prevent wrong use of C-FORM and therefore, the Central Government should bring amendment immediately. If need be, the matter may be discussed in the Council meeting. It was replied by the Secretary to the Council that feedback had been taken from the States. Some of whom have replied; however, this was not a GST Council matter and therefore could not be discussed in the Council.

9. For the **Agenda Item 3**, the Council took note of the presentation made by JS, DoR and the suggestions made by the Hon'ble Members.

**Agenda Item 4 : Issues recommended by the Fitment Committee for the consideration of the GST Council (Recommendations by Committee of Officers on Revenue Augmentation)**

10. Introducing this Agenda, Secretary to the Council stated that the meeting of the Fitment Committee had been convened to consider the deliberations/recommendations made by the Committee of Officers on Revenue Augmentation, which was set up a few months ago. He further said that the Committee of Officers on Augmentation of Revenue



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looked at some of the structural anomalies in the GST such as inverted tax structure which has led to distortions. He said a detailed presentation has been readied based on the discussions in the Fitment Committee which shall be made before the Council shortly. It is for the Council to take decisions in the matter at an opportune time. He then requested JS (TRU-I) Sh. G.D.Lohani to brief the Council in the matter.

10.1. JS (TRU-I) made a detailed presentation on the subject which is annexed at **Annexure 5**. He apprised the Council that the Committee of Officers on revenue Augmentation had observed that inverted tax structure has led to significant distortion in GST tax regime. This issue was deliberated at length in the Fitment Committee He cited some of the instances of inverted rate structure whereunder the GST rate on the final product is lower than on raw materials. This has created distortions in GST which is a deviation from the basic philosophy of a value added tax. He cited some of the adverse implications of the inverted duty structure as follows:

- Unutilized ITC becomes a cost to the manufacturer
- To correct this, refund of unutilized ITC is to be given
- Cash-flow issue even if refund is given
- No refund of input services and capital goods
- Inverted rates greater injury to Small standalone units
- Accumulated ITC on capital goods hurts the exporter
- Incentivizes imports
- Disincentives domestic manufacturing and investment
- Consumer not benefited. Unutilized ITC is a dead weight cost
- Gives rise to fraudulent practices – fake invoices, misclassification
- Claiming refund entails efforts, cost and hardship

Instances of inverted rate structure highlighted by him included fertilizers, mobiles, footwear, manmade yarn & fabrics, renewable energy devices, tractors, pharma, etc. The Committee of Officers on Revenue Augmentation recommended to calibrate rates so as to correct duty inversion. This issue was highlighted in the presentation made in the 38<sup>th</sup> GST Council meeting held on 18<sup>th</sup> December, 2019 at New Delhi. This issue

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was again examined by the Committee of Officers and deliberated in detail in Fitment Committee. On ABC analysis Fitment Committee as first step recommended rate calibration on four items/sectors i.e. mobile, footwear, textiles and fertilizers. He further stated that these four sectors contribute significantly to the total consumption base of goods. He went on to explain how the inversion arise in case of mobile phones vis-à-vis its parts/intermediate goods. It was stated that about Rs.5500 crore of ITC refund has been claimed on account of inverted tax structure in respect of mobiles. As no refund of input services and capital goods are allowed, the inverted rate structure adds to the cost of the mobile manufacturers. Consequently, consumers also do not benefit. This has also led to fraudulent practices. He further stated that the issue of a differential rate in respect of push button phones vis-à-vis smart phones was also discussed in detail in Fitment Committee. The margins in respect of push button phones is even thinner. Therefore, the Fitment Committee felt that a differential rate, that 18% on smart phone and 12% on push button phones may not be desirable as such differential rate creates distortion in tax regime and also is not conducive to exports.. The export of features phones from India during April 2019 to January 2020 was about Rs.2000 crore. It was, therefore, desirable to have a uniform rate of 18% on mobile phones and all its inputs.

10.2. Thereafter, JS (TRU-I) drew the attention of the Council to the prevailing inverted tax structure in respect of footwear and how the same has evolved from the pre-GST period and during the GST period. Footwear with RSP of upto Rs 500 were initially placed in 5% slab. Subsequently this limit was increased to Rs 1000 in July, 2018. He stated that with effect from 1.1.2019 footwear of value above Rs.1000 attracts 18% while others attract 5% GST. While soles, components and chemicals, consumables, services, capital goods attract 18% GST, technical textiles attract 12% GST while leather attracts 5% GST. The 70% of the cost of a footwear is contributed by those part components and capital goods which are at 18% GST leading to inversion. The value addition is about 15 to 20%. As a result, the manufacturer and the consumers both are adversely affected and the export of footwear also suffer. Therefore, the Fitment Committee had recommended to avoid dual rate and ideally all footwear should be standard rated. However, considering that the footwear is a mass consumption goods,



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at this stage, 12% rate for footwear with value upto Rs.1000 per pair may be conducive to correct inversion, as recommended by the Fitment Committee.

10.3. JS (TRU-I) further made a detailed presentation on textile sector explaining as to how the existing rate structure has created an acute inversion in the MMF sector and has led to all those distortion as were highlighted earlier in the presentation.. He explained that in pre-GST regime textiles suffered significant embedded taxes as no refund was admissible in excise. He also explained as to how the GST rates were evolved in textile sector. Initially Manmade yarns and fibres were placed in the 18% slab and fabric attracted GST at the rate of 5% with the condition of not allowing refund of accumulated ITC. Subsequently the GST rate on MM yarn was reduced to 12% and refund of accumulated ITC was allowed in Fabric. GST rate on all job work services was brought down to 5%. However, this brought in an inversion in dyeing service. Further, inversion continued in textiles as the value addition at yarn stage and fabric stage is not sufficient to correct inversion on these items. Further capital goods and services ( other than job work and transport ) attract standard rate of 18%. This inverted structure has ben acting as detriment to the growth of textile sector and investment in the sector.. He stated that the Ministry of Textiles had also recommended for correcting inverted rate structure so as to unshackle it from the burden of taxes (accumulated ITC etc.). This would increase the employment opportunities in the Textile industry and also make our exports competitive. It was also considered by the Inter-Ministerial Group (IMG) consisting of Ministry of Textiles, Commerce and Niti Ayog who had also observed similarly. The inversion in rate structure of textile sector has led to a refund of about Rs.4000 crore. In view of the above discussions, he stated that the Fitment Committee proposed the following rate structure on textiles:

- (a) 5% GST on cotton and other natural fibres (except raw jute, silk and wool) and all natural fibre yarns.
- (b) 12% GST on manmade fibres
- (c) 12% GST on MMF yarns
- (d) 12% GST on all fabrics

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- (e) 12% GST on all garments and made-up
- (f) 12% GST on dyeing services

10.4. Thereafter, JS (TRU-I) dwelt in detail on the inversion in rate structure in fertilizers. Briefly, he stated that while the GST on fertilizers is 5% most of the major inputs such as ammonia, sulphuric acid, input services and capital goods are at 18%. Only phosphoric acid is at 5% wherein the GST rate was successively reduced from 18% to 12% and finally to 5%. Fertilizer is also a heavily subsidised item as a result of which urea has a much higher inversion. DAP has inversion of 4% on account of inputs alone. In addition, there is inversion on account of services and capital goods. He stated that about 6100 Crores has been claimed as ITC refund so far on fertilizers. In view of the same Fitment Committee had recommended GST rate of 12% on fertilizers. Thereafter, views/comments of the hon'ble Members were invited.

10.5 The Hon'ble Member from Goa congratulated the Fitment Committee for the analysis done and pointed that it was the need of the hour and that other Hon'ble Members should support the proposal.

10.6. The Hon'ble Deputy Chief Minister of Gujarat stated that this was not the appropriate time to raise GST in the case of textiles and fertilizers as the current economic environment will not be able to handle any GST hike on these items. He also referred to his discussion with the textile mill owners, merchants, job workers, processors, retailers from Surat and Ahmedabad, none of them made recommendations regarding correction in inverted duty or that the industry was suffering from the same. More so he pointed out that in the pre-GST era there was no tax at all neither through VAT nor through Central taxes. He wondered if the textile industry was happy with this proposal. The textile industry is in the process of settling down with the existing rate structure and at this juncture it may not appropriate to hike taxes. Likewise, the proposed hike of GST on fertilizers would adversely impact the farmers. However, the recommendation in respect of mobile and footwear may be considered if other Hon'ble Members so desire.



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10.7. The Hon'ble Member from Kerala stated that the logic in the presentation was very good which is to eliminate inversion. However he pointed that the, additional cost in terms of refund being no longer available due to correction of inversion would be borne by the consumer and will have an inflationary impact. Council will have to consider the appropriate moment for raising GST. There is a near recession in the economy and a huge contraction in demand. The supply chain has broken on account of COVID-19. The Central Government may not be comfortable with stimulus package because they have an eye on inflation. We should be wary of any increase in commodity taxes at this point of time. Council could wait for a month or two and consider these corrections in the next GST Council meeting.

10.8. The Hon'ble Member from Punjab stated that the corrections proposed to remove distortions in GST are welcome and they generally welcome such corrections. However, as pointed out by fellow Ministers timing is an issue on account of Corona, crude and credit. With respect to textiles the Hon'ble Member stated that there are no direct consumers of fibre or yarn, while the yarn manufacturers are large suppliers, the fabric manufacturers are smaller ones., so it makes sense to increase rates at a more compliant stage. He further stated that the tax rate on natural and manmade textiles should be the same and as proposed to further not allow any evasion due to distinction. With respect to fertilizers he stated that natural gas is one of the major inputs used in the manufacture of fertilizers. He stated that natural gas is outside the ambit of GST and states levy taxes which in the pre-GST era was around 9.7% with CST at 2%, so average levy is anywhere between 12-20%. Now if another 12% is charged on fertiliser it would become like a sin good, so he opposed the proposed increase of GST on fertilisers.

10.9. The Hon'ble Member from Tamil Nadu stated that the Fitment Committee has recommended increasing the rates of tax on fabrics and garments to 12%, despite reservations expressed by Hon'ble Member from Tamil Nadu. Fabrics include dhotis and sarees, and these along with garments of value less than Rs.1000/- per piece are widely consumed by lower classes of the society. Similarly, footwear are also goods of mass consumption, any increase would adversely impact this class of consumers. He opined that tax rates should be decided based on ability to pay rather than on grounds

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only of administrative nature such as inability of the system to manage inverted tax structure. He finally conveyed the opposition of Government of Tamil Nadu to this proposal. Further he stated that Chemical fertilizers are under price control and covered under subsidy programme. The proposed increase in tax rate on fertilizers would increase the retail price of fertilizers. He was therefore opposed to the proposal. Apart from this he pointed to the long pending issue of rationalisation of rates on safety matches and to do away with the differential rates for 5% on hand made and 18% on machine made matches as it was not possible to visually distinguish between the two which is leading to misuse and evasion. He pointed out that the Fitment Committee had already deliberated on issue and recommended uniform rate of 12%, he urged the council to take a decision on the same and not keep it pending. He further stated that in their State, they have been receiving numerous representations from the trade associations dealing with food grains complaining that the tax authorities are demanding tax for delayed filing of disclaimer affidavit before the jurisdictional Commissioner, voluntarily foregoing the actionable claim or the enforceable rights on their brand name. The intention of issuing such notification for filing disclaimer affidavit is to grant exemption on the supply of food grains having unregistered brand name. However, the delay in filing such affidavit should not be a ground for levy and collection of tax on the supply of food grains. He urged the Hon'ble Chairperson to kindly issue guidelines to condone the delay in filing the disclaimer affidavit and not to raise demands on that ground. He also suggested that the distinction between branded and unbranded food grains should be completely done away with as most taxpayers have switched to unbranded category by filing affidavits and consequently the loss to exchequer on account of removal of the distinction will not be much. He also urged the Hon'ble Chairperson to kindly consider the remaining representations forwarded to the Council on the grounds of rationalization of tax, items of essential use by common man, items for the benefit of farmers and fishermen, items made by small artisans and items relating to religious sentiments at the earliest.

10.10. The Hon'ble Deputy Chief Minister of Delhi stated that though he agrees that course correction in respect of GST inversion should be done, the timing is very important because markets are currently very low. And this may not be the right time



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for increasing taxes. Markets would be down for about two to three months and therefore this decision should be postponed for after two to three months.

10.11. The Hon'ble Member from Chhattisgarh stated that the presentation did not make it clear as to what is being targeted. Is it procedure, relief to manufacturer or revenue augmentation. If procedure was being targeted then we may not allow refund on this accumulated ITC. He also felt that it was not advisable to increase GST on yarns and fertilizers at the moment. In respect of mobile phones, GST may be increased to 18%.

10.12 The Hon'ble Member from Uttar Pradesh stated that their objective is to increase agricultural production for which farmers are given subsidy. He is therefore opposed to increase of GST on fertilizers to 12%. In respect of mobiles he felt there should be two rates i.e. the smart phones costing above Rs.5000/- may be levied GST at the rate of 18%. While phones below this may continue to attract 12% GST. With respect to inversion correction on footwear and textiles he did not have any comments to make. However, the timing of course correction was important.

10.13 The Hon'ble Deputy Chief Minister of Haryana said he had no problems with the first three i.e. mobiles, footwear and textiles; however, he is opposed to increasing GST on fertilizers. He pointed out that Haryana is primarily an agrarian state, a bag of DAP currently costs 1000 which will further increase by 70-75 and will hit the farmers hard.

10.14 The Hon'ble Member from Assam stated that this agenda item was linked to the earlier agenda item and the discussion on how to make good the compensation requirements of the States. Some of the hon'ble members had recommended for market borrowings. He was of the view that the average monthly GST collection has to be about Rs.1.3 lakh crore in 2020-21 if the compensation requirement of the States are to be met. The Compensation Cess Act is very clear that compensation has to come from Compensation Cess Act. That all of us as Finance Ministers are used to taking hard decisions and the time has now come to take more such hard decisions. He had no specific comment to make in respect of textiles and fertilizers. Today, there is Corona virus and therefore perhaps we may postpone the decision. The hon'ble Member made it very clear that Assam is dependent on devolution

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of central taxes. Devolution is equivalent to compensation implying thereby that if the general revenue increases then the amount devolved to Assam would increase. He said that he had no specific comments to make except that distortions in the GST rate structure had to be corrected. Otherwise how would the Union Finance Minister compensate us at the rate of 14% year on year increase over protected revenue.

10.15 The Hon'ble Member from Goa stated that corrections in the GST tax structure should have been carried long ago in order to remove distortions in GST. He cited the instance of a particular industry in Goa, manufacturing fertilizers which has closed down because imported fertilizer is cheaper. He stated that GST Council had decided everything based on goodwill. There is bound to be pain now for gain to come later. There may be another crisis after some time. Where is the money going to come from for compensation? We do not have to be State specific or commodity specific. He urged the Members to think on broader terms and take firm decisions rather than deferring matter to a more suitable time.

10.16 The Hon'ble Minister from Kerala stated that no one is opposing the logic of Fitment Committee. In fact, he was opposed to the reduction of goods from 28% to 18% slab in the past also. However, in the particular situation the macro-economic picture has to be kept in view before going in for a rate increase at the moment. Hence, we may take this up in the next meeting

10.17 The Hon'ble Member from Odisha stated that textiles have two major components, power loom and handloom. The handloom sector attracts GST of 5% for which we have requested for waiver as this sector in Odisha was similar to agriculture. He requested that If the GST on power loom is raised, the handloom sector should be left untouched.

10.18 The Hon'ble Deputy Chief Minister from Bihar dwelt upon historical evolution of excise duty on textile fabrics and stated that fabrics below R.1000 was subjected to tax under GST for the first time. As this is not an opportune time owing to Corona Virus, there should be no increase on fabrics for the moment although increase in GST on readymade garments could be considered. He also opposed the proposal to raise taxes on fertiliser. Also States should be given more time to dwell on the proposal and think thoroughly.



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10.19 The Commissioner, Commercial Taxes of West Bengal stated that West Bengal government is not against correcting the inverted duty structure In fact on the proposal of West Bengal inverted duty on Wagons had been corrected. He pointed out that the sectors such as Textiles, Footwear and fertiliser proposed in the meeting today are very basic consumption items and that this is not appropriate time for any change in GST rate and the same may be postponed for decision in upcoming meetings.

10.20 The Hon'ble Member from Andhra Pradesh also stated that this was not appropriate time to increase GST. The Commissioner, Commercial Taxes of Maharashtra stated that his government supports the recommendations of Fitment Committee but does not support raising GST on garments and fabric

10.21 The Chief Economic Adviser stated that the objective of the proposal is revenue augmentation. However, instead of static modelling it should be done in a dynamic fashion meaning thereby that increase in taxes reduces the marginal propensity to consume (i.e. acts as a dampener to consumption). Further, exports of mobiles and textiles could be adversely impacted by increasing GST on parts and components on the same and therefore should be handled very carefully. The Secretary to the Council stated that this proposal was not for revenue augmentation but noted emphatically that, as highlighted by the Fitment Committee, to correct the distortion in GST tax regime that has been created by inverted tax structure and such correction would make our domestic manufacturing internationally competitive which would add to our GDP, provide employment and also increase exports.

10.22 The Hon'ble Chairperson of the Council mentioned that exercise done by committee was for the purpose of identification of items that are facing inversion, amount of refunds that are disbursed on this account. So, the purpose of this presentation was to highlight the areas of inversion and its extent so that with this information and facts the Council can deliberate.

10.23 The Hon'ble Minister from UP stated that all the members had left important work in their respective States to attend the Council meeting. It was therefore not wise to defer all decisions and not take any decision. He felt that Council should consider the issue of

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the GST rates on mobile phones. In this he was supported by the Hon'ble Members from Tamil Nadu, Odisha, Goa, Assam, Punjab, Haryana, Gujarat, Telangana, Uttarakhand, Chhattisgarh, Andhra Pradesh, Haryana and Delhi. The Hon'ble Finance Minister observed that there was general consensus for correcting the rate structure on mobile in the manner as was proposed by the Fitment committee. Thus, on consensus Council agreed to increase the rate on mobile phones and its parts to 18% wef 1<sup>st</sup> April 2020.

10.24 Thereafter, the Hon'ble Member from Tamil Nadu further stated that they had long pending issue of rationalisation of the rate of tax on safety matches at 12% and to do away with two different rates of 5% on handmade and 18% on manmade matches. It was difficult to distinguish between the two classes of matches by visual examination and therefore evasion by misclassification was rampant. He therefore urged the Council to take it up in this meeting. J S (TRU-I), on being asked to explain, stated that the Fitment Committee had earlier made this recommendation and it was discussed in the earlier GST Council meeting. While, in general there was an agreement in the Council, Chief Minister Puducherry had certain reservation on it. He had observed to come back to the Council with his views. Therefore, this matter is pending for a recommendation of the Council. Hon'ble Finance Minister observed that since then Chief Minister, Puducherry has communicated his agreement to the proposal and since the views of Chief Minister, Puducherry are known and there is no difference of view in the Council, the Council may agree to rationalise the GST on matches to 12%. Accordingly, Council agreed to the proposal to rationalise rates to 12% on all kind of matches.. The Council also directed that this change to be affected effect from 1<sup>st</sup> of April 2020.

11. When the GST Council reassembled after lunch, the Secretary to the Council stated that this Agenda item had two parts and the second part, Agenda item 4(ii) related to the fitment agenda for services. He then asked Sh. Manish Sinha, JS (TRU-II) to apprise the Council about the recommendations made by the Fitment Committee with respect to GST on services. In his presentation (annexed as **Annexure 6**) JS, TRU-II stated that there were four issues for consideration by the Council. One of the issues at S.No.3 of the Agenda item 4(ii) pertained to levy of IGST on ocean freight payable by importer under reverse charge mechanism. He stated that this issue is under examination and a detailed write-up



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had been enclosed to detailed agenda note (Annexure III). However, it was proposed to defer the same. The first Agenda was the direction given by the Hon'ble Supreme Court vide their order dt.11.12.2019 to allow the representations of Haj/Umrah Private Tour Operators (PTOs) to withdraw their petitions and directed the government to decide on the said representation within 90 days of the order. The PTOs have represented that GST should not be levied or exempted on Haj/Umrah tours conducted by PTOs. The Fitment Committee did not find the request of PTOs acceptable on account of the following factors:

- All religious pilgrimage tours except those organised/facilitated by GOI under bilateral arrangement are taxable.
- There can be many domestic and international tours which can be considered as religious pilgrimage and this demand can have domino effect in general on PTOs.

11.1. The next agenda was with respect to the place of supply rules in respect of MRO service and the rate of GST on the same. The JS, TRU-II stated that presently the Indian airlines pay 18% GST on domestic MRO service and only 5% IGST as goods (on most parts) under section 3(7) of customs tariff Act on foreign MRO service. Due to existing PoS provision, the following services provided by domestic MRO do not qualify as export and get taxed in India-

- Services subcontracted by foreign MRO to domestic MRO
- To foreign airlines on their routine flights; and
- To foreign aircraft leasing companies.

On the other hand, MRO outside India do not pay any tax under IGST Act as the activity of service happens outside the taxable territory. Therefore, their proposal was to reduce GST rate on MRO services to 5% with full ITC and change PoS for B2B MRO Services in respect of aircraft and aircraft parts and components to location of Recipient [Notification u/S 13(13) of the IGST Act]. The advantages of the proposal include that services of both domestic and foreign MRO will be taxed at the same GST rate of 5%, domestic MRO will get additional protection as tax paid at the rate of 5% on most goods sent abroad for repairs u/S 3(7) of the CTA will not be creditable, lower GST rate of 5%



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will reduce the additional cash flow burden on airlines. The disadvantages include GST rate of 5% may cause mild inversion of duty structure for MRO.

11.2. The last proposal explained by him was to tax job work service in relation to manufacture of alcoholic liquor for human consumption at the rate of 18%. He mentioned that the bottling industry currently is a 250 Crore industry in which 2/3<sup>rd</sup> of the units are paying tax at 18% and remaining at 5%. He pointed out that this was due to two rival entries under which this can be taxed, "manufacturing services on physical inputs (goods) owned by others at 18% and "services by way of job work in relation to all food and food products falling under chapter 1-22 in the Customs Tariff Act" at 5%. The proposal was to levy GST on the service of job work in relation to manufacture of alcoholic liquor for human consumption at the rate of 18% and bring an end to this classification dispute by inserting in the entry related to food and food products job work that it excludes alcohol and alcoholic beverages. He further stated that the rate of tax on contract manufacturing in GST was 18%. While proposing to levy GST at the rate of 5% on job work services in relation to food and food products, the Council never explicitly provided for 5% rate for job work on liquor. Furthermore, the default rate of GST on services was 18%. Further, overall, two-thirds of the units were paying GST at the rate of 18% and the rest were paying at the rate of 5%. He explained that in the Fitment Committee most of the members had agreed to the proposal. However, Tamil Nadu and Maharashtra expressed a different opinion.

11.3. The Financial Adviser to the Hon'ble Chief Minister of Punjab stated that they support the proposal on MRO. with respect to the amendment in its place of supply. As regards the rate of GST to be applied on the same, as the default rate was 18%, the same may be continued. He pointed out that since ITC was allowed on the MRO services, and the airlines industry was capable of absorbing the same, a reduction in GST on MRO services will not benefit the industry as such. He proposed that the rate be fixed at 12% as this would also not have any inversion. To this, JS, TRU-II clarified that the 5% rate was proposed in consultation with the line ministry with a view to reduce the additional cash flow burden on airlines. The present proposal does not involve any change in duty presently charged under section 3(7) of the Customs Tariff Act, 1975. Domestic MRO will also get



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protection due to 5% tax paid under section 3(7) of the Customs Tariff Act, 1975 on most imported goods (sent abroad for repairs) as this tax is not available as credit. Particularly at this nascent stage, when we want to invite this business to India, starting with a protection rate (5% GST + 5% on import) would be preferable. He said that on merit 12% was an ideal rate with no inversion but this protection rate is something that the line ministry and the industry has desired for growth of this sector. He further pointed out that the refund outgo due to the mild inversion would be around Rs.12.70 Crores/annum.

11.4. With respect to the job work on alcohol, the Financial Adviser to Hon'ble Chief Minister stated that they were opposed to it for the reason that alcoholic liquor for human consumption is outside the purview of GST. Therefore, the processes that amount to manufacture should not be subjected to GST and GST should be leviable only on those processes that do not amount to manufacture. In the instant case, job work for alcoholic liquor for human consumption amounted to manufacture and therefore should not be subjected to GST.

11.5. The Hon'ble Minister from Tamil Nadu stated that they welcome the Fitment committee proposal on MRO services but are opposed to the proposal to increase the rate of tax to 18% on the job work services of manufacture of alcoholic liquor for human consumption, classifying them under "manufacturing services on physical inputs owned by others". This proposal has been opposed by Tamil Nadu and Maharashtra in the Fitment Committee. At present, "the job work services in relation to manufacture of all food and food products" is taxable at 5%. Alcoholic beverages fall well within the definition of 'food' under section 3(j) of the Food Safety and Standards Act, 2006 and therefore, job work services for manufacture of alcoholic liquor for human consumption is taxable at 5%. The proposed increase in tax rate will result in demands by manufacturers for increasing the MRP of alcohol or reducing the State Tax on alcohol. Further, increasing the tax rates will also further limit the manoeuvrability of the States to change State Taxes.

11.6. The Hon'ble Member from Odisha stated that the GST on job work for alcoholic liquor is not a tax on liquor but is a tax on service. He agreed with the recommendations of the Fitment Committee that liquor is not food. He said there are two systems of manufacturing liquor through bottling plant, first being by issue of license to a third party

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and the other where the brand owner himself does all operations of bottling. If the august house considers that liquor is food, then question of leviability at 5% arises; else the matter is settled.

11.7. The Hon'ble Member from Andhra Pradesh stated that the proposal will impact the MRP sale price for alcoholic liquor for human consumption and the leverage of State to alter taxes on the same will go down. The Hon'ble Member from Kerala stated that alcoholic liquor for human consumption is in the exclusive domain of the States as far as taxations is concerned and that he supported the views of the Hon'ble Member from Punjab. He compared the proposal to entertainment tax, where it was understood that the states could continue with imposition of the same but effectively states had to withdraw it because the price of the tickets were pushed too high because of GST.

11.8. The Hon'ble Member from Odisha further stated that the 18% GST on service of job work will not impact the price of liquor because this depends upon the relationship between the brand owner and the contract bottling unit. Finally, the Secretary to the Council stated that if there is no unanimity then we could let the hon'ble courts take a view on whether alcohol is food or not and thus determine the rate of tax on this service.

12. For **Agenda Item 4**, the Council recommended the following: -

- i) To increase the GST on mobile phone and parts to 18%;
- ii) To rationalise the GST on matches (hand-made and machine-made) to 12%;
- iii) To not exempt GST on Haj/Umrah Tours organised and conducted by Haj Group operators/ private tour operators
- iv) To defer the decision with respect to levy of IGST on Ocean freight payable by importer under reverse charge mechanism.
- v) To levy GST on MRO services in respect of aircraft, aircraft engines, and other components and parts at the rate 5% with full ITC and to change Place of Supply for B2B MRO services in respect of aircraft, aircraft engines, and other components and parts to location of recipient (Notification may be issued u/S 13(13) of the IGST Act.



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- vi) To let the law take its own course in the matter of applicable GST rate on the job work service in relation to manufacture of alcoholic liquor for human consumption.
- vii) To take up the issue of inverted tax structure on textiles, fertilizers, footwears and others in future meetings of the Council.

**Agenda Item 5A : Issues recommended by the Law Committee for the consideration of the GST Council**

13. The Secretary took up the next Agenda on issues recommended by the Law Committee for consideration of the Council. He started by saying that all these issues were deliberated in great detail in the Officers' meeting held on 13<sup>th</sup> March 2020. He thereafter, asked the Principal Commissioner, GST Policy Wing, CBIC (PC, GSTPW) to give a brief overview of the deliberations in the Officers' meeting regarding the recommendations made by the Law Committee on the subject. Initiating the discussion, PC, GSTPW made a detailed presentation (annexed as **Annexure 7**). He stated that the first Agenda item 5A(i) was discussed in great detail in the Officers' meeting on 13.03.2020 wherein some of the States were of the view that the proposed clarification seemed to negate the advance ruling given. It was, therefore, opined by them that jurisprudence should be allowed to evolve in the matter of differing advance rulings. While some of the States did not wish to get into the legality of the issues raised, some of the other States felt that it was a matter of contractual agreement between the bottling unit and the brand owner. The Hon'ble Financial Adviser to Punjab CM had also alluded to the same in his remarks while discussing the job work service with respect to contract manufacturing of alcoholic liquor for human consumption. PC, GSTPW informed that the Officers' Committee on 13-03-2020, therefore, had decided to defer the issue.

13.1. The next item Agenda item 5A(ii) highlighted by PC, GSTPW was the proposed circular clarifying apportionment of ITC in cases of business organization under section 18(3) of CGST Act read with rule 41(1) of CGST Rules which had been agreed to in the Officers' meeting on 13.03.2020. It was being clarified inter-alia that in case of demerger, for the purpose of apportionment of ITC, the value of assets is to be taken at the State level

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(at the level of distinct person) and not at the entity (all India) level. The transferor is required to file Form GST ITC-02 in those States where both transferor and transferee are registered. The total unutilized ITCs of the transferor and not the individual unutilised ITCs, is to be apportioned in the ratio of value of assets. A detailed methodology of apportionment was also shown in the proposed circular.

13.2 The next Agenda item 5A(iii) was with respect to waiver of penalty and interest on previous period due to removal of pre-import condition under Advance Authorisation scheme. PC, GSTPW stated that the current request was to exempt interest and penalty for the period 13.10.2017 to 09.10.2019. The GST law, however does not provide for any waiver of interest and the only way was to waive the pre-import condition retrospectively. He further informed that during a meeting held between the Hon'ble Finance Minister and Hon'ble Commerce and Industry Minister it was decided that the above matter will be examined and placed before the GST Council. The Law Committee, however, after deliberations had recommended to maintain status quo which had been agreed to in the Officers' Committee meeting held on 13.03.2020.

13.3 The next item taken up by the PC, GSTPW was the Agenda No. 5A (iv) relating to levy of interest under the provisions of section 50 of the CGST Act, 2017 for delay in payment of tax. He informed that Section 50 of CGST Act was amended through Finance (No. 2) Act 2019 to provide for charging interest only on the tax liability net of credit available, but since some of the States were yet to pass the amendment in respective SGST Acts, this had not been notified. He further informed that the Hon'ble High Court of Madras had passed orders stating that this was a clarificatory amendment and thus stood inserted retrospectively; High Courts of Delhi and Gujarat have stayed recovery on gross liability. PC, GSTPW informed that the said amendment was not made retrospectively and thus would apply prospectively only after notification of date of its effect. He informed that if interest was to be charged @ 18% on the gross basis from July 2017 to September 2019, the liability would come to around Rs 46,000 crore, and if the interest was to be charged only on cash basis, it would come to around Rs 8,800 crore. He stated that the matter was discussed in great detail in the Officers' Committee and there was an agreement that interest should be recovered on net basis only under section 50 for delayed payment since 1<sup>st</sup> July



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2017 itself i.e. retrospectively. He stated that the Council needs to take a decision whether the said amendment should be implemented the way it has been carried out i.e. once the leftover States amended their laws, notify the provision prospectively or whether this amendment should be carried out retrospectively w.e.f 01.07.2017. PC, GSTPW stated that if the Council chooses the latter option, it would require an amendment in law and it may also lead to giving refunds to those tax payers who might have paid interest on gross basis. Dy.CM of Bihar stated that he felt that it was coercion since the interest charged should be on cash part and not the credit part. Most of the tax payers did not know about this liability since they paid the late fee which was being calculated by the system and the interest was to be calculated by them on self-assessment basis. He further stated that it was only after the tax officers started attaching the bank accounts for recovery of interest liability that they came to know that the interest is to be paid on gross basis. He opined that the interest should be on net basis and this amendment should be carried out retrospectively. This opinion was seconded by the Hon'ble member from Gujarat. Tamil Nadu was of the view that levy of interest on delayed payment of taxes to be made on net cash tax liability should be given effect retrospectively from 01.07.2017. The Secretary reminded the Council that one amendment was approved by the GST Council in its 38<sup>th</sup> Meeting and the States were requested to amend their laws. He requested all the States that the respective State laws should be amended to charge interest on net basis with retrospective effect and till then the recovery shall also be on net basis. The Council recommended that interest should be calculated on net basis and the amendment should be done retrospectively.

13.4 Agenda No. 5A(v) was taken up next by PC, GSTPW which was regarding waiver of filing of FORM GSTR-1 by taxpayers who had availed the special composition scheme for services under notification No.2/2019-Central Tax (Rate) dated 07.03.2019. PC, GSTPW informed that this was needed to ensure that credits based on GSTR-1s of such suppliers are not available to the buyers of goods/services from suppliers availing of the special composition scheme. He also informed that as the utility of opting in FORM CMP-02 became available to such taxpayers only on September 2019 and such taxpayers who had filed GSTR-3B in the interim were unable to opt to pay tax under the said notification. PC, GSTPW informed that this proposal was agreed to in the Officers' Committee meeting held



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on 13.03.2020. He informed that it would be implemented through a notification under section 148 of the CGST Act.

13.5. The next agenda item taken was Agenda No. 5A (vi). PC, GSTPW informed that this was discussed in detail in the Officers' Committee held on 13.03.2020. He stated that this proposal was with respect to filing of annual returns in FORM GSTR-9 and GSTR-9C (Reconciliation Statement) for Financial Year 2018-19. He stated that so far only 2017-18 Annual return (FORM GSTR-9) and reconciliation statement (FORM GSTR-9C) are closed. He mentioned that from GSTR-9 returns, Rs 3,172 crore as additional tax and Rs 575 Cr. interest thereon got collected while from GSTR-9C, only Rs 391 crore additional tax and Rs 81Cr. interest got collected. PC, GSTPW stated that the GST Council in its 37<sup>th</sup> Meeting held at Goa had made filing of GSTR-9 and GSTR-9C optional for the tax payers having aggregate turnover of less than 2 Crore. He stated that from such tax payers, appx. Rs 580 crore tax along with interest got collected through GSTR-9 and that if this exemption was raised to a turnover of Rs 5 crore, still 85% of money from GSTR-9 and 87% of money from GSTR-9C would have been recovered. However, increasing the threshold would reduce the compliance burden to 6,87,000 taxpayers instead of 12,42,000 taxpayers. He further informed that since the 37<sup>th</sup> GST Council decided that this return filing by tax payers with turnover of less than Rs 2 crore was optional, 30 lakh tax payers who were below this specified threshold still filed GSTR-9. He also informed that the compliance burden on account of GSTR-9 and 9C has been one of the biggest issues regarding GST regime. PC, GSTPW stated that this proposal was discussed at length in the officers meeting held on 13.03.2020 and there was no consensus on the issue. The Hon'ble Member from Kerala stated that certainly compliance burden would reduce but leakage will increase and the system should not be trampled in this manner. Annual return presently is the only point of check since GSTR 1 and GSTR-3B are not linked or matched. He did not think it was right to exempt 6 lakhs plus tax payers from this check point. If the system that was discussed during the presentation by Shri Nandan Nilekani was implemented, maybe then this can be dispensed with. Otherwise this is the only scrutiny of annual returns with tax payments. The Hon'ble Deputy Chief Minister of Haryana stated that under the income tax the limit is Rs. 2 crore and therefore the same limit may be kept under GST also. The Secretary to the Council stated that the limit of Rs 2 crore in Income



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Tax was for getting accounts audited by Chartered Accountants. In the GST system, every month there were 2 returns and invoice level details. The proposal is aimed at reducing the compliance burden particularly on the small tax payers and these tax payers are already filing their monthly returns. They have to approach Chartered Accountants for filing their returns. One major criticism of the GST regime has been that this has increased the compliance burden (filing monthly returns, accountant fees etc.). Replying to the issue raised by Hon'ble member from Kerala that this might lead to leakages, Secretary replied that this was only for 2018-19 and if it was found that the behaviour of any of the taxpayer is doubtful then he can be directed to file the annual returns. Hon'ble Member from Kerala replied that the problem is that the burden is on the officers. Introduction of any new system requires learning by the tax payers and now that the tax payers have learnt how to work with the GST system, this move will render all the effort put in the past to nothing. The annual return is the only document to serve as a check point to check fraudulent ITC. Annual return is only the addition of individual GSTR-1s and reconciling with GSTR-3B. This did not reduce any terrible compliance burden but only undoing of all the effort put in till now. Hon'ble Member from Bihar stated that tax payers cannot file the annual returns and reconciliation statements without the help of Chartered Accountants. The turnover of Rs 5 crore is not a big amount. To reduce the compliance burden and when the revenue implication is not huge, the benefit has to be given to the small and medium tax payers. The decision for the years 2019-2020 can be made later but for the years 2017-18 and 2018-19, the relief to the tax payers should be given. The Hon'ble Member from Chhattisgarh enquired as to what was the merit of retaining GSTR 9 and increasing the threshold in respect of GSTR-9C. Keeping GSTR 9C at earlier limit might be desirable which was also the suggestion. PC, GSTPW replied that going forward, there was a proposal that GSTR 9 and GSTR 9 C may be combined. The major cost for the tax payers comes out of the fees paid to the auditing Chartered Accountant/Cost Accountant. He informed that in fact, based on an analysis done, below Rs 5 crore limit, the additional tax recovered from each tax payer was Rs 13,000 per tax payer whereas the compliance cost was appx. Rs 50,000. Tamil Nadu had supported and welcomed the ameliorative measures taken for ease of doing business by enhancing the turnover limit upto Rs.5 crore for filing annual returns in Form GSTR-9 and reconciliation statement in Form GSTR-9C. It was finally agreed that relief

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be given to taxpayers below a certain threshold i.e. Rs.5 crore for filing GSTR-9C for 2018-19 as hardly any additional revenue accrues on account of filing of these returns. It was also decided that the due date for filing of annual return in FORM GSTR-9 and the reconciliation statement in FORM GSTR-9C be extended to 30<sup>th</sup> June, 2020. Further, it was decided that no late fees be levied for delayed filing of the annual return and the reconciliation statement for the FY 2017-18 and 2018-19 for taxpayers with aggregate turnover less than Rs. 2 crores since in any case filing of these forms had been made optional for them .

13.6. With respect to the proposal for amendment in CGST Rules 2017 [Agenda No. 5A (vii)] it was stated by the PC, GSTPW that this had been deliberated in depth in the Officers' Committee meeting on 13.3.2020. Broadly, there was broadly consensus among the Officers..

13.7 Thereafter, the PC, GSTPW stated that the proposed amendments [Agenda No. 5A (viii)] to the CGST Act were also discussed in detail in the Officers' meeting and there was agreement in respect of amendments in section 16 and section 75 (12). He explained that it is proposed to insert an explicit condition in Section 16 to the effect that ITC on invoices or debit notes may be availed only when the details of such invoices have been furnished in the details of outward supplies by the concerned supplier. He further explained that further Section 75(12) is proposed to be amended to provide for recovery of tax on liability declared in FORM GSTR-1 also so that tax can be recovered on supplies for which FORM GSTR-3B was not filed. He informed that Hon'ble High Court of Madhya Pradesh had already upheld this view. He informed that a since GSTR -1 is proposed to be linked to GSTR-3B, it was important that GSTR-1s are regularly filed by the tax payers and that these amendments would encourage the GSTR-1 filing.

13.8 With respect to the proposed amendment in sections 35 / 44 of the CGST Act, he informed that the proposal is to remove the requirement of filing of reconciliation statement by Chartered Accountant or Cost Accountant. Further, the reconciliation statement would not be separately required and will be merged with the Annual return and the same may be mandated for a particular class of person only.



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13.9 He further stated that there was no consensus with respect to amendments proposed in sections 109/110 relating to the constitution of GST Appellate Tribunals. He mentioned that the amendments have been proposed since the Madras High Court had quashed the existing provisions on the grounds of judicial imbalance. He explained that the Tribunal Bench with one judicial and two technical members was held against the principles laid down by Courts in relation to Tribunals. Simultaneously, Hon'ble Supreme Court has, in case of Kudrat Sandhu Vs. Union of India, prescribed guidelines relating to selection, qualifications etc. of the Tribunal members which would apply to Members of the GST Tribunal also. PC, GSTPW stated that accordingly, this proposal for amendment in constitution and qualifications, method of selection of members etc. was brought to the Council. He stated that this was discussed in the Officer's Meeting on 13.03.2020 in detail. The discussions were on the issues like who would be the technical member in those States which have only one Bench, proposed selection committee comprising of Supreme Court Chief Justice or any other Judge. He further stated that the suggestion from number of States was that selection Committee should be headed by the Chief Justice of concerned High Court. Hon'ble member from Chhattisgarh proposed that there can be 5 members of the tribunal, the judicial members can be 3 and out of the remaining two, one can be from the concerned State and one from Centre. Hon'ble Member from Uttarakhand mentioned that with regard to the recommendation of Law Committee regarding constitution of appellate tribunal and benches thereof, at agenda item 5A(viii), the State of Uttarakhand was of the view that rather than giving representation to either of two technical members i.e. technical member from State or Centre, to address the issue of technical members outnumbering the judicial members in the respective benches, it would be preferable to give representation to technical member from Centre, besides a President/Judicial Member in the National Bench and the regional benches and likewise to a technical member from States, besides a Judicial member in the State benches and the area benches. This would not only resolve the issue of equal representation in the respective benches but also give an assured representation to both the administration i.e. Centre and State in the GST Appellate Tribunal. Hon'ble member from Uttar Pradesh stated that it should be left to the State Government to decide what the State Government decides. Hon'ble member from Kerala stated that in case there has to be only one technical member, it has to be a technical member

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from State only. This was also seconded by Hon'ble Member from Odisha. Hon'ble member from Haryana stated that as suggested by Chhattisgarh, increasing the number of members would not be a problem. If there cannot be five members, there can be four members, two technical members (one from State and one from Centre) and two judicial members. There can also be a senior lawyer who can be designated as a judicial member. Tamil Nadu expressed strong reservations against the proposed amendments to sections 109 and 110 of the CGST Act with reference to the appointment of technical members in the GST Tribunals. These amendments seek to replace two technical members by one, leaving the option to choose a Central Technical member or State Technical Member to the Government of India. Tamil Nadu was of the view that the National Bench of the Appellate Tribunal and its Regional Benches may consist of Judicial Member and a Technical Member (Central) and in State Bench of the Appellate Tribunal and its Area Benches must consist of Judicial member and a Technical member (State). The Secretary stated that the background to this whole issue was that couple of months ago there was a Constitutional Bench of five judges which gave a judgment in the case of Kudrat Sandhu which set aside rules relating to various tribunals like CESTAT, ITAT. The Supreme Court gave guidelines based on which new rules were framed. Even Attorney General of India was consulted during the framing of these mentioned rules. JS, DoR explained that the judgement said that the selection cannot be done by the executive but by a committee where the judicial members should have at least equal representation as the executive, it also laid down the qualifications required. He added that in the proposal of having two members in a Bench, in case there are two benches in one State, then one bench can have a technical member from State and the other Bench can have a technical member from Centre. If there is only one bench, then the technical member can be filled on a rotational basis, once from the State and the next time from Centre so that parity can be maintained. The problem with a four-member Bench in Tribunal is that it becomes administratively difficult, due to higher number of members. Today, most of the tribunals like CAT have only two members. As the number of members increase, it also becomes difficult to reach decisions. Hon'ble member from Delhi did not support the idea of rotation. Hon'ble member from Chhattisgarh stated that judicial majority may be maintained but one technical member from State should be present and the State should not be ruled out since the proposed



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amendment to Sections 109/110 says Technical Member (Centre) “or” Technical Member (State). Chairperson replied that the intention was not to rule out the State but only to keep parity. JS, DoR added that in case there are four benches in one State, two benches can have Technical Members from State concerned and two Technical Members can be from Centre. The Secretary added that for tribunals like ITAT, CESTAT etc, as per the Kudrat Sandhu judgement, the selection panel was to be headed by a Supreme Court judge and getting an appropriate judicial member is a challenge since availability and numbers of judicial members is difficult. GSTAT is one Appellate Tribunal having benches in various States and therefore, the selection has to be done by a Supreme Court Judge who has to be nominated by the Chief Justice of the Supreme Court. Filling up the judicial member posts in other tribunals where the number and benches are less compared to the proposed structure in GST, is already difficult, Hon’ble member from Gujarat also supported this view that even filling up the posts reserved for High Court judges is difficult. Hon’ble member from Bihar also supported the idea of rotation of technical members. Hon’ble Member from Delhi stated that at National and Regional level the technical member can be from Centre and at the State level, the technical member should be from State. JS, DoR stated that even at the State level, the bench constituted would be the State bench of the National Tribunal (GSTAT) and therefore the proposed system of rotation of technical members. The Secretary stated that there is only one National Appellate Authority with benches at various places like CAT which has only one President with benches in various States. Chief Commissioner, State tax, Gujarat mentioned that this was debated in the Officer’s Meeting on 13.03.2020 and this debate is resulting in delaying the decision and cases are piling up. This issue had to be resolved. He stated that the Supreme Court judgement states two things (a) any member, especially judicial member cannot be appointed by the executive and judiciary has to be involved in the appointment process, (b) judicial members cannot be in minority in a bench. He suggested a formulation that since this is a National Tribunal; the Central branch at Delhi will decide only the Place of Supply issues and rest will be taken by State Benches in different States with more than one bench in a State/place as per requirement. The two issues that have to be decided are (i) What should be the composition of the bench (ii) Selection Committee. Regarding the first issue he submitted that, for bigger States with huge businesses, more than one Bench is required.

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If there are four members who are posted in one place then it need not mean that all four will be adjudicating on the same bench, and on the same issue. The Business Rules may be framed to have two members, one judicial and one technical in one bench & the size may be varied to include more, and for smaller States/ for smaller benches with an odd number of technical members, then the first opportunity should be given to the State to fill and then on rotation basis, technical member from Centre may occupy. Coming to the issue of Selection, as rightly proposed the judicial members have to be selected by Judiciary. If a panel makes a selection of a judicial member to the Tribunal, the same panel might also have to select the technical member as well which needs to be examined. Except for National Level Bench, for the selection to a State Level Bench, if there could be a committee at the State level with the Chief Justice of the concerned High Court instead of the judge of Supreme Court, then the issue can be resolved. Hon'ble Member from Haryana stated that technical member from Centre was required to complete 20 years of Group A service and technical member from State was required to complete 25 years of service. Haryana had an age limit of 40 years to get into the service and therefore, will have very few qualified people. He requested that this limit may be brought down to 20 years. Finally, the Chairperson to the Council stated that the matter needed detailed examination which will be done before a final view is placed before the Council.

13.10 Coming to the proposed amendment to Section 16 of IGST Act, PC GSTPW explained that this proposal was to prescribe LUT route as the default route for Zero rated supply of goods or services i.e. without payment of IGST. Till the time amendment was made, exemption of IGST in case where place of supply is outside India, may be considered. He further explained that it is, however, proposed to provide that the Government may notify a class of suppliers or supplies where the zero rated supply could be made on payment of IGST. He also stated that currently both the routes do not lead to same quantum of refund like refund of ITC on Capital goods was not allowed yet. He stated that the same will be discussed in Law Committee later so as to provide full zero rating to the exporters. PC, GSTPW informed that another proposed change in Section 16 of the IGST Act, 2017 was that zero rating of supplies made to a SEZ developer / unit be restricted only to such supplies which are meant for authorized operations only (and not all operations as it is today). He further explained that yet another change proposed in the same section



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was to make realisation of foreign exchange remittances in case of export of goods within the time period prescribed under Foreign Exchange Management Act (FEMA), 1999 a condition for benefit of refund i.e. the refund given on zero rated supplies will need to be returned back by the exporter if the remittances are not realised within the prescribed time limits. Principal Commissioner, GSTPW explained that this would address the issue of any fake exports or overvalued exports.

13.11. With respect to amendments proposed under section 151 and 152, Commissioner, Commercial Taxes, Tamil Nadu desired that Section 151 in its existing form may be retained for the purposes of collection of statistics while a new section 151A may be inserted to capture the intent of this proposal. The PC, GSTPW submitted that the suggestions from CCT, Tamil Nadu will be taken into consideration, and will be finalised in consultation with the Union Law Ministry.

13.12. The remaining proposed amendments to the GST Act have been discussed as part of Table Agenda items 11(iv) and 11(viii).

13.13. With respect to the next Agenda item [5A (ix)] on 'Know Your Supplier' and Information Return [Agenda Item 5 (x)] PC, GSTPW informed the Council that the same had been agreed to in the Officers' meeting held on 13.03.2020. He explained that as a Trade Facilitation measure, a new facility called 'Know Your Supplier' is proposed which would enable every Registered person to have some basic information about the supplier with whom they conduct or proposed to conduct business. He further stated that many a times, the recipients have claimed that they did not know the credentials of the supplier and the transactions done were done in good faith. PC, GSTPW stated that in the proposed scheme of 'Know your Supplier', on entering the supplier's PAN/GSTIN, requisite information about the supplier would become available to any registered person, based on which a reasonable judgement can be made whether to transact with such parties or not.

13.14. As regards the proposal relating to [Agenda item 5A(x)] notification of NPCI, TRANSUNION CIBIL LIMITED and AMFI under Section 150(1)(p) of the CGST Act, 2017, PC, GSTPW explained that the same would enable the GST Authorities to get regular data from them in the prescribed format. He explained that further as recommended in the

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2<sup>nd</sup> National GST Conference, information returns are also proposed from banks in the prescribed format.

13.15 With respect to Agenda item No. 5A (xi) for enabling Aadhaar based authentication of the registered persons PC, GSTPW stated that the proposed amendments relate only to new taxpayers since the date of implementation of authentication process for existing taxpayers was awaited from GSTN/Infosys. He informed that the Budget for 2019-2020 provided for Aadhaar based authentication of persons seeking GST registration. He stated that the GSTN was still developing the utility and roll out for new tax payers can be done in April 2020 and accordingly, those rules were proposed to be notified. Hon'ble Member from Bihar enquired as to what was the difficulty in authentication the existing tax payer using Aadhaar. Since most of the tax payers were the existing tax payers and new tax payers had already become alert with regard to fraudulent activity, authenticating only the new tax payers may not be of much help. The Secretary replied that Infosys was told much earlier to authenticate both the categories but they replied that for new tax payers, the roll out can happen from April 2020 and longer timelines were given for existing tax payers. There is also another Table Agenda to seek in principle approval of the Council to give additional man power to GSTN. His proposal was that the timeline given by Infosys in the presentation earlier in the meeting regarding authentication of existing tax payers with Aadhaar, linking GSTR-1 with GSTR-3B, GSTR-2A to GGSTR-3B, Spike Rules should be modified to make activities completed by end of July. For this purpose, if additional manpower and any other support is required, they should be provided with it. He mentioned that the Chairperson had told Infosys that their proposals would be discussed with the Council and the decision would be communicated to them. The Chairperson stated that the timeline given by Infosys that these proposals would be rolled out by January 2021 was not reasonable given that they will be provided with additional manpower and other resources. She felt that it would be proper to set the deadline as July 2020 instead of January 2021. This also provided for some time for the system to settle down. Hon'ble member from Bihar enquired whether Aadhaar authentication was mandatory for refunds. The Secretary replied that wherever Aadhaar had been made mandatory like LPG subsidy, scholarship etc. as per Supreme Court Judgement, some exceptions have to be made for persons without Aadhaar, they will be subjected to further due diligence. The authorities will be empowered



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by law to authenticate using Aadhaar and in case the person does not have/provide, alternative verifications will be made. The Chairperson mentioned that RBI Rules provide for Other Valid Identity (OVI). Some banks in Assam had shut down Jan Dhan accounts of Chai Bagan workers since they could not provide Aadhaar for authentication. Direct Benefit Transfer (DBT) was not possible without Jan Dhan accounts. OVI can include voter identity card or any such identity proofs. The Secretary mentioned as per the proposal in this Agenda Item, the proviso to Section 25(6A) says that 'if an Aadhaar number is not assigned to the registered person, such person shall be offered alternate and viable means of identification in such manner as Government may, on the recommendations of the Council, prescribe'. CEO, GSTN added that for the new tax payers, the module has been built and tested. They were now working on the field visit/ those who don't provide Aadhaar. The application for the authentication of the existing tax payers was being built. In the meantime, there were 1.64 crore persons in the GST system who were promoters, authorized signatory etc. Their Aadhaar seeding statuses in bank accounts were taken from CBDT.

13.16 With respect to the Agenda item No. 5A (xii) for issuance of clarification in respect of appeal in regard to non-constitution of Appellate Tribunal it was conveyed by PC, GSTPW that it was being clarified by way of a proposed circular that the limitation for filing an appeal in the Appellate Tribunal would begin from the date the said tribunal is constituted which was based on Removal of Difficulties Order dated 03.12.2019 issued by the Government on the recommendations of the Council. The PC, GSTPW then took up Agenda Item 5A(xiii) and stated that based on discussions in law committee, core group meetings and consultations with GSTN following was proposed with regard to the e-invoice scheme:

- a. Certain class of taxpayers like an insurance company or a banking company, a financial institution, non-banking financial institution, GTA, passenger transportation service providers as IRCTC referred in sub rule (2), (3), (4) and (4A) of rule 54 of CGST Rules, 2017 may be exempted from requirement of e-invoicing;

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- b. Amendment of rule 48 to exclude credit note, debit note, export invoice, ISD, self-invoice under section 31(3)(f) of CGST Act, 2017 in case of RCM supplies etc for the purpose of obtaining Invoice Reference Number (IRN);
- c. Date of implementation of e-invoicing may be extended to 1st October, 2020 for the taxpayers whose aggregate turnover in a financial year exceeded one hundred crore rupees only.

13.17. He informed that the proposal had been agreed to in the officers meeting held on 13 March 2020. Similarly, with respect to Agenda 5A(xiv) the Council agreed to defer the implementation of QR code on B2C invoices to 1<sup>st</sup> October, 2020 and also exempt certain class of taxpayers like insurance or a banking company, financial institutions, non-banking financial institutions, GTA, passenger transportation service providers as IRCTC referred to in sub rule (2),(3),(4) and (4A) of rule 54 of CGST Rules, 2017 and OIDAR service providers, from capturing dynamic QR. Further, PC, GSTPW informed that the NPCI would be invited for the next meeting of the GST Council so that they can present their roadmap for introducing QR code for B2C invoices.

13.18. The next Agenda item No. 5A(xv) pertaining to extension of due dates for filing FORM GSTR-1, GSTR-3B, and GSR-7 for the month of January 2020 in respect of the Union Territory of Ladakh to 31<sup>st</sup> March, 2020 was agreed. Member from J&K requested the Chairperson to allow similar extension for all returns to be filed by taxpayers in J&K for the period July 2019 to February 2020, till 24<sup>th</sup> March 2020 so that revenue can be realised in the current financial year. The same was also agreed.

13.19. Further, the Agenda item No. 5A(xvi) proposing for continuation of the current system of staggered returns in Form GSTR-3B and GSTR-1 for 6 months till September 2020 was also agreed in view of the proposed linking of GSTR 3B-GSTR 1 as presented by Infosys as part of the transition plan to new return system.

13.20. The next Agenda item 5A(xvii) was for prescribing a special procedure for the newly merged UTs of Dadra & Nagar Haveli and Daman & Diu, the transition for which would be completed by 31<sup>st</sup> May, 2020. PC, GSTPW informed that the same was agreed to in the Officers' meeting held on 13.03.2020. The next Agenda 5A (xviii), for extending the



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time limit to finalise the e-wallet scheme upto 31.03.2021 and extending the existing exemptions from IGST and cess on the imports made under AA/EPCG/EOU schemes upto 31.03.2021, was also approved.

13.21 In respect of Agenda Item 5B, the deliberations & recommendations of the Law Committee, in the matter of representation by Construction Federation of India on the orders of the Hon'ble High Court of Delhi dated 31.5.2019 in writ petition No. 6536 of 2019 by M/s. Hindustan Construction Company Ltd., were placed before the Council. The GST Council took note of the same.

14. For **Agenda item 5A**, the Council approved:-

- i. to defer the issue related to taxability of 'economic surplus' earned by brand owners of alcoholic liquor for human consumption;
- ii. the circular clarifying challenges faced in apportionment of ITC in cases of business reorganization under section 18(3) of CGST Act read with rule 41(1) of CGST Rules;
- iii. not to exempt interest and penalty for the period from 13.10.2017 to 09.10.2019 for imports under advance authorization scheme;
- iv. to levy interest on net basis under provisions of section 50 of the CGST Act for delayed payment of tax (retrospectively w.e.f. 1<sup>st</sup> July, 2017), and to carry out necessary amendments in law for the same;
- v. waiver of filing of FORM GSTR-1 by taxpayers who have availed the special composition scheme under notification No. 2/2019-Central Tax (Rate) dated 07.03.2019 and to give effect to such waiver by issue of notification under section 148 of the CGST Act;
- vi. to give relief to taxpayers having threshold of less than Rs.5 crores from filing GSTR-9C for FY 2018-19, to extend the due date for filing of annual return in FORM GSTR-9 and the reconciliation statement in FORM GSTR-9C for FY 2018-19 from 31<sup>st</sup> March, 2020 to 30<sup>th</sup> June, 2020 and that no late fees be levied for delayed filing of the annual return and the reconciliation statement for the FY 2017-18 and 2018-19 for taxpayers with aggregate turnover less than Rs. 2 crores;

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- vii. the amendments proposed in Rules 92, 96 and 96B and concomitantly in FORM GST RFD-01 and in principle approved the amendments proposed in Rules 43, 86 and 89 also;
- viii. the amendments proposed in Sections 16, 35, 44, 75(12), 83, and sections 151 and 152; amendments proposed in sections 109/110 relating to constitution of GST Appellate Tribunal were not approved and it was decided to refer the several principles laid down in the case of Kudrat Sandhu vs. UOI before finalization;
- ix. The new facility of 'Know Your Supplier' to enable every Registered person to have some basic information about the supplier with whom they conduct or proposed to conduct business.;
- x. Information Return notification of NPCI, TRANSUNION CIBIL LIMITED, AMFI and banks to enable the GST Department to seek data from them in the prescribed format;
- xi. notification/ rule for enabling AADHAR based authentication in GST w.e.f. 01.04.2020 only for new taxpayers as date for existing taxpayers is yet to be decided;
- xii. the circular clarifying that the period of limitation for filing an appeal in the Appellate Tribunal would begin from the date the said tribunal is constituted;
- xiii. the extension in date of implementation of e-invoicing by six months (i.e. e-invoicing will be implemented from 01.10.2020) and to exempt certain class of taxpayers like insurance or a banking company, financial institutions, non-banking financial institutions, GTA, passenger transportation service providers as IRCTC referred to in sub rule (2), (3), (4) and (4A) of rule 54 of CGST Rules, 2017 from implementing e-invoicing;
- xiv. to defer the implementation of QR code on B2C invoices to 1<sup>st</sup> October, 2020 and also exempt certain class of taxpayers like insurance or a banking company, financial institutions, non-banking financial institutions, GTA, passenger transportation service providers as IRCTC referred to in sub rule (2), (3), (4) and (4A) of rule 54 of CGST Rules, 2017 and OIDAR service providers from capturing dynamic QR code on their invoices;



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- xv. extend due dates for filing FORM GSTR-1, GSTR-3B, and GSR-7 for the month of July 2019 to January 2020 in respect of the Union Territory of Ladakh to 24<sup>th</sup> March, 2020;
  - xvi. to continue the existing system of furnishing FORM GSTR-1 and FORM GSTR-3B till the month of September, 2020;
  - xvii. special procedure under GST for the merger of UTs of Dadra & Nagar Haveli and Daman & Diu, the transition for which would be completed by 31<sup>st</sup> May, 2020;
  - xviii. to extend the time limit to finalise the e-wallet scheme upto 31.03.2021 and to extend the existing exemptions from IGST and cess on the imports made under AA/EPCG/EOU schemes upto 31.03.2021
- 14.1. For **Agenda item 5B**, the Council took note of, the deliberations & agreed to the recommendations of the Law Committee, in the matter of representation by Construction Federation of India on the orders of the Hon'ble High Court of Delhi dated 31.5.2019 in writ petition No. 6536 of 2019 by M/s. Hindustan Construction Company Ltd.

**Agenda Item 6: Creation of the State and Area Benches of the Goods and Services Tax Appellate Tribunal (GSTAT) for the State of Uttar Pradesh**

15. The Secretary introduced the agenda and stated that in terms of Section 109 of the CGST Act, 2017; Goods and Services Tax Appellate Tribunal (GSTAT) were being constituted by the Government on the recommendation of the GST Council. The Appellate Tribunal having National / Regional Benches at National level and the State / Area Benches at State level, to hear appeals against orders passed by the Appellate Authority or by the Revisional Authority. (Enclosed in Agenda circulated for reference).

15.1. While the proposal of states and UTs for creation of State and Area Benches of Goods and Services Tax Appellate Tribunal was considered in the 35<sup>th</sup> and 37<sup>th</sup> meeting of the GST Council, the proposal for the State of Uttar Pradesh could not be considered as the Hon'ble High Court of Allahabad, Lucknow Bench had quashed the proposal of State Government for setting up of State Bench in Allahabad and 4 Area Benches in Ghaziabad, Lucknow, Varanasi and Agra. The Department of Revenue had proposed to file SLP against the said judgment of the Allahabad high Court, Lucknow Bench.

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15.2. Hon'ble High Court of Allahabad vide its judgement dated 16.01.2020 in Writ Tax No. 942 of 2018 had inter-alia directed that the issue of creation of GSTAT Benches for the state of Uttar Pradesh be taken up by the Central Government as well as the GST Council, as expeditiously as possible.

15.3. Accordingly, proposal for creating State Bench of Good and Services Tax Appellate Tribunal for the State of Uttar Pradesh in Allahabad and 4 Area Benches in Ghaziabad, Lucknow, Varanasi and Agra was placed before GST Council for consideration.

16. For **Agenda item 6**, the Council approved the proposal for creating State Bench of Good and Services Tax Appellate Tribunal for the State of Uttar Pradesh at Allahabad and 4 Area Benches at Ghaziabad, Lucknow, Varanasi and Agra.



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**Agenda Item 7: Quarterly Report of the NAA (National Anti-profiteering Authority) for the quarter October to December 2019 for the information of the Council**

17. The Secretary introduced the Agenda item pertaining to various issues related to the National Anti-profiteering Authority (NAA) and placed the quarterly performance report of National Anti-profiteering Authority along with performance reports of DGAP, Screening Committee and State Level Screening Committee for the 3rd quarter (September, 2019 to December, 2019) of the financial year 2019-20 before the Council for information.

17.1. In terms of provisions of clause (iv) of Rule 127 of the CGST Rules 2017, National Anti-Profiteering Authority (NAA) was required to furnish a performance report to the GST Council by 10<sup>th</sup> of the closing of each quarter. Anti-profiteering provisions are contained under Section 171 of the CGST Act, 2017 which empowered NAA to determine as to whether benefit of reduced rate of tax or the Input Tax Credit (ITC) had been passed on to the recipient by way of commensurate reduction in the prices and in case of failure, NAA might order reduction in prices, commensurate benefit to recipient, impose penalty and cancel registration, in suitable cases.

17.2. The performance report of National Anti-profiteering for the 3rd quarter ending December, 2019 of Financial Year 2019-20 was as under:

**Performance of National Anti-Profiteering Authority:**

Op. Balance	No. of Investigation Reports received from DGAP during the quarter	Disposal of Cases (during Quarter)				Closing Balance
		Total Disposal during quarter	No. of cases Where Profiteering established	No. of cases Where Profiteering not established	No. of cases referred back to DGAP	
<b>84</b>	<b>36</b>	<b>46</b>	<b>31</b>	<b>02</b>	<b>13</b>	<b>74</b>

18. For **Agenda item 7**, the GST Council took note of the performance of the National Anti-profiteering Authority for the 3rd quarter September, 2019 to December, 2019.

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**Agenda Item 8: Deemed ratification by the GST Council of Notifications, Circulars and Orders issued by the Central Government**

19. The Secretary asked Principal Commissioner, GST Policy Wing, CBIC to place the agenda before the Council. The PC, GSTPW, CBIC stated that in the 38<sup>th</sup> Meeting held on 18.12.2019, the Council had ratified all the notifications, circulars and orders issued before 14<sup>th</sup> December, 2019. He thereafter made a presentation (attached as **Annexure 8**) listing out all the notifications, rate and non-rate, of CGST, UTGST, IGST and Compensation Cess, Circulars and removal of difficulty orders issued after 14.12.2019 till 08.03.2020, under the GST Laws by the Central Government as available on [www.cbic.gov.in](http://www.cbic.gov.in).

20. For **Agenda Item 8**, the Council granted deemed ratifications to the notifications, circulars and Orders as in agenda item and the presentation (attached as **Annexure 8**) made during the Council Meeting, which are available on [www.cbic.gov.in](http://www.cbic.gov.in)

Act / Rules	Type	Notification/Circular/Order Nos
CGST Act/CGST Rules	Central Tax	73 of 2019 to 8 of 2020
	Central Tax (Rate)	27 of 2019 to 01 of 2020
UTGST Act	Union Territory Tax (Rate)	27 of 2019 to 01 of 2020
IGST Act	Integrated Tax	01 of 2020
	Integrated Tax (Rate)	26 of 2019 to 01 of 2020



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Circulars	Under CGST Act, 2017	128 of 2019 to 131 of 2020
ROD Orders	Under CGST Act, 2017	10 of 2019
Orders	Under CGST Act, 2017	01 of 2020

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

**Agenda Item 9: Decisions of the GST Implementation Committee (GIC) for information of the Council**

21. The Secretary asked Principal Commissioner, GST Policy Wing, CBIC to present the Agenda before the Council. Thereafter, PC, GSTPW, CBIC stated that the GST Implementation Committee (GIC) took decisions between 19.12.2019 and 13.03.2020. Further, due to the urgency involved, certain decisions were taken by GIC after obtaining approval amongst GIC Members by circulation. Thereafter, he made a presentation (attached as **Annexure 8**) on the decisions taken by Members of the GIC post 38<sup>th</sup> GST Council Meeting.

22. For **Agenda item 9**, the Council took note of the decisions of the GST Implementation Committee between 19.12.2019 and 13.03.2020.

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**Agenda Item 10: Decisions/recommendations of the 9<sup>th</sup> and 10<sup>th</sup> IT Grievance Redressal Committee for information of the Council**

23. Introducing this Agenda item, the Secretary requested Shri Dheeraj Rastogi, JS, GST Council to apprise the Council of the issue. JS, GSTC stated that after the 38<sup>th</sup> GST Council meeting two meetings of the ITGRC were held, the 9<sup>th</sup> ITGRC on 2<sup>nd</sup> December 2019 and the 10<sup>th</sup> on 22<sup>nd</sup> January 2020 to resolve grievance of the taxpayers arising out of technical and non-technical issues. (Minutes of the Meeting attached as **Annexure A** of this agenda Item). The gist of the proceedings of the 9<sup>th</sup> and 10<sup>th</sup> ITGRC, as per Agenda Item was as follows:

**9<sup>th</sup> IT GRC Meeting – 02<sup>nd</sup> December 2019**

23.1. Ninth meeting of the IT grievance Redressal Committee (IT-GRC) was held on 02<sup>nd</sup> December 2019 to resolve grievance of the taxpayers arising out of technical and non-technical issues. (Minutes of the 9<sup>th</sup> Meeting of the ITGRC was attached as **Annexure X** of the agenda Item 10). There were total 4 Agenda items placed before the 9<sup>th</sup> ITGRC, as follows:

- a. In **Agenda 1**, total **279 cases of TRAN-1/TRAN-2/TRAN-3** had been examined by GSTN and presented before the committee. Out of these, 256 cases were sent by Nodal officers and 23 were court cases.
- b. In **Agenda 2**, in pursuance of decision in 32<sup>nd</sup> GST Council Meeting, regarding extended scope of ITGRC, GST Council Secretariat had received another **28 cases** in response to extended scope of ITGRC and analysis of these cases was also presented before the committee.
- c. In **Agenda 3**, in accordance with the mechanism/process approved in 8<sup>th</sup> ITGRC that ITGRC would take up the non-technical cases identified as 'Category A cases' in Annexure 3 of 6<sup>th</sup> ITGRC and Agenda 3 of the 8<sup>th</sup> ITGRC. Out of these Category A cases of 6<sup>th</sup> and 8<sup>th</sup> ITGRC, three cases which appeared in subcategory A1 of the Annexure 3 of 6<sup>th</sup> ITGRC were placed before the committee as table agenda. Additionally, the case of M/s Shiv Vanijya was also received just before the scheduled time of the 9<sup>th</sup> ITGRC Meeting. Hence, it was also included in the table agenda.



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- d. In **Agenda 4**, As per Hon'ble High Court of Delhi order dated 28.11.2019 in WPC 9575/2017 and CM No 38987/2017 filed by Sales Tax Bar Association (STBA), Constitution of Public Grievance Committees (PGC) at local and Commissionerate level had to be done.

After detailed discussion, the 9<sup>th</sup> ITGRC decided and recommended as under: -

**Recommendation for Agenda 1:**

**In respect of TRAN-1 cases:**

- i. **To Allow** 25 cases of TRAN-1 pertaining to Subcategories A1 and A3 of technical glitch as per Annexures indicated in column No. 3 and 4 of Table 2 of Minutes for filing of TRAN 1/TRAN 2 in accordance with the Law Committee recommendations regarding consequential benefits related to filing of TRAN 1 and TRAN 2.
- ii. **To Allow GSTN to withdraw** 07 cases of Subcategory A2 and A4 as mentioned in Table 2 of Minutes without any decision and directed GSTN to present the same in the next ITGRC Meeting.
- iii. **Not to Allow** remaining 63 cases of TRAN-1 pertaining to Category 'B' as per Annexures indicated in column No. 3 and 4 of Table-3 of Minutes in absence of any evidence of technical/system errors in these cases, as was decided in similar cases in past eight IT-GRC meetings.

**In respect of TRAN-2 cases:**

- i. **To allow** 47 cases of TRAN-2 pertaining to Subcategories A1 and A3 of technical glitch as per Annexures indicated in column No. 3 and 4 of Table 4 of Minutes; for filing of TRAN 2 in accordance with the Law Committee recommendations regarding consequential benefits related to filing of TRAN- 2.
- ii. **To allow GSTN to withdraw** 02 cases of Subcategory A2 as mentioned in Table 4 of Minutes without any decision and directed GSTN to present the same in the next ITGRC Meeting.
- iii. **Not to Allow** remaining 113 cases of TRAN-2 pertaining to Category 'B' as per Annexures indicated in column No. 3 and 4 of Table-5 of Minutes

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in absence of any evidence of technical/system errors in these cases, as was decided in similar cases in past eight IT-GRC meetings.

- iv. **To allow GSTN to withdraw 04 cases** (which were approved earlier in 2<sup>nd</sup> ITGRC) so as to re-examine in detail and present in next ITGRC with detailed comments.

**In respect of TRAN-3 cases:**

- i. **Not to allow** 18 cases of TRAN-3 listed as per Annexure-4 of the Minutes to avoid any unwanted tinkering with the GST portal.

**Recommendation for Agenda 2**

- i. **To Allow** reopening of portal for 08 cases of Subcategory A1 (Annexure 5 to the Minutes) as per Extended Scope of ITGRC decided in 32<sup>nd</sup> GST Council Meeting and subsequently the mechanism/process approved in 8<sup>th</sup> ITGRC.
- ii. **Not to allow** re-opening of portal for Category A2 (04 cases), A3 (01 case), A4 (05 case) (total 10 cases) as the criteria's laid down by 32<sup>nd</sup> GST Council Meeting were not fulfilled. However, jurisdictional Commissioners of States/CBIC could resubmit appropriate cases to ITGRC after correcting the deficiencies as discussed or take any other remedial steps as per law.
- iii. Cases of Category B2 (03 cases) and D (01 cases) (total 04 cases), having reported technical error or were not fulfilling parameters as recommended by 32<sup>nd</sup> GST Council were **recommended for forwarding to GSTN** for further analysis in terms of circular dated 03.04.2018 and placing before the next meeting of ITGRC, if found fit.
- iv. Cases at **Category B3 (04 cases)** had been presented in the 1<sup>st</sup> to 8<sup>th</sup> ITGRC and recommended by ITGRC, hence **no action required**.
- v. Cases at **Category C (02 cases)** had been presented in the 1<sup>st</sup> to 8<sup>th</sup> ITGRC but not recommended by ITGRC and now again forwarded by CGST/SGST tax authorities without recommendation, hence Committee **directed that State/CBIC tax authorities be asked to re-examine these cases, if**



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required, and forward, only if they fulfil, the parameters/conditions as decided in 32<sup>nd</sup> GST Council Meeting.

**Recommendation for Agenda 3:**

- **Allowed** reopening of portal for 04 cases of Agenda 3 also as per extended scope of ITGRC decided in 32<sup>nd</sup> GST Council Meeting and subsequently the mechanism/process approved in 8<sup>th</sup> ITGRC.

**Recommendation for Agenda 4:**

- Recommend that GST Policy Wing and GSTN may jointly prepare a suitable agenda and place before the ensuing GST Council to comply the order of Hon'ble Court.

**10<sup>th</sup> IT GRC Meeting – 22<sup>nd</sup> January 2020**

23.2. Tenth meeting of the IT grievance Redressal Committee (IT-GRC) was held on 22<sup>nd</sup> January 2020 to resolve grievance of the taxpayers arising out of technical and non-technical issues. (Minutes of the Meeting attached as **Annexure Y** of the agenda Item). There were total 2 Agenda items placed before the 9<sup>th</sup> ITGRC, as follows:

- In **Agenda 1**, Total 63 cases of **TRAN-1 (18 Cases) /TRAN-2 (45 Cases)** had been examined by GSTN and presented before the committee. Out of these, 50 cases were sent by Nodal officers and 13 were court cases.
- In **Agenda 2**, In pursuance of decision in 32<sup>nd</sup> GST Council Meeting, regarding extended scope of ITGRC, GST Council Secretariat had received another **04 cases** in response to extended scope of ITGRC and analysis of these cases was also presented before the committee.

23.3. After detailed discussion, the 10<sup>th</sup> ITGRC decided and recommended as under: -

**Recommendation for Agenda 1; Pertaining to technical glitches in filing TRAN-1 & TRAN-2 cases.**

**In respect of TRAN-1 (18 Cases); the ITGRC recommended**

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- i. **To allow 08 cases** of TRAN-1 pertaining to Subcategories A1, A2 and A4 of technical glitch as per Annexures indicated in column No. 3 and 4 of Table 2 of Minutes for filing of TRAN 1/TRAN 2 in accordance with the Law Committee recommendations regarding consequential benefits related to filing of TRAN 1 and TRAN 2.
- ii. **Not to allow remaining 10 cases** of TRAN-1 pertaining to Category 'B' (Subcategories B1, B2 and B5) as per Annexures indicated in column No. 3 and 4 of Table-3 of Minutes in absence of any evidence of technical/system errors in these cases, as was decided in similar cases in past nine IT-GRC meetings.

**In respect of TRAN-2 (45 Cases); the ITGRC recommended**

- i. **To allow 03 cases** of TRAN-2 pertaining to Subcategories A2 and A3 of technical glitch as per Annexures indicated in column No. 3 and 4 of Table 4 of Minutes for filing of TRAN 2 in accordance with the Law Committee recommendations regarding consequential benefits related to filing of TRAN 2.
- ii. **Not to allow remaining 42 cases** of TRAN-2 pertaining to Category 'B' (Subcategories B3, B5, B7, B9, B10) as per Annexures indicated in column No. 3 and 4 of Table-5 of Minutes in absence of any evidence of technical/system errors in these cases, as was decided in similar cases in past nine IT-GRC meetings.

**Recommendation for Agenda 2 (04 cases); ITGRC recommended**

- i. **To allow reopening of portal for 02 cases** of Subcategory A1 (Annexure 6) as per Extended Scope of ITGRC decided in 32<sup>nd</sup> GST Council Meeting and subsequently the mechanism/process approved in 8<sup>th</sup> ITGRC.
- ii. **To defer the 01 case of Subcategory A2** (Annexure 6) and it was recommended to send back to jurisdictional Commissionerate, CBIC and GSTN for resubmission with proper and full details along with the views of CBIC. It was also suggested by the committee that other cases of similar nature may also be



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sent back to jurisdictional Commissionerate/States for proper details and similar verifications as discussed at para 17.2.2 of Minutes.

- iii. **To defer the 01 case of Subcategory A4** (Annexure 6) and it was recommended to send it back to the jurisdictional Commissionerate/State for proper and full details of High Court order as required under the extended scope of ITGRC or take any other remedial steps as per law.

23.4. The decisions/recommendations as per attached Minutes of the 9<sup>th</sup> and 10<sup>th</sup> ITGRC were placed for information of the Council.

24. For **Agenda item 10**, the Council took note of the decisions/recommendations of the 9<sup>th</sup> and 10<sup>th</sup> Meeting of the IT Grievance Redressal Committee.

**Agenda Item 11: Any other Agenda item with the permission of the Chairperson**

25. Introducing this Agenda item, the Secretary stated that there are 12 Table Agendas to be taken up for discussion and asked the Principal Commissioner, GST Policy Wing to initiate the discussion.

25.1 The Table Agenda 11(i) with respect to the Lottery scheme for B2C supplies was discussed in the Officers' meeting on 13.03.2020. At the outset, PC, GSTPW stated that the objective was to expand the tax base so as to include the last mile value addition in GST, which was considerable. The Hon'ble Deputy Chief Minister of Delhi felt that the scope of the scheme should be broadened and should not be restricted only to digital payments. He also felt that it should be made State-specific. He said that their scheme of "Bill Banao Inaam Pao" of the Delhi government in the VAT era was hugely successful. It was, therefore, decided to defer this proposal for further detailed examination.

25.2. PC, GSTPW explained that amendments in the existing refund circular 18.11.2019 under Table Agenda item 11(ii) had been agreed to in the Officers' meeting which included the following:

- i. No refund of accumulated ITC on account of reduction in GST Rate
- ii. Refund of unutilized ITC to be restricted to the ITC available in GSTR-2A of the relevant period

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- iii. Provision for providing HSN/SAC Code in the statement of invoices to be furnished with the refund of unutilized ITC, wherever applicable
- iv. Clubbing of Financial Years for filing refund
- v. Manner of calculation of refund, in cases of refund of tax provided at S. No. (i) to (l) of para 3 of Circular No. 125/44/2019-GST dated 18.11.2019.

25.3 As regards Table Agenda item 11(iii), the PC, GSTPW informed the Council that he had given a detailed presentation in the Officers meeting held on 13<sup>th</sup> March 2020. He again explained proposal of Spike Rule for curbing fake invoicing and fraudulent passing of ITC to the Council. PC, GSTPW informed that it was proposed that physical verification of premises and Financial KYC of persons wanting to obtain registration may be made compulsory. The same may be required to be completed before obtaining the registration or within six months of obtaining the registration. In case a person opts to get his verification done within six months of obtaining the registration, he would get it in the same manner as currently provided but it is proposed to put restriction on the quantum of ITC that can be passed by such a registered person. He explained that the proposed restriction is to the extent of rupees 3 lakhs ITC per month. He further explained that proposal is to allow him to pass on the additional ITC, beyond the limit set, on deposit of 20% of additional amount proposed to be passed in cash ledger. Further, it is proposed that no refund would be allowed to taxpayers for the period during which the verification / KYC had not been completed. PC, GSTPW further explained that the taxpayer on his own may also opt for a full financial KYC and physical verification of premises and such restrictions and limitations shall cease to apply after positive verification. The Council agreed to the Spike Rule proposal in principle and directed that finer modalities may be finalized by the GST Policy Wing in consultation with the GSTN in due course of time.

25.4. Introducing the Table Agenda Item 11(iv) relating to the proposed amendments to the GST Act, PC GSTPW stated that it is proposed to amend Section 83 of CGST Act to remove the ambiguity arising out of interpretation of the phrase "during the pendency of proceedings" in Section 83. He informed that various High Courts have taken a view that in case of attachment of property pursuant to a search under section 67 of the Act, its present form section 83 empowers attachment only till the time search is completed and that such



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attachment cannot continue during the period of investigation. PC, GSTPW stated that it was proposed to amend Section 83 to provide for provisional attachment where proceedings under Chapter XII, Chapter XIV or Chapter XV had been initiated. He further explained that currently, this power was with the Commissioner but that several States had requested that since there is only one Commissioner, this power should be delegated to an officer authorized who is not below a certain rank. Hon'ble member from Bihar enquired about the change in the power of attachment in this amendment. PC, GSTPW replied that language correction in the provision had to be made since regarding the phrase "during the pendency of proceedings" in Section 83, the Courts had held that once the officer enters the premises, the search operation begins and the attachment can continue till the search operation is completed. This defeated the very purpose of attachment. The proposal was that attachment could continue till the time the demand got decided or one year, whichever was earlier. Hon'ble Member from Bihar stated that the delegation should not be done to lower levels beyond a point to prevent misuse of the power. The Chairperson mentioned that it could be one rank below the Commissioner i.e. Joint Commissioner. PC, GSTPW further explained that the current provisions allow the attachment of property of only the taxable person and that the proposed amendment is to allow attachment of property of the beneficiary (mastermind) also since in most of the cases of fake invoices specially, the registered taxable person hardly has any assets. The draft of the amendment will be finalized with the consultation of Union Law Ministry. Other proposed amendments as part of Table Agenda 11(iv) related to amendments in Section 129 & Section 130 and consequently in section 74 and section 107 of the CGST Act. PC, GSTPW explained that it was proposed to delink the transit check section 129 from other provisions as similar provisions existed in same form in VAT era also and further that these amendments were presented in the Officers Meeting and agreed to.

25.5. PC, GSTPW further presented the proposal contained in Table Agenda Item 11(v) to issue notification and circular clarifying issues related to corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2017 and who were undergoing the corporate insolvency resolution process, same was also discussed and agreed to in the Officers' meeting held on 13.03.2020. He explained that this would enable such Companies

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to comply with the provisions of GST laws during CIRP (Corporate Insolvency Resolution Process) period. It was agreed to.

25.6. The next Agenda item 11 (vi) brought up by PC, GSTPW was the proposal to issue removal of difficulty order for extending the time limit for revocation of cancellation of registration. He explained that the same was being done on the request of Government of Tamil Nadu and that also had been agreed to in the Officers' meeting on 13.3.2020, where it was agreed to that in all cases where cancellation orders were passed upto 14.3.2020, the aggrieved may be allowed to file application for revocation of cancellation till 30.6.2020.

25.7. Introducing Agenda item 11(vii), the Secretary stated that the GST Council in its 27<sup>th</sup> Meeting held on 4<sup>th</sup> May, 2018 decided that GSTN will be converted into a 100% Government-owned entity by transferring 51% equity shares held by the Non-Government institutions to the Centre and states equally. The Union Cabinet in its Meeting held on 26<sup>th</sup> September, 2018 approved the proposal to convert GSTN into a fully-owned Government Company with 50% equity of the Company to be held by the Central Government and the balance 50% to be held by States and Union Territories. Further, the GST Council in its 31st Meeting held on 22nd December, 2018 and the Department of Revenue (DOR), Government of India vide its Letter No S-31011/5/2018-ST-1-DoR dated 17<sup>th</sup> January, 2019 both had approved the revised shareholding pattern of GSTN as per (**Annexure-1** to the Agenda).

25.7.1. Pursuant to Share Transfer Notices issued by the Empowered Committee & Non-Government Institutions, the respective Transferees (Centre and States) were required to acknowledge the receipt of the above Share Transfer Notice and communicate their acceptance through Purchase Notice to the respective Transferor(s) within 30 days from the receipt of Share Transfer Notice. Post acceptance of the offer to purchase the share, Centre, State Governments & Union Territories Government were required to pay share purchase consideration to them accordingly. The Status was as follows:

- a. The State Governments of Tamil Nadu, Sikkim and Chhattisgarh have not yet communicated their acceptance till date and thereafter need to make the payment for share transfer in their favour as well.



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- b. The following Governments have accepted the proposal; however, the payment was still pending from them:

S No.	Governments	S No.	Governments
1	Government of India	10	Government of Uttarakhand
2	Government of Gujarat	11	Government of Assam
3	Government of Tamil Nadu	12	Government of Kerala
4	Government of Rajasthan	13	Government of Jharkhand
5	Government of Sikkim	14	Government of Uttar Pradesh
6	Government of Andhra Pradesh	15	Government of Chhattisgarh
7	Government of Bihar	16	Government of Arunachal Pradesh
8	Government of Nagaland	17	Government of Telangana
9	Government of Mizoram		

25.7.2 Accordingly, it was proposed that:

- a. State Governments of Tamil Nadu, Sikkim and Chhattisgarh may accept the above offer; and

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- b. Central Government and 16 other State Governments as listed above may be requested to make payment of their respective share purchase consideration and execute necessary documentations including Shareholders' Agreement and send the same to GSTN in order to expedite the matter of conversion of GSTN.

25.8. Next, Table Agenda No.11 (viii) was taken up for discussion by PC, GSTPW. It was explained that the proposal was for amendment in the CGST Act so as to explicitly include the transactions and activities involving goods and services or both, by, to its members, for cash, deferred payment or other valuable consideration along with an explanation stating that for the purpose of this section, an association or a body of persons, whether incorporated or not as taxable supply w.e.f 01.07.2017, It is also proposed that such an association or a body of persons, whether incorporated or not and member thereof shall be treated as distinct persons under section 7(1) of the CGST Act. Consequently, para 7 of Schedule II of the CGST Act is proposed to be deleted. It was informed that this had become necessary to make this retrospective amendment in view of pronouncement in this regard by the Hon'ble Supreme Court in a case involving levy of service tax on supplies of taxable services by the Clubs to its Members. PC, GSTPW informed that this had also been agreed to in the Officers' Committee meeting held on 13.03.2020.

25.9. The next Agenda item taken up was Table Agenda 11 (ix). PC GSTPW explained that the same was for complying with the directions of the order of Hon'ble High Court of Rajasthan in the matter of Rajasthan Tax Consultants Association vs UoI and Ors. (D.B. Civil Writ No.15239/2017). The matter was placed before the GST Council for deliberation and decision. The Council agreed that under GST law there was no provision for waiver of interest for delayed filing of returns.

25.10. PC, GSTPW took up the next Table Agenda item 11(x) for refund of ITC of the tax paid on capital goods, in cash, for registered taxpayers with annual aggregate turnover upto Rs.30 crores. He explained that this proposal has been brought up with a view to improve India's ranking in 'Paying Taxes' category of World Bank's 'Ease of Doing Business' index where in India has been scoring 'NIL' in absence of any provision to allow cash refund of credit taken on Capital Goods. Council took note of the fact that the proposal to



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allow cash refund of credit taken on Capital Goods to case study company having Rs. 30 Cr. Turnover would entail huge revenue outgo of Rs. 15000 Cr. at minimum for getting a jump of 7 ranks. The members opined that at the current stage where there is a shortfall even for paying agreed compensation to the States, such a proposal cannot be agreed to.

25.11 Introducing the Table Agenda 11(xi), the Secretary stated that he agreed with the idea floated by Shri Nandan Nilekani that there was a need to do incremental changes rather than a big-bang shift to 'New Return system' to allow time to trade of adjusting to the change. He also stated that the filing process had stabilized, trade was already used to the present system of filing of GSTR-3B and GSTR-1 and also compliance was improving. With this background, he invited Shri Manish Sinha, Joint Secretary (TRU-II) to make a short presentation before the Council for improvement and simplification of existing returns for transition to the new return model as well as covering the issue of time bound implementation of long pending CRs arising out of changes in Law/ Rules through one-time special measure. The presentation made by JS (TRU-II) is at **Annexure-8**. He, stated that the purpose of incremental change was to ensure that the invoices declared in GSTR-1 got converted into liability and taxes got collected on the same. Another change required was that credit would become available only on the reported invoices i.e. invoices reported in GSTR-1. These incremental changes ensured that the present return design itself acquired the main attributes of the new design and came close to it. He also stated that one of the challenges faced by quarterly taxpayers (turnover less than Rs. 1.5 Cr) was their inability to upload details of invoices on which credit was to be passed to other monthly or quarterly taxpayers. Further, he supported the implementation of ideas such as spike rule, Aadhar linking of registration to control the menace of dummy dealers and credit on fake invoices etc. Accordingly, he placed the following points before the Council for discussion and approval:

- a. A process would be designed where liability entered in FORM GSTR-1 would be auto-populated in FORM GSTR-3B for both monthly and quarterly taxpayers. It would be auto-populated for monthly taxpayers in the first phase and thereafter for quarterly filers. In the initial phase, such liability would be auto populated and would be kept editable. Further, gaps between liability of GSTR-1(which was auto-

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populated in GSTR-3B) and liability furnished in FORM GSTR-3B would be communicated to tax administrations through MIS reports. The field would be configurable having facility for editing the auto-populated liability such that going forward in time, downward revision could be reduced in stages.

- b. In all cases, credit would be made available to the taxpayers only for those invoices which had been uploaded by their suppliers in their GSTR-1. As the first step for achieving this, date of filing for GSTR-1 would be made available in GSTR-2A immediately.
- c. As proposed by Mr. Nandan Nilekani in his presentation, credit in GSTR-2A shall be auto-populated in GSTR-3B. As GSTR-2A was a dynamic document which consisted of all the details of all the invoices (without a time limit), a new sub-statement (GSTR-2B) would be generated which would consist of all the invoices for which credit would be available in the current month, as on due date. Once the system stabilized, credit enhancement would be restricted to 10% of the credit populated. This limit would be configurable and might be further reduced from 10%, as desired.
- d. It would be desirable that the ITC credit on import of goods would also be auto-populated in GSTR-3B. Initially, all auto-populated data might be kept editable.
- e. Monthly filers shall continue to file their GSTR-1 monthly.
- f. Quarterly filers would have an option to file their GSTR-1 monthly also and an IT facility would be created for the same. This effectively would give them a facility for continuous upload of documents in month one and two of any quarter for passing on the ITC credit to monthly buyers. The third month return of a quarterly filer, which was essentially a quarterly return, shall continue to be mandatory and shall not contain details of invoices declared in month one and two. No late fee should be levied for the first two months of a quarter for quarterly filers.
- g. The limit for opting in for quarterly filing would be maintained at aggregate turnover of Rs. 1.5 Crore.
- h. Filing of FORM GSTR-1 was proposed to be staggered:



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- i. FORM GSTR-1 for taxpayers with turnover more than Rs. 1.5 Crore upto 10<sup>th</sup> of subsequent month
  - ii. FORM GSTR-1 for taxpayers with turnover less than Rs. 1.5 Crore upto 13<sup>th</sup> of subsequent month
- i. The primary purpose of FORM GSTR-1 was to upload B2B data, providing details of exports and amendment of original invoices declared earlier. Currently, the law provided that FORM GSTR-1 was to be filed by all taxpayers. It was observed that approximately 40% of the taxpayers filing GSTR-1 were either 'Nil' filers or making pure B2C supplies. These taxpayers who otherwise did not serve the core purpose of GSTR-1 had to mandatorily log on to the GST portal and file a nil GSTR-1 return. This was unnecessary compliance for small taxpayers and led to clogging / hanging of the GST portal. Therefore, these two categories might be exempted from GSTR-1 filing.
- j. Essentially, the liability of filing FORM GSTR-1 might be restricted to only those taxpayers who were performing any of the actions:
- a. Making B2B supplies
  - b. Making exports
  - c. Making amendments
- k. A separate functionality was required to be developed to give taxpayers opportunity to file a 'Nil' GSTR-1 at the time of filing of their GSTR-3B. Thus, they would be freed from the compliance of filing of GSTR 1.
- l. Nil filing of FORM GSTR-3B and FORM GSTR-1 would be through SMS. Initially, this facility would be available for GSTR-3B.
- m. 'Spike rule' and Aadhar validation, initially for the new taxpayers and then for the existing taxpayers, were essentially elements for plugging loophole in the system leading to loss of revenue and therefore were part of the transition strategy which might be implemented expeditiously. Implementation of 'spike rule' might need classification of registration in classes such as new and existing taxpayers and different spike rules for them might be prescribed for different class of taxpayers.

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25.11.1 The GST Council thereafter discussed the details of the incremental approach and agreed to it in view of express benefits rather than adopting a big-bang shift to 'New Return system' as the trade was already used to the present system of filing of GSTR-3B and GSTR-1. The Council also deliberated and further approved that Shri Nandan Nilekani would attend the next 3 meetings of the GST Council and update the council of the status of implementation as well as assist the Council in taking appropriate decisions on technology related issues. The Council also agreed to the proposed deployment of additional manpower (60 in number) on T & M basis, and that expeditious approvals needed to be given, both on procurement of additional hardware and hiring of manpower so that the return filing experience of the taxpayers and removal of technical glitches could be carried out urgently.

25.12. The next Table Agenda item 11 (xii) was placement of *ad hoc* exemption order issued in respect of exemption from IGST for import and re-export of guns/ equipment from Sri Lanka under Section 25 (2) of Customs Act, 1962 before the GST Council was for information. The Council took note of the same.

26. For **Agenda item 11**, the Council: -

- i. Deferred the incentive scheme for consumers to increase invoice compliance in B to C supply for more detailed examination.
- ii. Approved issuance of Circular clarifying certain refund related issues.
- iii. Approved physical verification and KYC of persons willing to take registration within first six months and corresponding spike rule.
- iv. Approved proposed amendments in the CGST Act, 2017, subject to vetting by the Union Law Ministry.
- v. Approved the proposal to issue notification and circular clarifying issues related to corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016.



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- vi. Approved the proposal to issue Removal of Difficulty Order, as a one-time measure, for extending the time limit for revocation of cancellation of registration.
- vii. Took note of the proposal detailed in para 25.7.2 above and directed the GST Council Secretariat to issue necessary advisory/direction to all the concerned in order to complete the transaction at the earliest.
- viii. Approved amendment in the CGST Act, subject to vetting by the Union Law Ministry, so as to include the supply of goods and services or both, between an association or a body of persons, whether incorporated or not, to its members, for cash, deferred payment or other valuable consideration under the ambit of GST.
- ix. Took note of the order of Hon'ble High Court of Rajasthan in the matter of Rajasthan Tax Consultants Association vs UoI and Ors. (D.B. Civil Writ No.15239/2017
- x. Did not approve the proposal for refund of ITC of the tax paid on capital goods, in cash, for registered taxpayers with annual aggregate turnover upto Rs.30 crores.
- xi. Approved the following :
  - a. To adopt and implement the incremental approach of linking the present system of filing of GSTR-3B and GSTR-1, as presented in the Agenda Item 2 and Table Agenda 11(xi) rather than a big-bang shift to 'New Return system'.
  - b. To support the timely implementation of various initiatives, the Council approved the proposed deployment of additional manpower (60 in number) on T & M basis and assured that both on procurement of additional hardware and hiring of manpower, expeditious approvals would be given however the return filing experience of the taxpayers and removal of technical glitches should be carried out urgently.
  - c. To implement these initiatives by the 31st of July, 2020.

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- xii. Took note of *ad hoc* exemption order issued in respect of exemption from IGST for import and re-export of guns/ equipment from Sri Lanka under Section 25 (2) of Customs Act, 1962

**Agenda Item 12: Date of the next Meeting of the GST Council**

27. This agenda item was not taken up for discussion.
28. The Meeting ended with a vote of thanks to the Chair.



(Nirmala Sitharaman)  
Chairperson, GST Council



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Annexure 1

**List of Hon'ble Ministers who have attended the 39<sup>th</sup> GST Council Meeting on 14<sup>th</sup> March 2020**

Sl No	State/Centre	Name of Hon'ble Minister	Charge
1	Govt of India	Ms. Nirmala Sitharaman	Union Finance Minister
2	Govt of India	Shri Anurag Singh Thakur	Minister of State (Finance)
3	Andhra Pradesh	Shri Buggana Rajendranath	Minister for Finance, Planning and Legislative Affairs
4	Arunachal Pradesh	Shri Chowna Mein	Deputy Chief Minister
5	Assam	Dr. Himanta Biswa Sarma	Finance Minister
6	Bihar	Shri Sushil Kumar Modi	Deputy Chief Minister
7	Chattisgarh	Shri T.S. Singh Deo	Minister, Commercial Tax
8	Delhi	Shri Manish Sisodia	Deputy Chief Minister
9	Goa	Shri Mauvin Godinho	Minister for Transport and Panchayat Raj
10	Gujarat	Shri Nitinbhai Patel	Deputy Chief Minister
11	Haryana	Shri Dushyant Chautala	Deputy Chief Minister
12	Jammu and Kashmir	Shri K. K. Sharma	Advisor to Lt. Governor
13	Jharkhand	Shri Rameshwar Oraon	Minister - Planning cum Finance, Commercial Taxes, Food, Public Distribution & Consumer Affairs.
14	Kerala	Dr. T. M. Thomas Isaac	Minister for Finance & Coir
15	Manipur	Shri V Hangkhanlian	Minister for Agriculture, Veterinary & Animal Husbandry
16	Odisha	Shri Niranjana Pujari	Finance & Excise Minister
17	Puducherry	Shri V. Narayansamy	Chief Minister
18	Punjab	Shri Manpreet Singh Badal	Finance Minister
19	Tamil Nadu	Shri D. Jayakumar	Minister for Fisheries and Personnel & Administrative Reforms
20	Uttarakhand	Shri Satpal Ji Maharaj	Tourism Minister
21	Uttar Pradesh	Shri Suresh Kumar Khanna	Minister Finance, Parliamentary Affairs, Medical Education

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Annexure 2

List of officials who have attended the 39<sup>th</sup> GST Council meeting on 14<sup>th</sup> March 2020

Sl No	State/Centre	Name of the Officer	Charge
1	Govt. of India	Dr. A B Pandey	Revenue Secretary
2	Govt. of India	Dr Krishnamurthy Subramanian	Chief Economic Advisor
3	Govt. of India	Shri M. Ajit Kumar	Chairman, CBIC
4	Govt. of India	Shri John Joseph	Member, CBIC
5	Govt. of India	Shri A. K. Pandey	Member (GST), CBIC
6	Govt. of India	Shri Sandeep M Bhatnagar	Member(Inv), CBIC
7	Govt of India	Dr Kavitha Gotru	CCA
8	Govt. of India	Shri Anil Kumar Jha	Additional Secretary, DoR
9	Govt of India	Shri Ritvik Pandey	Joint Secretary, DoR
10	Govt. of India	Shri G.D. Lohani	Joint Secretary, TRU I, DoR
11	Govt. of India	Shri Manish Kumar Sinha	Joint Secretary, TRU II, DoR
12	Govt. of India	Shri Suresh Kishnani	DG, GST
13	Govt. of India	Shri Yogendra Garg	Pr. Commissioner (GST), CBIC
14	Govt. of India	Shri Sanjay Mangal	Commissioner (GST), CBIC
15	Govt of India	Shri Gaurav Singh	Deputy Secretary (TRU)
16	Govt of India	Shri Rahil Gupta	Under Secretary (TRU)
17	Govt of India	Shri Nikhil Goyal	Dy. Commissioner (TRU)
18	Govt of India	Shri S. Wasif Haider	OSD, TRU
19	Govt of India	Shri Susanta Mishra	TO, TRU
20	Govt. of India	Shri Pramod Kumar	Director, TRU-II, DoR
21	Govt of India	Shri Harish Y. N.	OSD, TRU-II

  
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22	Govt. of India	Shri N Gandhi Kumar	Director, DoR
23	Govt. of India	Shri Praveen Bali	Technical Officer (DoR)
24	Govt. of India	Shri Amaresh Kumar	Addl. Comm., GST Policy Wing
25	Govt. of India	Shri Nimba Ram	Joint Comm., GST Policy Wing
26	Govt of India	Ms Nisha Gupta	Joint Commissioner, GST Policy Wing
27	Govt of India	Shri Vikash Kumar	DC, GST Policy Wing
28	Govt of India	Shri Kumar Asim Anand	DC, GST Policy Wing
29	Govt of India	Ms Deepika Singh	DC, GST Policy Wing
30	Govt of India	Aman Mittal	AC, GST Policy Wing
31	Govt. of India	Shri Rajesh Malhotra	DG (M&C)
32	Govt of India	Shri Keshav Choudhary	Deputy Commissioner, TPRU
33	Govt. of India	Shri Vipul Bansal	PS to Union Finance Minister
34	Govt. of India	Shri Astik Sinha	PS to MoS (Finance)
35	Govt. of India	Shri Debashis Chakraborty	OSD to Finance Secretary
36	Govt. of India	Shri Rahul Raja	OSD to Chairman, CBIC
37	Govt. of India	Shri A. K. Goel	Secretary to NAA
38	Govt. of India	Shri Dev Kr. Rajwani	OSD to Chairman, NAA
39	Govt. of India	Shri Aatman Shah	PA to MoS (F)
40	GST Council	Shri Amitabh Kumar	Joint Secretary
41	GST Council	Shri S.K. Rahman	Joint Secretary
42	GST Council	Shri Dheeraj Rastogi	Joint Secretary
43	GST Council	Shri Rajesh Agarwal	Director
44	GST Council	Shri Jagmohan	Director
45	GST Council	Shri Nitin Deepak Agarwal	Under Secretary
46	GST Council	Shri Mahesh Singarapu	Under Secretary

*MS*

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47	GST Council	Shri Krishna Koundinya	Under Secretary
48	GST Council	Shri Sarib Sahran	Superintendent
49	GST Council	Shri Adesh Nayak	Superintendent
50	GST Council	Shri Krishan Kumar Verma	Superintendent
51	GST Council	Ms Chanchal Soni	Superintendent
52	GST Council	Shri Maneesh Nemiwal	Superintendent
53	GST Council	Shri Om Veer Singh	Superintendent
54	GST Council	Shri Sumit Kumar	Superintendent
55	GST Council	Shri Vijay Kumar	Superintendent
56	GST Council	Shri Vipin Sethi	Superintendent
57	GST Council	Shri Sanjay Bansal	Superintendent
58	GST Council	Shri Abhishek Kumar	Superintendent
59	GST Council	Shri Rakesh Joshi	Inspector
60	GST Council	Shri Pankaj Bharadwaj	Inspector
61	GST Council	Shri Vijay Malik	Inspector
62	GST Council	Shri O P Singh	Inspector
63	GSTN	Shri Prakash Kumar	CEO
64	GSTN	Ms Kajal Singh	EVP, Services
65	GSTN	Shri Nitin Mishra	EVP, Tech
66	GSTN	Shri Vashistha Chaudhary	SVP (Services)
67	GSTN	Shri Jagmal Singh	VP, Services
68	GSTN	Shri Sarthak Saxena	OSD to CEO
69	INFOSYS	Shri Nandan Nilenkani	Non Executive Chairman, Infosys
70	INFOSYS	Shri C. N. Raghupathi	Head, India Business, Infosys
71	INFOSYS	Shri Renga V. R.	Member - Engagement Management, Independent Validation Services Solutions Unit



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72	INFOSYS	Shri Venkatanarayan	VP
73	INFOSYS	Shri Indrasis Dasgupta	Program Manager
74	Govt. of India	Shri Ashutosh Baranwal	Principal Commissioner, Ludhiana Zone
75	Govt of India	Shri Ajay Saxena	Pr. Commissioner, Bengaluru Zone
76	Govt of India	Shri B. B. Mohapatra	Pr. Commissioner, Raipur, Bhopal Zone
77	Govt of India	Shri Mahendra Ranga	Pr. Commissioner, Lucknow Zone
78	Govt. of India	Shri Atul Gupta	Commissioner, Audit II, Pune
79	Govt. of India	Shri V. K. Gahlout	Commissioner, CGST, Agartala, Guwahati Zone
80	Govt. of India	Shri Manas Ranjan Mohanty	Commissioner, CGST, Mumbai
81	Govt. of India	Shri Anuj Gogia	Commissioner, CGST, Meerut Zone
82	Govt of India	Shri C. P. Goyal	Commissioner, Alwar, Jaipur Zone
83	Govt. of India	Shri M. R. R. Reddy	Commissioner, CGST, Secunderabad
84	Govt. of India	Shri M Srihari Rao	Commissioner, Vizag Zone
85	Govt of India	Shri V. M. Jain	Commissioner, Haryana, Panchkula Zone
86	Govt. of India	Dr. Vikash Shukla	Media Advisor to RS
87	Govt. of India	Shri Kush Mohan Nahar	DD (PIB)
88	Andhra Pradesh	Dr D.Samba Siva Rao	Special Chief Secretary, Revenue
89	Andhra Pradesh	Shri Peeyush Kumar	Chief Commissioner (State Tax) (GST)
90	Andhra Pradesh	Shri K. Ravishankar	Commissioner, State Tax (GST)
91	Arunachal Pradesh	Shri Kanki Darang	Commissioner of Taxes
92	Assam	Shri Anurag Goel	Commissioner, State Tax

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93	Assam	Shri Subrata Gogoi	Superintendent of State Tax
94	Bihar	Shri Arun Kumar Mishra	Additional Secretary, CTD
95	Chandigarh	Shri Ramesh Kumar Chaudhary	Asst. ETC
96	Chhattisgarh	Shri Ramesh Kumar Sharma	Commissioner of State Tax
97	Chhattisgarh	Shri K. R. Jharia	Additional Commissioner, State Tax
98	Chhattisgarh	Shri Anand Sagar Singh	Special Assistant to Minister
99	Delhi	Shri Rajeev Verma	Principal Secretary, Finance
100	Delhi	Shri Vivek Pandey	Commissioner, State Tax
101	Delhi	Shri C. Arvind	Secretary to Dy CM
102	Delhi	Ms Shilpa Shinde	Special Commissioner
103	Goa	Shri Hemant Kumar	Commissioner, ST
104	Goa	Shri Ashok Rane	Additional Commissioner, ST
105	Gujarat	Shri Pankaj Joshi	Additional Chief Secretary
106	Gujarat	Shri J. P. Gupta	Chief Commissioner, State Tax
107	Gujarat	Shri Sanjay M. Saxena	Joint Commissioner, State Tax
108	Haryana	Shri Anurag Rastogi	Principal Secretary, Excise & Taxation
109	Haryana	Shri Shekhar Vidyarthi	Commissioner, E & T Dept
110	Haryana	Shri Vijay Kumar Singh	Addl. Excise & Taxation Commissioner
111	Himachal Pradesh	Dr. Ajay Sharma	Commissioner, State Tax and Excise
112	Himachal Pradesh	Shri R. D. Janartha	Addl. Commissioner
113	Himachal Pradesh	Shri Ujwal Singh Rana	Joint Commissioner
114	Jammu & Kashmir	Shri P K Bhatt	Commissioner, CT

  
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115	Jharkhand	Shri Santosh Kumar Vatsa	Special Secretary, CTD
116	Jharkhand	Shri Brajesh Kumar	State Tax officer
117	Karnataka	Shri Srikar M.S	Commissioner, CT
118	Kerala	Shri Rajesh Kumar Singh	Additional Chief Secretary
119	Kerala	Shri Anand Singh	Commissioner, State Tax
120	Kerala	Shri Mansur M. I.	Deputy Commissioner, State Tax
121	Kerala	Shri Shaikh Hassan	ALO
122	Kerala	Ms. Sini K. Thomas	Information Officer
123	Madhya Pradesh	Shri Raghwendra Kumar Singh	CCT
124	Madhya Pradesh	Shri Sudip Gupta	Jt. CCT
125	Maharashtra	Shri Sanjeev Kumar	Commissioner, State Taxes
126	Maharashtra	Shri Dhananjay Akhade	Joint Commissioner, State Taxes
127	Manipur	Shri Charchit Gaur	Commissioner of Taxes
128	Manipur	Shri Yumnam Indrakumar Singh	Asst. Commissioner of Taxes
129	Mizoram	Shri Vanlal Chhuanga	Commissioner & Secretary Taxation
130	Mizoram	Shri R. Zosiamliana	Addl. Commissioner, State Taxes
131	Nagaland	Shri Kesonyu Yhome	Commissioner of Taxes
132	Odisha	Shri Sushil Kumar Lohani	Commissioner, CT & GST
133	Odisha	Shri Ananad Satapathy	Special Commissioner of CT & GST
134	Odisha	Shri N. K. Rautray	Special Secretary, Finance
135	Puducherry	Shri L. Kumar	Commissioner (ST)
136	Puducherry	Shri K. Sridhar	Deputy Commissioner (ST)
137	Punjab	Shri V. K. Garg	Financial Advisor to Chief Minister

*(Signature)*

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138	Punjab	Shri Vivek Pratap Singh	Commissioner, State Tax
139	Punjab	Shri Ravneet Khurana	Additional Commissioner, State Tax
140	Rajasthan	Dr. Preetam B Yashvant	Chief Commissioner, State Tax
141	Rajasthan	Shri Ketan Sharma	Special Commissioner (GST)
142	Sikkim	Shri J D Bhutia	Commissioner, CT
143	Tamil Nadu	Shri M. A. Siddique	Principal Secretary/Commissioner of Commercial Taxes
144	Tamil Nadu	Shri K. Gnanasekaran	Addl. Commissioner (Policy & Public Relations)
145	Telangana	Ms Neetu Prasad	Commissioner, CT
146	Telangana	Shri N. Sai Kishore	Joint Commissioner
147	Tripura	Shri Badal Baidya	Assistant Commissioner, State Tax
148	Tripura	Shri Ashin Barman	Superintendent of Taxes
149	Uttarakhand	Shri Anil Singh	Additional Commissioner, State Tax
150	Uttarakhand	Shri S. S. Tiruwa	Deputy Commissioner
151	Uttarakhand	Shri Abhishek Sharma	OSD to Minister
152	Uttar Pradesh	Shri Alok Sinha	Additional Chief Secretary, CTD
153	Uttar Pradesh	Shri Sanjay Kumar Pathak	Joint Commissioner, CTD
154	Uttar Pradesh	Shri Amit Pandey	PS to Minister
155	West Bengal	Shri Devi Prasad Karanam	Commissioner, CT




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Annexure 3

**NAVIGATE YOUR NEXT**



**GST System Updates**  
- Presentation to GST Council  
- 14<sup>th</sup> March, 2020

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**Agenda**

- Recent incidents and remediation plan
- Roadmap for Returns Filing
- Additional initiatives to prevent revenue leaks

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## Recent incidents and remediation plan

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### Summary of Issues

- Taxpayers have been raising issues on the performance of GST System – especially during peak filing days. Key issues include
  - Service disruptions and degradation during peak periods
  - Non-delivery of OTP over emails (Aug-2019 to Jan-2020)
  - Circuit Breaker – “Too many users are filing” message
  - Request is still “In-progress” message
- Major issue was observed on 20<sup>th</sup> Jan-2020 – due to multiple factors

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4

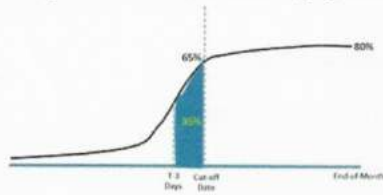


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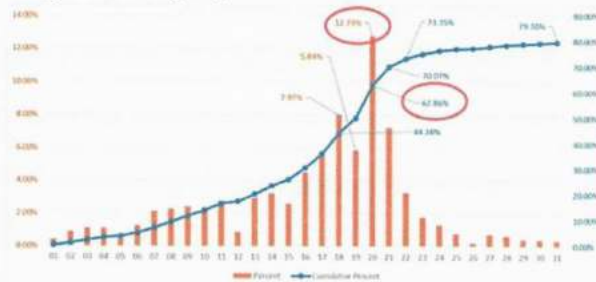


### Factors contributing to issues on 20<sup>th</sup> Jan-2020

Typical trend is to reach 65% compliance by due-date. But due dates for GSTR-9 and amnesty scheme for GSTR-1 lead to skewing of load on 20<sup>th</sup> Jan for GSTR-3B filing



- Typically, compliance reaches about 65% by due date
- Filing continues and peaks at 80% by the end of the month
- 35% of the filing happens in the last 3-days
- Filing continues in the following months to reach 90%. 10% of the tax payers never file



Filing Trend in Jan -2020

- Concurrency on 20<sup>th</sup> Jan 2020 crossed 1.5 lakhs (30% more than normal)
- Higher concurrency meant to slower processing. Triggered a negative spiral

### Actions taken based Jan'20 GSTR-3B Peak Filing and System Review

Remedial measures implemented and the staggered filing contributed to better filing experience in Feb'2020. However, capacity augmentation still pending

- **Email OTP** – Root cause traced to Security policies which were corrected
- **Code Cleanup** – Redundant code removed. Logic optimized
- **Configuration** – Tuned & corrected for superior performance



- **Capacity Augmentation** – System operating at 2.5 times designed capacity. Plan to upgrade infrastructure
- **Delayed** - Augmentation of the network and security devices in-progress. Supply of hardware delayed due to COVID-19

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CHAIRMAN'S INITIALS

In summary...

1. Majority of the system issues impacting peak day performance have been addressed
2. But concurrency that the system can handle remains at 1.25 Lakhs
3. Plan to augment capacity to 3 Lakhs – but delayed due to external factors
4. Continue with the staggered filing model

7



Roadmap for Returns Filing

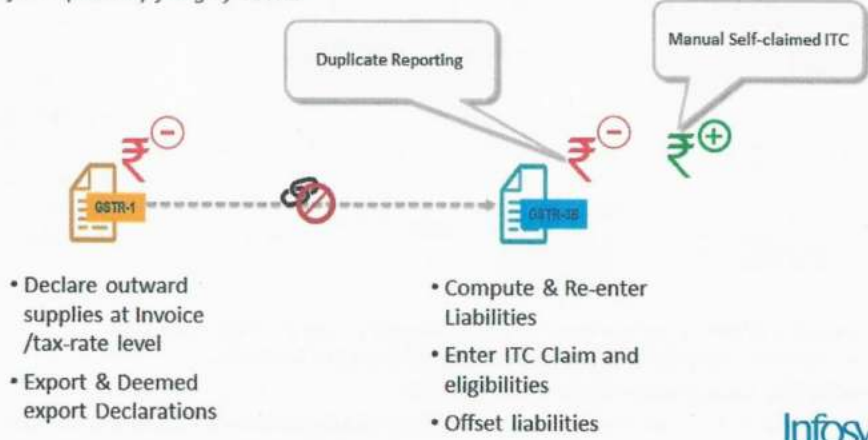


  
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Currently GST Compliance is implemented on a 2 returns model...

Most Taxpayers file two returns each month – GSTR1 and GSTR3B. Some taxpayers (turnover < 1.5 Cr) have opted for a quarterly filing of GSTR1



9

The model has allowed several modes of fraud resulting revenue loss

While honest taxpayer see duplicate submission as a burden, fraudulent taxpayers are apparently taking advantage of the gap to perpetuate multiple modes of fraud

Under Declaration of Liabilities	Excess ITC Claim	Fake Registrations with intent to fraud	Fake Invoice Scams
₹ 31,247.00Cr* (97,853 cases)	₹ 38,771.00Cr* (42,618 cases)	Significant - but hard to quantify	

10

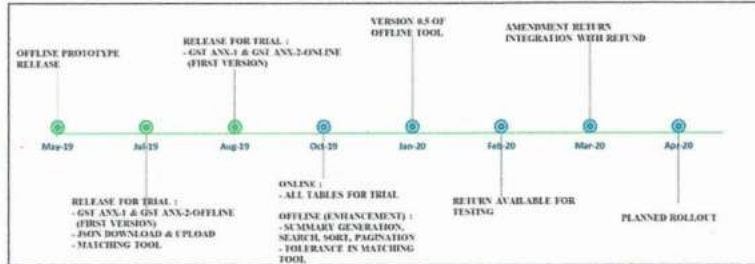
\*. Calculated from Q4'19 to Q3'20



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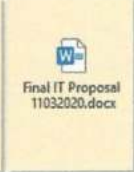
**New Returns which addresses these issues is progressing as planned**

*Preparation for New Returns has been progressing as planned including beta software, feedback and awareness sessions. However, level of participation has been low*



- Beta since May-19
- 900+ feedback and several defects reported & fixed
- 72 sessions across 33 cities
- 9 Webinars in multiple languages

- However, the level of participation in Beta program has been low (~ 1.5%). Under such circumstances, an alternate **incremental rollout** model could be considered.
- Additionally, capacity augmentation is on critical path
- The alternate model was discussed & agreed with **DoR officials, GSTN and Infosys on 29.Feb.2020 and 07.Mar.2020**



**Changes are needed in compliance process – but implemented incrementally**

*Multiple changes are needed to reach the end-state where there is only one-return with statements only facilitating return generation and providing other benefits.*



*We need to reach the end-state in **small increments** with each stage delivering incremental benefits. Sufficient time should be allowed to enable the ecosystem to adjust and adapt.*



*OK*  
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**First stage, would be to link only liabilities starting with Monthly Filers**

GSTR1 could be repositioned as an **enabler for declaring liabilities** and not an additional burden. It's frequency should be left to taxpayer based on needs & intent.



- Auto-population of liabilities from GSTR-1 in GSTR-3B for Monthly Taxpayer
- Editable in GSTR3B to a threshold
- Dashboard to view the difference

- Optional for:**
- NIL Filers (~23%)
  - B2C (No ITC) (~12%)

- |                                      |  |
|--------------------------------------|--|
| <b>Quarterly for:</b>                | <b>Monthly For:</b>                        |
| • Don't want to pass ITC             | • B2B with intent to pass ITC              |
| • No intent to avail cash flow loans | • Intends to Avail Cash Flow Lending loans |
|                                      | • Exporters                                |

**Option for Quarterly filers also to file GSTR-1 Monthly**  
(to pass credit or avail cash flow loans)

13



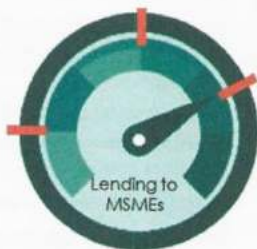
**GSTR1 as an enabler for lending**

GSTR1 could also be repositioned as an **enabler for lending**. Cash Flow Credit - Infuses Credit into the Economy and has potential to create jobs

**Rs 5.31 L Cr /month**  
For 68 Lakh MSMEs  
below Rs 5Cr turnover

**If each hires one employee, potential to create ~75 Lakh jobs!**

**Rs 1.52 L Cr /month**  
For 52 Lakh MSMEs  
below Rs 1Cr turnover



**Rs 19.21 L Cr /month**  
For 74 Lakh MSMEs  
below Rs 50Cr turnover

14

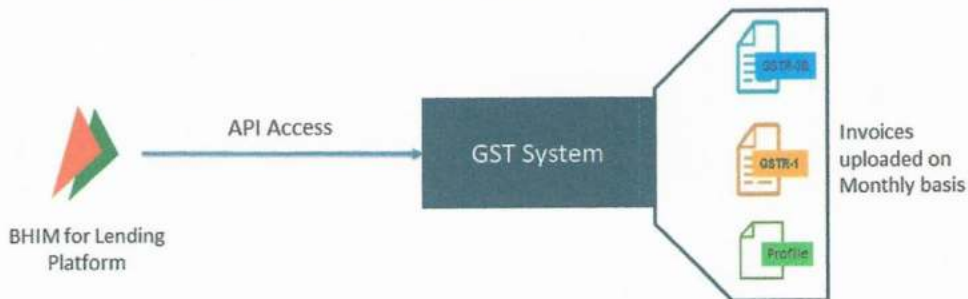


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### Enabling Lending based on GSTR1

*In order to enable lending based on GSTR1 invoices, the GST Platform will need to be integrated with the lending platform through APIs for consent based information sharing*



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### In the second stage, we limit the ITC to the extent of liability admitted by suppliers

*Limiting ITC to accrued value is crucial - but inherently disruptive. Should be preceded with efficient technology tools to enable reconciliation between Supplier & Buyers*



- Documents filed within the ITC cut-off date for the period shall be considered for auto-population of ITC
- Any document filed after the cut-off date for the period would be considered in future period
- A new statement GSTR-2B (in addition to 2A) shall be computed post the cut-off date for the period
- This shall be made available in GSTR-3B
- Offline **Matching tool** and Communication tool shall be made available to the taxpayer **3 months prior** to actual linking

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### Benefits to the proposed model to taxpayers

In addition to continuance of **familiar model** without any drastic changes, the proposed model delivers the following benefits to the taxpayers.



#### Convenient

- ✓ ~34% of taxpayer do not even need to file GSTR1
- ✓ Reconcile credit with Suppliers
- ✓ GSTR3B is fully auto-drafted



#### Flexible

- ✓ Taxpayer determines filing frequency
- ✓ Switch from Monthly to Quarterly at will



#### Accurate

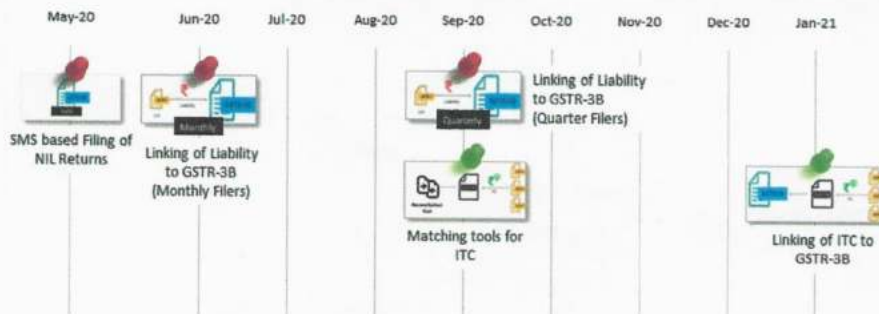
- ✓ Avoids calculation & transcription errors
- ✓ Transparent: Correct Return backed by invoice level details

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### Timelines for the incremental rollout could be as given below

At each stage, there should be effective Change management with impact analysis, communication, feedback and refinement of plan



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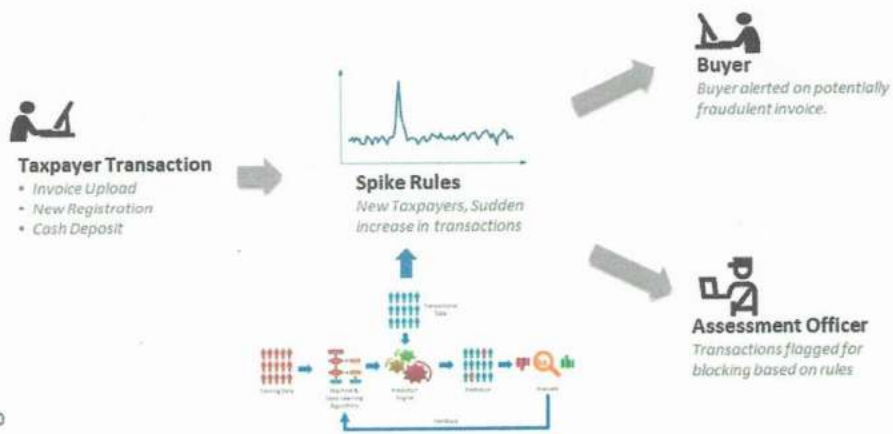
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## Additional initiatives to prevent revenue leaks

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### Some types of frauds cannot be eliminated by compliance alone

*Frauds like fake-invoice and disappearing dealers cannot be tackled through compliance alone. Need data-driven, rule based interventions to prevent flow of fraudulent ITC*



*DS*

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**Rules based blocking of ITC only alleviates the Fake ITC issue – does not eliminate**

*Eliminating requires more radical re-thinking of the compliance process*

- Possible loss of revenue if ITC derived from GSTR2A
  - Seller may not file return
  - Buyer may not have paid invoice (Fake Invoice)
  - Spike rules may reduce it, but are not a perfect solution

- Incentive for Fake Invoice will continue to exist as long as ITC is allowed to be claimed – (even if based on admitted liability)
- Menace can only be eliminated if ITC flow is linked to discharge of liability

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**GST Payment Gateway - Linking Tax collection to Invoice Payment**

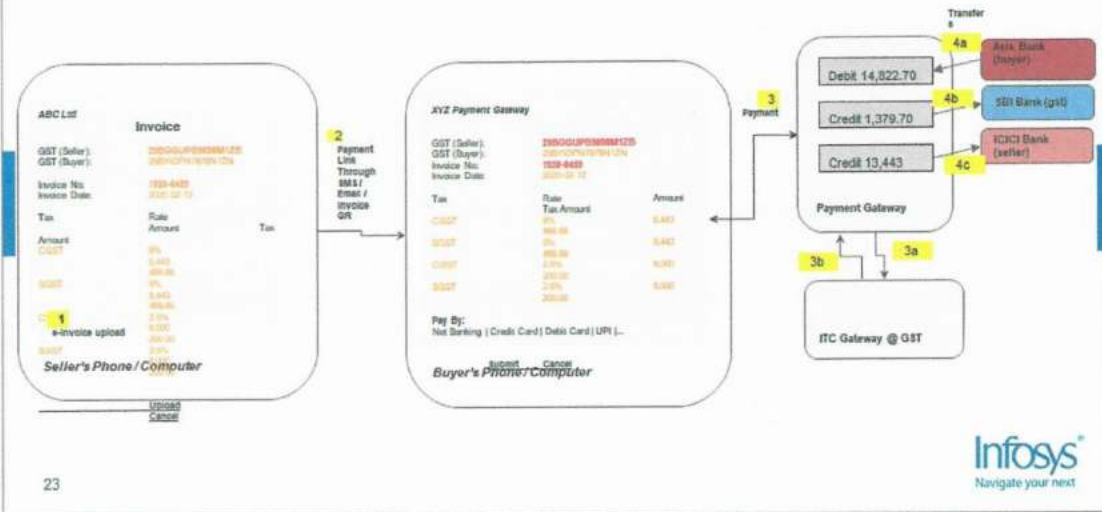
- What if ITC is generated through payment of tax by buyer ?
  - Tax collected as part of purchase transaction using a GST payment gateway
  - Three party transaction including buyer, seller and government
  - Government get tax in real time
- Buyers gets ITC for the tax they actually paid
  - Can be encashed immediately for sales completed through payment gateway
  - May be settled in GSTR3B
- No ITC for **fake** invoices since it is **not payment linked**
  - Incentive for “fake” invoices can be eliminated
- If all transactions through payment gateway then return auto generated

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GST Payment Gateway - Linking Tax collection to Invoice Payment



THANK YOU

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Annexure 4

# GST Revenue Position

39TH GST COUNCIL MEETING (14/03/2020)

## GST revenue during Dec '19 to Feb '20

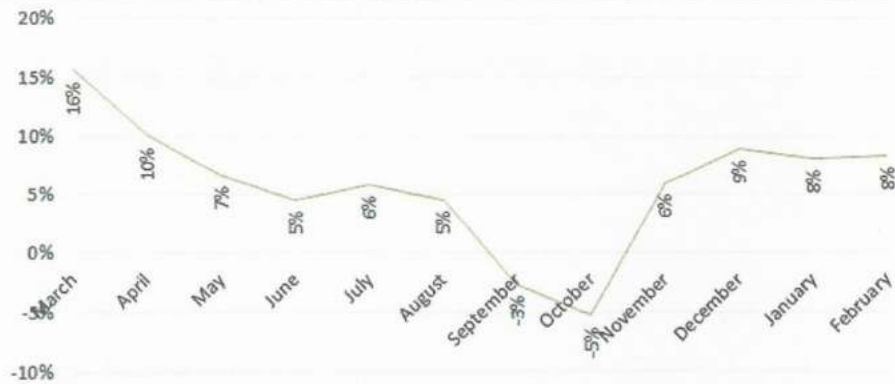
	Dec-19	Jan-20	Feb-20
CGST	19,962	20,944	20,569
SGST	26,792	28,224	27,348
IGST	48,099	53,013	48,503
Domestic	26,804	29,532	27,758
Imports	21,295	23,481	20,745
Comp Cess	8,331	8,637	8,947
Domestic	7,484	7,813	7,907
Imports	847	824	1,041
<b>Total</b>	<b>1,03,184</b>	<b>1,10,818</b>	<b>1,05,367</b>

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### Trends in gross GST Revenues (₹ crore)



### Growth in gross GST Revenues



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Revenue Gap during the period April-Feb (In Percentage)

State/UT	2018-19	2019-20
Arunachal Pradesh	-43	-31
Mizoram	-54	-66
Manipur	-30	-47
Nagaland	-16	-40
Sikkim	-10	-17
Telangana	1	12
Assam	-2	13
Andhra Pradesh	8	14
Uttar Pradesh	16	14
Tamil Nadu	7	15
Meghalaya	6	16
Maharashtra	7	18
West Bengal	10	18
Jharkhand	15	22
Rajasthan	10	23
Haryana	17	24
Tripura	19	24

Revenue Gap during the period April-Feb (In Percentage)

State/UT	2018-19	2019-20
Madhya Pradesh	16	25
Bihar	20	26
Gujarat	15	26
Kerala	27	29
Karnataka	21	29
Odisha	16	29
Delhi	23	30
Chhattisgarh	23	32
Goa	26	36
Uttarakhand	35	40
Himachal Pradesh	29	41
Jammu and Kashmir	37	41
Punjab	38	46
Puducherry	44	58
Average	14	23

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Revenue Gap during the period April-Feb



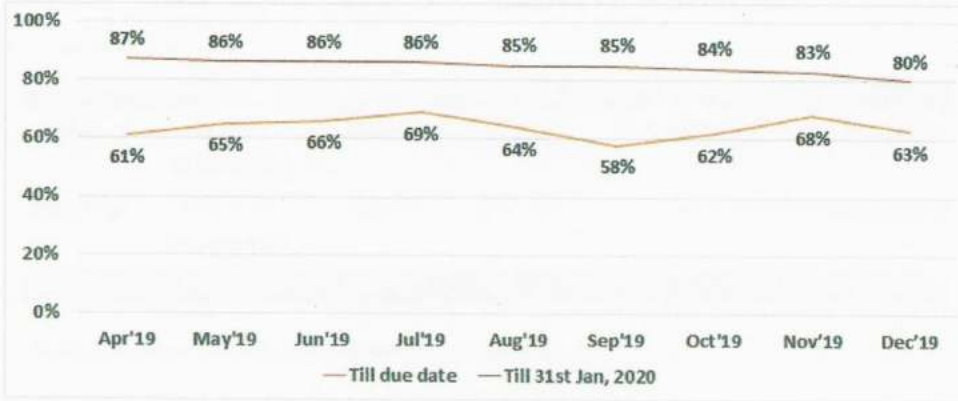
Return filing (GSTR-3B) till due date and till 31<sup>st</sup> Jan, 2020

Return Period	Till due date		Till 31 <sup>st</sup> Jan, 2020	
	Filed	%	Filed	%
Apr'19	6017388	61%	8627066	87%
May'19	6481965	65%	8676361	86%
Jun'19	6655120	66%	8702655	86%
Jul'19	7047881	69%	8741093	86%
Aug'19	6540650	64%	8763292	85%
Sep'19	5967642	58%	8776265	85%
Oct'19	6463266	62%	8763520	84%
Nov'19	7091985	68%	8694417	83%
Dec'19	6550743	63%	8307922	80%

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**GSTR-3B filing**



**Net IGST Balance**

IGST Collection/Settlement/Apportionment/Refund from April'19-Feb'20		
1	Collections(+)	5,42,193
2	Recovery from IGST Ad-hoc apportionment(+)	29,000
3	Refunds (-)	88,138
4	Settlement (-)	455830
(i)	CGST	2,61,773
(ii)	SGST	1,94,057
5	CGST ad hoc(-)	13,500
6	SGST ad hoc(-)	13,500
7	Net (1+2-3-4-5-6)	225

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## GST Compensation Cess Balance

(Figures in Rs. Crore)

	2017-18	2018-19	2019-20	Total
Compensation Cess collected	62,612	95,081	79,000 (till Jan'20)	2,36,693
Compensation released	41,146	69,275	1,20,498 (till Nov'19)	2,30,919
<b>Balance</b>	<b>21,466</b>	<b>25,806</b>	<b>-41,498*</b>	<b>5,774</b>

\* Taking into account un-utilized cess of FY 2017-18 & FY 2018-19

## Compensation Requirement

- In the current financial year, the GST compensation has been provisionally calculated and released fully for April to September, 2019 and partly for Oct-Nov, 2019. The GST compensation balance of Rs. 14,036 crore for Oct-Nov, 2019 is still to be released.
- GST compensation for Dec, 2019-January, 2020 cycle has also become due in the month of February, 2020. The total amount required in current FY to meet the compensation for Dec, 2019-Jan, 2020 & the balance for Oct-Nov, 2019 is approximately Rs. 48,000 crore.



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Annexure 5



**INVERTED RATE STRUCTURE IN GST**

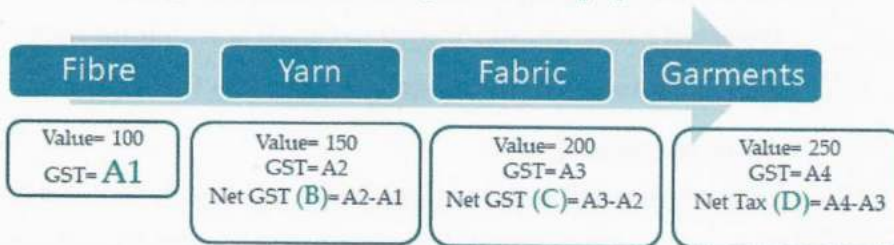
**39<sup>th</sup> GST Council Meeting**

**The 14<sup>th</sup> March, 2020, New Delhi**

1

**GST rate structure- desired features**

- GST applies to value addition at each stage
- This is achieved by allowing set off of input tax credit against tax liability of a taxpayer



If "B" or "C" or "D" is negative, there is accumulation of ITC which is a cost to business unless refunded

2

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### Instances of Inverted Rate Structure

[Redacted]

- Fertilizers
- Mobiles
- Footwear
- Manmade yarn, fabrics
- Renewable energy devices
- Tractors
- Pharma
- Others smaller items

3

### IMPLICATION.....

[Redacted]

- Unutilized ITC becomes a cost to the manufacturer
- To correct this, refund of unutilized ITC is to be given
- Cash-flow issue even if refund is given
- No refund of on input services and capital goods
- Inverted rates greater injury to Small standalone units
- Accumulated ITC on capital goods hurts the exporter
- Incentivizes imports
- Disincentives domestic manufacturing and investment
- Consumer not benefitted. Unutilized ITC is a dead weight cost
- Gives rise to fraudulent practices- fake invoices, misclassification
- Claiming refund entails efforts, cost and hardship

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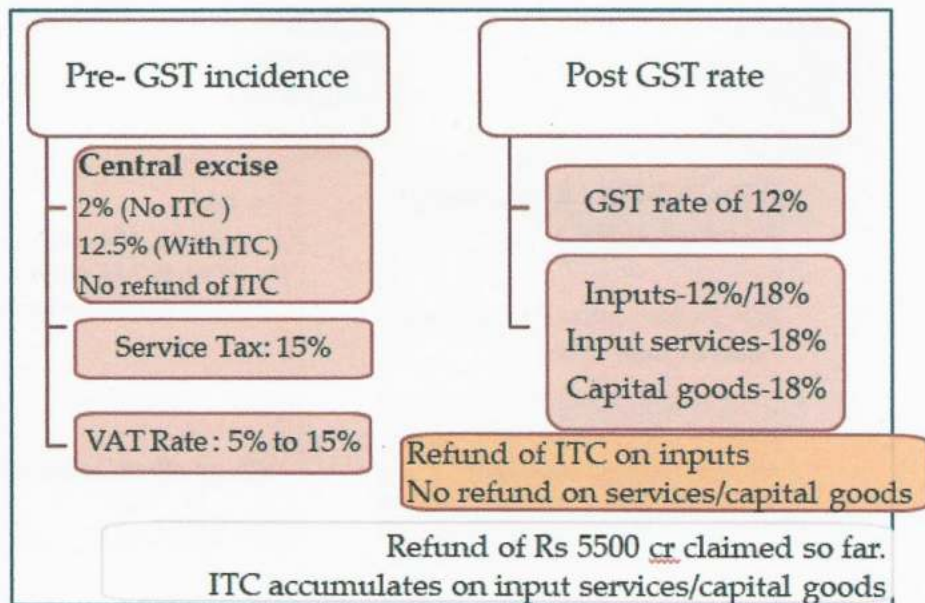


## Inverted rate structure correction

- Committee of officers on revenue augmentation identified inverted rate structure as a significant distortion having a serious implication to revenue and business
- Recommended for calibration of rates to correct it
- This issue was highlighted in the presentation made in in the last meeting
- Committee again examined it
- Detailed deliberations in Fitment Committee
- On ABC analysis, Fitment Committee, as first step, has recommended rate calibration on four items/ sectors, i.e., mobile, footwear, textiles and fertilizer

5

## Inverted Rate Structure on Mobile Phones

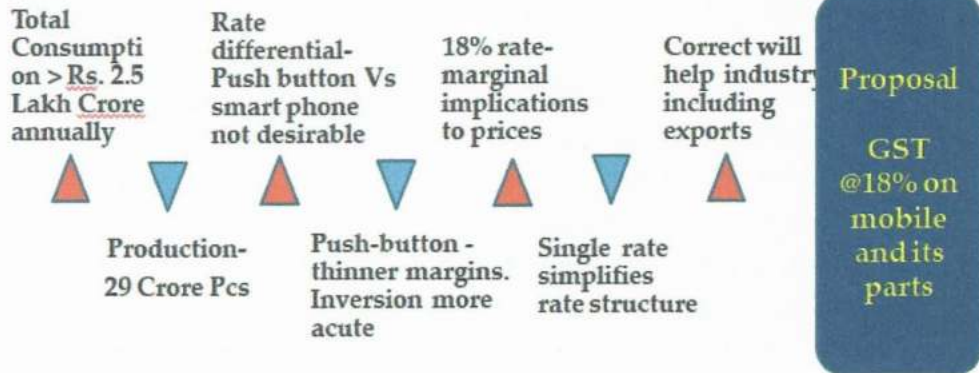


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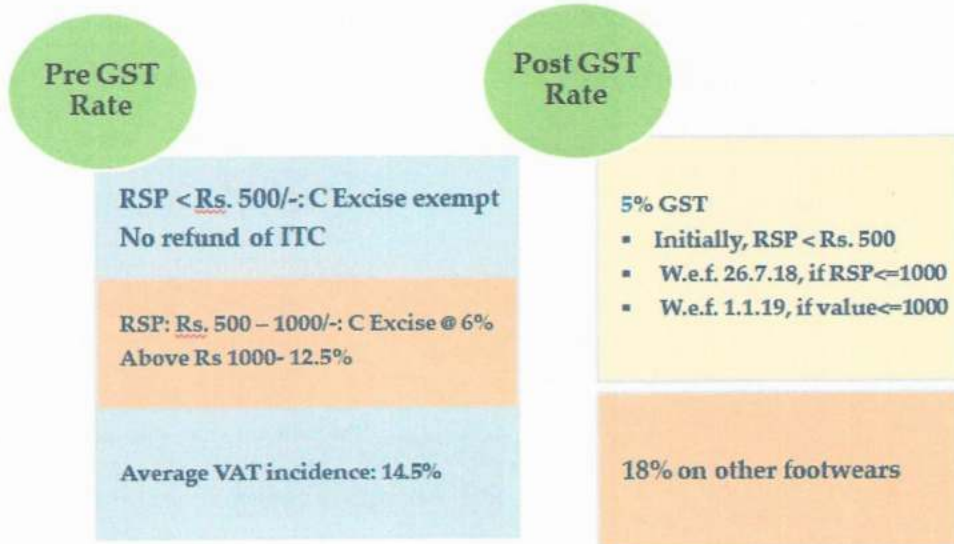
## Inverted Rate Structure on Mobile Phones

### Fitment discussions



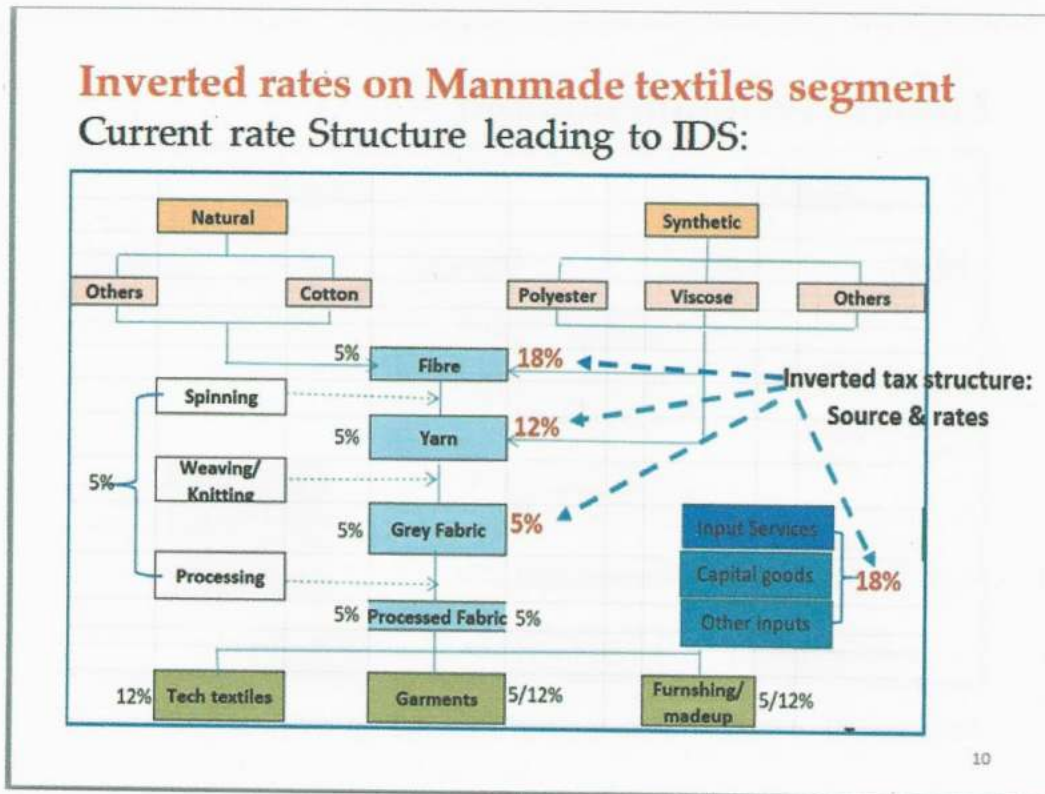
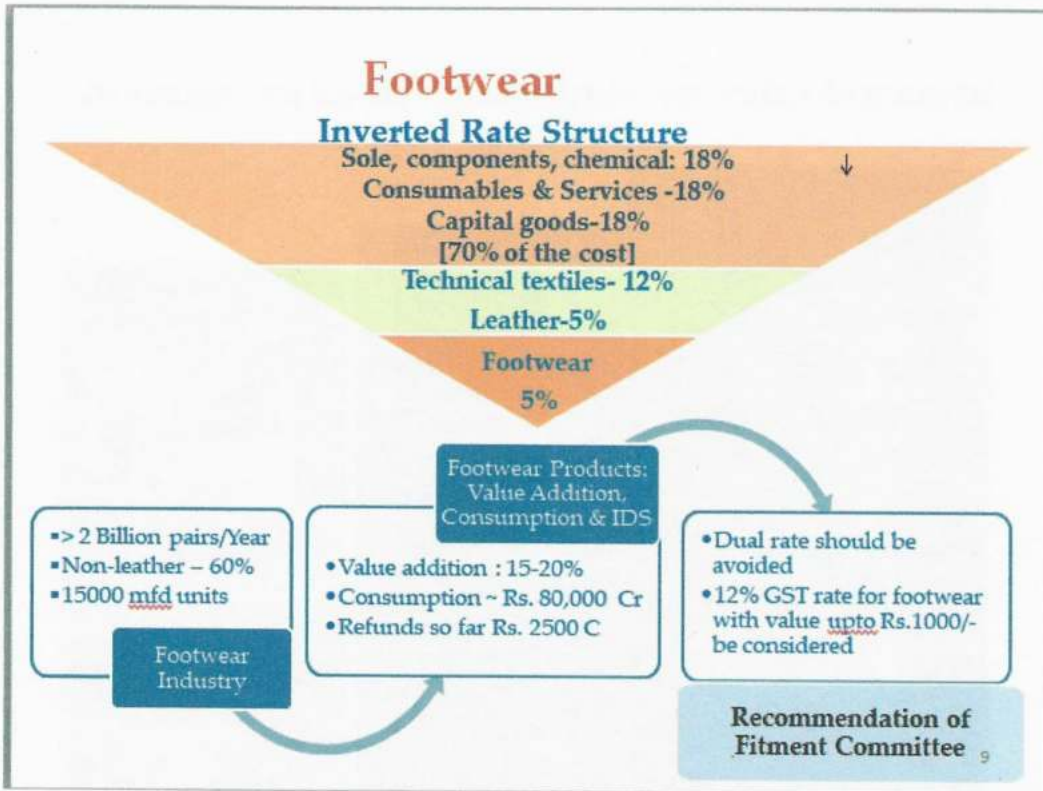
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## Footwear



8

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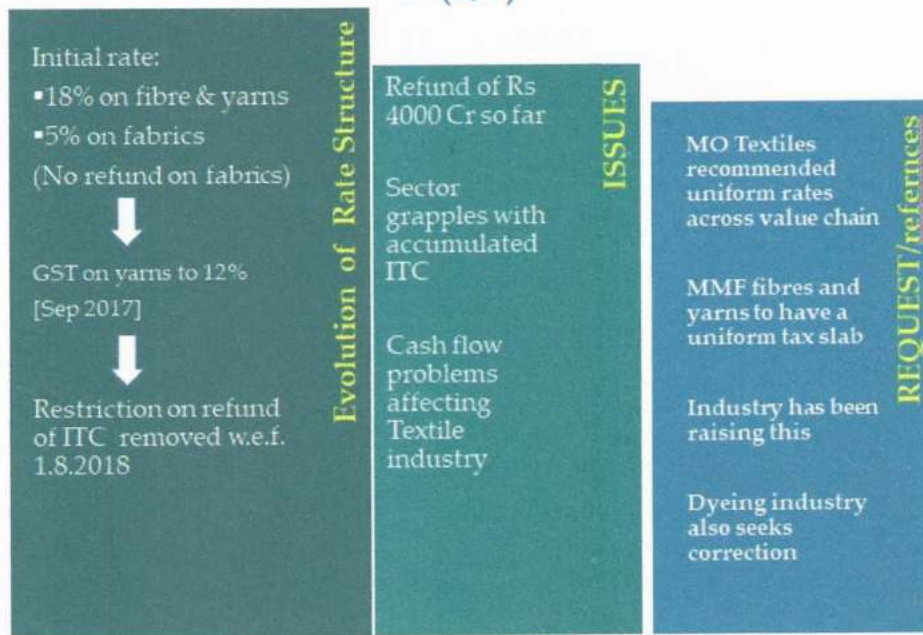
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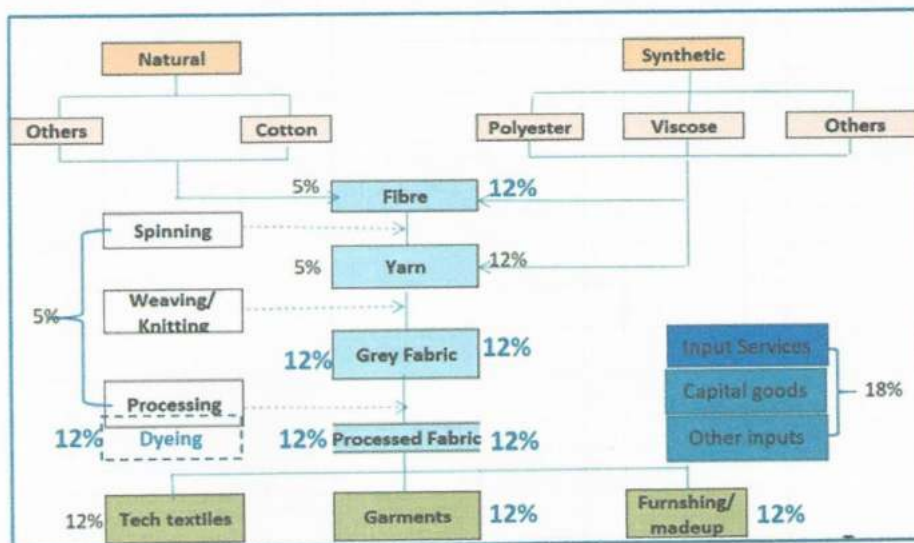
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## Inverted rates in Manmade Textiles segment

...(2/3)



## Fitment recommendation



The proposed changes in rates are shown in blue (bold font)

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*[Handwritten Signature]*

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## Proposed Rate Structure

S. No.	Item	Proposed GST Rate
1.	Cotton and natural fibres (except raw jute, silk, and wool)	5%
2.	Manmade Fibres	12%
3.	Manmade Fibre Yarns	12%
4.	All Fabrics	12%
5.	All garments and made-up	12%
6.	Dyeing Services	12%

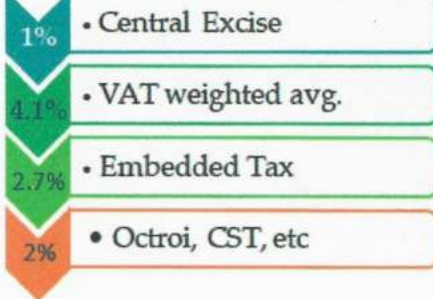
13

## Fertilizers

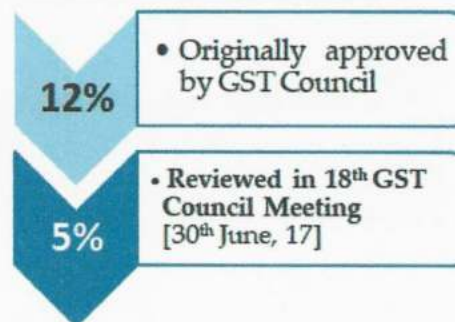
A subsidized, price-controlled product (directly or indirectly)

- Annual consumption: 60 mMT (Urea: 30 mMT, DAP & NPK: 10 mMT)
- Value consumed : Rs. 80,000 Cr (subsidised) ; Annual subsidy: Rs. 70,000 Cr

Pre-GST tax incidence(min): 9.8%



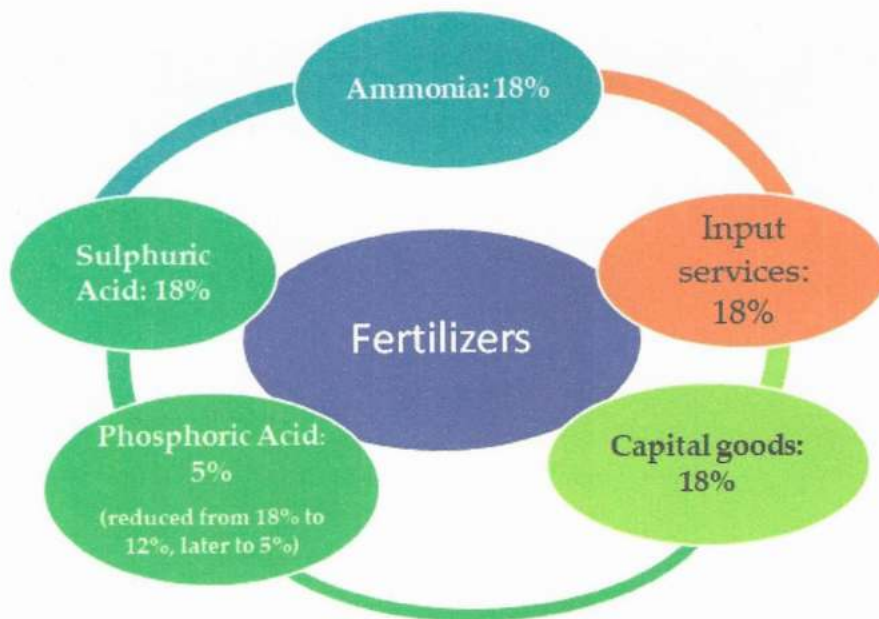
GST on Fertilizers: 5%



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### Inverted rate in Fertilizer



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DAP has inversion of about 4% on account of inputs alone. In addition there is inversion on a/c of services and capital goods

Urea has much higher inversion as price is highly subsidised

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### Inversion in fertilizers

- About Rs. 6100 Cr has been claimed as ITC refund so far on Fertilizers
- Fitment Committee proposes GST rate of 12% on fertilizers, which should solve the duty inversion problem to a large extent

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Annexure 6

39<sup>th</sup> GST Council Meeting  
Issues pertaining to Services

New Delhi  
14.03.2020

Agenda items

- Representation of Haj/Umrah Private Tour Operators(PTO)
- Ocean Freight Issue
- MRO services
- Job work service: alcoholic liquor



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**Agenda 1**  
**Representation of Haj/Umrah Private Tour Operators(PTO)**

**Issue**

- Hon'ble SC vide order dated 11.12.2019 has directed the Government to decide on the representation of the PTOs within 90 days of the Court order.
- PTOs have represented that GST should not be levied/exempted on Haj/Umrah tours conducted by PTOs.

Fitment Committee did not find the request of PTOs acceptable.

- All religious pilgrimage tours except those organised/facilitated by GOI under bilateral arrangement are taxable.
- There can be many domestic and international tours which can be considered as religious pilgrimage and this demand can have domino effect in general as PTOs.

**Agenda 2**  
**Ocean Freight Issue**

**Gujarat High Court Judgment:**

- IGST on ocean freight payable by importer under RCM in case of CIF contracts has been struck down as ultra vires the law.

**Reasons for striking down:**

- RCM is only applicable on recipient and importer is not the recipient in CIF cases.
- Service from a supplier in non-taxable territory to recipient in non-taxable territory is neither intra nor inter state supply as per GST law.

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**Agenda 2**  
**Ocean Freight Issue**

**Consequence of the judgement:**

- Level playing field to ISL disturbed.
- In case of CIF imports, transport by FSL will not attract tax but by ISL will attract tax.
- Existing levy of GST on import freight by importers under RCM has been jeopardized.

**Fitment Committee Recommendation:**

- Issue needs further discussion. May be deferred.

**Agenda 3**  
**MRO Issues**

- Presently the Indian airlines pay 18% GST on domestic MRO service and only 5% IGST as goods (on most parts) under section 3(7) of customs tariff Act on foreign MRO service.
- Due to existing PoS provision, the following services provided by domestic MRO do not qualify as export and get taxed in India –
  - Services subcontracted by foreign MRO to domestic MRO;
  - to foreign airlines on their routine flights; and
  - to foreign aircraft leasing companies.
- On the other hand, MRO outside India do not pay any tax under IGST Act as the activity of service happens outside the taxable territory.



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**MRO services availed from foreign MRO vis-vis Indian MRO in FY 2018-19 (values in INR Crores)**

Airline	Value of MRO Services procured by Indian airlines		% of MRO Services procured by Indian airlines from Indian MRO
	from foreign MRO	from Indian MRO	
Air Asia	19	14	43%
IndiGo	2210*	47	1%
SpiceJet	1528	38	2%
Blue Dart Aviation	168	0	0%
<b>Total</b>	<b>5757</b>	<b>100</b>	<b>2%</b>

\* - As per annual report of IndiGo.

Source: MoCA

**Existing MRO Tax Structure**



PoS: location where the services are actually performed★

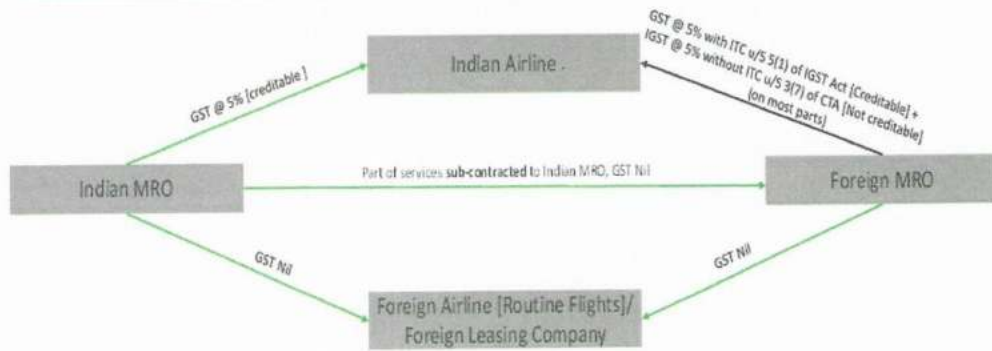
GST Rate: 18%

IGST on goods reimported after repairs: 5% u/S 3(7) of Customs Tariff Act (on most parts).

*[Handwritten Signature]*

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**Proposed MRO Tax Structure**



PoS: For B2B services, the location of recipient  
 GST Rate: 5%  
 IGST on goods reimported after repairs: 5% u/S 3(7) of CTA (on most parts).

Alternate

**Proposed MRO Tax Structure: Alternate**



PoS: For B2B services, the location of recipient (i.e. the party giving the contract of service)  
 GST Rate: 12%  
 IGST on goods reimported after repairs: 0%  
**Complete level playing field- No inversion**

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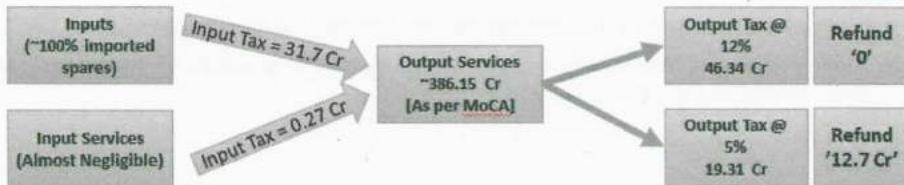
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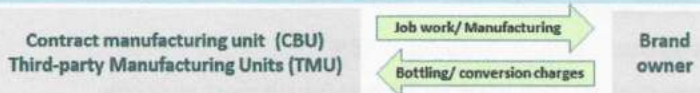
**Whether 5% rate on MRO services will cause Inversion in tax structure? Yes!**

MRO	Inputs	Tax Paid	Input Services	Tax Paid	Total ITC Available	Output Services (MRO)	Tax Payable @18%	Tax Payable @12%	Tax Payable @5%
Max Aerospace Group	16.03	2.45	1.08	0.19	2.66	20.27	3.65	2.43	1.01
GMR Aerotech	1.57	0.28	0.44	0.08	0.36	119.31	21.48	14.32	5.97
Airworks India Engg. Pvt Ltd	167.28	28.96	-	-	28.96	246.57	44.30	29.59	12.33
<b>Total</b>		<b>31.70</b>		<b>0.27</b>	<b>31.98</b>	<b>386.15</b>	<b>69.43</b>	<b>46.34</b>	<b>19.31</b>

*\*All values in Crores*



**Agenda 4: Job work service: alcoholic liquor**



**Introduction:**

- Contract manufacturing of alcoholic liquor attracts GST @ 18% (9988- sl. No. 26 (iv))

9988 heading sl. No. 26 (iv)	Manufacturing services on physical inputs (goods) owned by others	GST @ 18%
------------------------------	---	-----------

- GST @ 18% is being paid in most cases on the service. In isolated cases TMUs are claiming alcoholic liquor as food products and paying GST @ 5% [sl. No. 26 (i)(f)]

9988 heading sl. No. 26 (i)(f)	Services by way of job work in relation to all food and food products falling under Chapters 1 to 22 in first Schedule to Customs Tariff Act	GST @ 5%
--------------------------------	--	----------

- Definition of 'food' under section 3 (j) of the Food Safety and Standards Act, 2006 covers alcoholic drinks

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**Job work service: alcoholic liquor**

**Proposal:**

- Presently, contract manufacturing of liquor attracts GST @ 18%. To prevent dispute and litigation, same rate may be clarified for job work service.
- An explanation may be inserted in the 5% GST rate entry that "food and food products" excludes alcoholic beverages

**Fitcom recommendation:**

- Most of the members of fitment committee agreed to the proposal
- Tamil Nadu and Maharashtra have reservation on grounds of room for state government to raise excise duty

**Job work service: alcoholic liquor**

**Justification for the proposal:**

- Rate of tax on contract manufacturing is 18%
- Council never explicitly provided for 5% rate for job work on liquor
- Default rate for service is 18%

3 major units having contract bottling amount 100 Cr (appx.)	Overall 2/3 <sup>rd</sup> units paying GST @ 18% and 1/3 <sup>rd</sup> Units paying GST @ 5%
Market share appx. 40%	At uniform @ 18%, revenue gain approximately 28 cr.



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Annexure 7



Agenda No	Issue	Status during Officers Meeting
5A(i)	Taxability of 'economic surplus' earned by brand owners of alcoholic liquor for human consumption	Deferred / Objections on principle.
5A(ii)	Challenges faced in apportionment of ITC in cases of business reorganization under section 18 (3) of CGST Act read with rule 41(1) of CGST Rules	Agreed
5A(iii)	Issue regarding waiver of penalty and interest on previous period due to removal of pre-import condition under Advance Authorisation scheme	Agreed
5A(iv)	Levy of interest under the provisions of section 50 of the CGST Act, 2017 for delay in payment of tax	Agreed; Net basis retrospectively
5A(v)	waiver of filing of FORM GSTR-1 by taxpayers who have availed the special composition scheme under notification No. 2/2019-Central Tax (Rate) dated 07.03.2019	Agreed
5A(vi)	Filing of GSTR-9 (Annual Return) and GSTR-9C (Reconciliation Statement)	Agreed for extension of date and late fee waiver below 2 cr; No consensus on 9/ 9C waiver threshold for 2018-19 and need to develop 9C for 2019-20

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# MINUTE BOOK

Agenda No	Issue	Status during Officers Meeting
5A(vii)	Proposal for amendment in CGST Rules, 2017	Agreed, except no consensus on rule 43 (TN/Odisha to give inputs and amendment in section 16 (4) may also be required), 86 (issue of settlement), 89(amendment in section 54 may also be required)
5A(viii) & Table Agenda II(iv)	Proposed amendments in the CGST Act, 2017 and IGST Act, 2017	No consensus on section 109/110 (even number of benches / rotational appointment with State first in the Act), 83 (formulation), 151(TN-insert 151A and retain 151 for statistics collection)
5A(ix)	Know Your Supplier	Agreed
5A(x)	Information Return	Agreed

Agenda No	Issue	Status during Officers Meeting
5A(xi)	Aadhar Rules	Agreed; Draft to be vetted by MoLJ Date for existing taxpayers to be decided
5A(xii)	Appellate Tribunal Circular	Agreed
5A(xiii)	E-Invoice	Agreed
5A(xiv)	QR Code	Agreed
5A(xv)	Ladakh GSTR extension for January,20	Agreed upto 31.03.2020
5A(xvi)	GSTR-3B and GSTR-1 for April-Sept,20	Agreed
5A(xvii)	Dadra and Nagar Haveli Special Procedure	Agreed: up to 31.05.20
5A(xviii)	E-Wallet Deferment	Agreed
TA II(i)	Lottery Scheme	Agreed
TA II(ii)	Refund Circular	Agreed
TA II(iii)	Spike Rule	Agreed in principle
TA II(v)	NCLT Special procedure and Circular	Agreed
TA II(vi)	RoD for revocation of cancellation	Agreed
TA II(viii)	Section 7 Supply (AoP)	Agreed
TA II(ix)	Rajasthan High Court	Agreed
TA II(x)	EODB- Refund on Capital Goods	Not agreed
TA II(xii)	Placement of Customs Ad hoc exemption order	Only information
NEW	01/2020 before the GST Council	
9	Deemed Ratification	Agreed



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**Agenda 8: Deemed Ratification of Notifications, Circulars, RoD and Orders (1/4)**



**Notifications under CGST Act**

Notification No. 05/2020 - Central Tax dated 13.01.2020	Seeks to appoint Revisional Authority under CGST Act, 2017.
Notification No. 74/2019 - Central Tax dated 26.12.2019	Seeks to waive late fees for non-filing of FORM GSTR-1 from July, 2017 to November, 2019
Notification No. 75/2019 - Central Tax dated 26.12.2019	Seeks to carry out changes in the CGST Rules, 2017
Notification No. 76/2019-Central Tax dated 26.12.2019	Seeks to extend the due date for furnishing of return in FORM GSTR-1 for registered persons in Assam, Manipur or Tripura having aggregate turnover more than 1.5 crore rupees for the month of November, 2019
Notification No. 77/2019 - Central Tax dated 26.12.2019	Seeks to extend the due date for furnishing of return in FORM GSTR-3B for registered persons in Assam, Manipur, Meghalaya or Tripura for the month of November, 2019
Notification No. 78/2019 - Central Tax dated 26.12.2019	Seeks to extend the due date for furnishing of return in FORM GSTR-7 for registered persons in Assam, Manipur or Tripura for the month of November, 2019
Notification No. 01/2020-Central Tax dated 01.01.2020	Seeks to bring into force certain provisions of the Finance (No. 2) Act, 2019 to amend the CGST Act, 2017.

**Agenda 8: Deemed Ratification of Notifications, Circulars, RoD and Orders (2/4)**



**Rate notifications issued under CGST Act and UTGST Act 2017**

Notification No. 27/2019 - Central Tax (Rate) dated 30.12.2019	Seeks to further amend notification No. 01/2017 -Central Tax (Rate) to change the rate of GST on goods as per recommendations of the GST Council in its 38 <sup>th</sup> meeting.
Notification No. 28/2019 - Central Tax (Rate) dated 31.12.2019	To amend notification No. 12/ 2017 - Central Tax (Rate) so as to exempt certain services as recommended by GST Council in its 38 <sup>th</sup> meeting held on 18.12.2019.
Notification No. 29/2019 - Central Tax (Rate) dated 31.12.2019	To amend notification No. 13/ 2017 - Central Tax (Rate) so as to notify certain services under reverse charge mechanism (RCM) as recommended by GST Council in its 38 <sup>th</sup> meeting held on 18.12.2019.
Notification No. 01/2020 - Central Tax (Rate) dated 21.02.2020	Seeks to amend notification No. 1/2017- Central Tax (Rate) dated 28.06.2017 so as to notify rate of GST on supply of lottery.
Notification No. 27/2019 - Union Territory Tax (Rate), dated 30.12.2019	Seeks to further amend notification No. 01/2017-Union Territory Tax (Rate) to change the rate of GST on goods as per recommendations of the GST Council in its 38 <sup>th</sup> meeting.
Notification No. 28/2019 - Union Territory Tax (Rate), dated 30.12.2019	To amend notification No. 12/2017- Union Territory Tax (Rate) so as to exempt certain services as recommended by GST Council in its 38 <sup>th</sup> meeting held on 18.12.2019.
Notification No. 29/2019 - Union Territory Tax (Rate), dated 30.12.2019	To amend notification No. 13/2017-Union Territory Tax (Rate) so as to notify certain services under reverse charge mechanism (RCM) as recommended by GST Council in its 38 <sup>th</sup> meeting held on 18.12.2019.

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**Agenda 8: Deemed Ratification of Notifications, Circulars, RoD and Orders (3/4)**



**Rate notifications issued under UTGST Act and IGST Act, 2017**

Notification No. 01/2020 - Union Territory Tax (Rate) dated 21.02.2020	Seeks to amend notification No. 1/2017-Union Territory Tax (Rate) dated 28.06.2017 so as to notify rate of GST on supply of lottery.
Notification No. 01/2020 - Integrated Tax dated 01.01.2020	Seeks to bring into force certain provisions of the Finance (No. 2) Act, 2019 to amend the IGST Act, 2017
Notification No. 26/2019 - Integrated Tax (Rate) dated 30.12.2019	Seeks to further amend notification No. 01/2017-Integrated Tax (Rate) to change the rate of GST on goods as per recommendations of the GST Council in its 38 <sup>th</sup> meeting.
Notification No. 27/2019 - Integrated Tax (Rate) dated 31.12.2019	To amend notification No. 9/2017- Integrated Tax (Rate) so as to exempt certain services as recommended by GST Council in its 38 <sup>th</sup> meeting held on 18.12.2019.
Notification No. 28/2019 - Integrated Tax (Rate) dated 31.12.2019	To amend notification No. 10/2017 - Integrated Tax (Rate) so as to notify certain services under reverse charge mechanism (RCM) as recommended by GST Council in its 38 <sup>th</sup> meeting held on 18.12.2019.
Notification No. 01/2020 - Integrated Tax (Rate) dated 21.02.2020	Seeks to amend notification No. 1/2017 - Integrated Tax (Rate) dated 28.06.2017 so as to notify rate of GST on supply of lottery.

**Agenda 8: Deemed Ratification of Notifications, Circulars, RoD and Orders (4/4)**



**Circulars Order issued under CGST Act, 2017**

Circular No. 128/47/2019 dated 23.12.2019	Generation and quoting of Document Identification Number (DIN) on any communication issued by the officers of the CBIC to tax payers and other concerned persons.
Circular No. 129/48/2019 dated 24.12.2019	Standard Operating Procedure to be followed in case of non-filers of returns
Circular No. 130/49/2019 dated 31.12.2019	Reverse Charge Mechanism (RCM) on renting of motor vehicles.
Circular No. 131/1/2020 dated 23.01.2020	Standard Operating Procedure (SOP) to be followed by exporters
Removal of Difficulties Order No. 10/2019 - Central Tax dated 26.12.2019	Seeks to extend the last date for furnishing of annual return/reconciliation statement in FORM GSTR-9/FORM GSTR-9C for F.Y. 2017-18 till 31.01.2020
Order No. 01/2020-GST dated 07.02.2020	Extension of time limit for submitting the declaration in FORM GST TRAN-1 under rule 117 (1A) of the Central Goods and Service Tax Rules, 2017 in certain cases

  
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**AGENDA 9: DEEMED RATIFICATION OF NOTIFICATIONS APPROVED BY GIC**



Notifications under CGST Act, IGST Act	
Notification No. 73/2019 - Central Tax dated 23.12.2019	Seeks to extend the last date for filing of FORM GSTR-3B for the month of November, 2019 by three days from 20.12.2019 till 23.12.2019
Notification No. 02/2020-Central Tax dated 01.01.2020	Seeks to carry out changes in the CGST Rules, 2017 Rule 117, Changes in FORM REG-01, e-Invoice Schema)
Notification No. 03/2020-Central Tax dated 01.01.2020	Seeks to amend the notification No. 62/2019 – Central Tax dated 26.11.2019 to amend the transition plan for the Union Territories of Jammu & Kashmir and Ladakh
Notification No. 04/2020 - Central Tax dated 10.01.2020	Seeks to extend the period of late fee waiver to file FORM GSTR-1 from July 2017 to November, 2019 from 10 <sup>th</sup> January 2020 till 17 <sup>th</sup> January, 2020.
Notification No. 06/2020-Central Tax dated 03.02.2020	Seeks to extend the last date for furnishing of annual return/reconciliation statement in FORM GSTR-9/FORM GSTR-9C for the period from 01.07.2017 to 31.03.2018 to 5 <sup>th</sup> and 7 <sup>th</sup> February 2020
Notification No. 07/2020-Central Tax dated 03.02.2020	Notification issued to prescribe due dates for filing of return in FORM GSTR-3B in a staggered manner (20 <sup>th</sup> , 22 <sup>nd</sup> and 24 <sup>th</sup> of next month)
Notification No. 08/2020 - Central Tax dated 02.03.2020	Seeks to amend the CGST Rules, 2017 to prescribe the value of Lottery pursuant to change in rate structure on Lottery

**Agenda Item 5A(i): Circular on taxability of economic surplus (1/2)**




- The issue is whether both VAT and GST are to be levied on the full value of bottled alcoholic beverages ?
- Under service tax regime, (Letter F. No. 332/17/2009-TRU dated 30.10.2009) it was settled that
  - service Tax would be payable only on the bottling/job charges, distribution costs and other reimbursements;
  - the surplus/profit earned by the BO being in the nature of business profit (which falls within the purview of direct taxes), will not be chargeable to service tax.
- However, in GST regime divergent practices are being followed in the field formations including charging of VAT and GST on the full value of bottled alcoholic beverages




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**Agenda Item 5A(i): Circular on taxability of economic surplus (2/2)** 

- Divergent practices are being followed. Two advance rulings have also been issued. Some investigations have also got taken up based on the advance rulings
- National Appellate Authority on Advance Ruling is proposed in case of conflicting orders only for distinct persons but the same is still to be set up
- *Officers meeting suggested deferment- Punjab suggested that there are more models and that the issue can be addressed through GST exemption*
- Issues for consideration are:
  - Whether Government should consider clarifications on such contentious issues or should the contentious issues be decided through litigation only
  - Whether GST also to be levied on full value of alcoholic beverages in addition to VAT

**Agenda Item 5A(ii): Clarification for apportionment of (ITC) in cases of business reorganization u/s 18 (3) and rule 41(1) (1/2)** 

Issuance of Circular to clarify the following: -

- In case of demerger, apportionment of unutilized ITC of the transferor shall be done based on the value of assets taken at the State level (at the level of distinct person) and not at the entity (all-India) level;
- Apportionment formula shall be applied on the ITC balance of the transferor as available in electronic credit ledger on the date of filing of FORM GST ITC – 02 by the transferor;
- Ratio of value of assets in the apportionment formula to be taken as on Appointed date of demerger.
- Formula for apportionment of ITC as per proviso to Rule 41(1) shall be applicable for all forms of business re-organization that results in partial transfer of business assets along with liabilities,

  
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**Agenda Item 5A(ii): Clarification for apportionment of (ITC) in cases of business reorganization u/s 18 (3) and rule 41(1) (2/2)**



- Apportionment formula shall be applied to the total amount of unutilized ITC of the transferor i.e. sum of CGST, SGST/UTGST and IGST credit. It shall also be applicable for apportionment of Cess between the transferor and transferee;
- Transferor shall be at liberty to determine the amount to be transferred under each tax head within this total amount, subject to the ITC balance available with the transferor under the concerned tax head;
- Transferor is required to file FORM GST ITC-02 only in those states where both transferor and transferee are registered.



**Agenda Item 5A(iii): Issue of waiver of interest & penalty by removal of pre-import condition under Advance Authorisation**



- Requests have been received including through Dept. of Commerce to remove pre-import condition under Advance Authorisation (AA) scheme and to waive interest & penalty for the period 13.10.2017 to 09.10.2019;
- Committee on Exports decided that the proposal giving retrospective effect to removal of pre-import condition for AA cannot be considered;
- Drawback division suggested that the request may not be considered at this stage as Supreme Court had stayed the operation and implementation of judgement of the High Court of Gujarat for removing pre-import condition with retrospective effect;
- Law Committee recommended that since the issue is sub-judice and the period during which this condition is to apply is long, it would prudent to maintain status quo;
- The proposal is placed before the GST Council for further deliberation and decision.



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**Agenda Item 5A(iv): : Levy of interest under the provisions of Section 50 of the CGST Act for delay in payment of tax**



- **Section 50 of CGST Act was amended in 2019** providing for levy of interest only on tax liability discharged through cash; The said provision has **not been notified** till date as all SGST Acts haven't been amended;
- For the period July 2017 to September 2019, the interest on gross basis is approx. **Rs. 46000 Cr and Rs. 8800 Cr on net basis**
- High Courts of Madras has passed orders that interest should be levied on net liability only; High Courts of Delhi and Gujarat have stayed recovery on gross liability
- Accordingly, the issue is placed before the GST Council for further decision on the following aspects:
  - Whether interest is to be recovered on the gross tax payable or on the tax paid in cash
  - If the interest is to be recovered on the net cash tax liability,– whether it is to be from a prospective or retrospective date; and
  - if from a prospective date, whether the credit available as closing balance of the tax period will be taken or subsequent credit will also be allowed to be utilised

*Officers recommended interest on net basis retrospectively:*



**Agenda Item 5A(v): Waiver from filing of FORM GSTR-1 by taxpayers who have availed special composition scheme**



- Taxpayers who opted for the special composition scheme w.e.f. 01.04.2019 for services paid 6% GST on outward supplies but they could not file the intimation in FORM GST CMP-02 till 11.09.2019;
- Consequently most of them filed monthly returns in FORM GSTR-3B. Accordingly they were not allowed to file FORM GST CMP-02 even after 11.09.2019
- They are facing hurdles related to filing of FORM GSTR-1 as the rate slab of 6% is not available in FORM GSTR-1;
- Under the scheme ITC is not to be passed on to the recipient on such supplies.
- In order to avoid wrong availment of ITC by recipient of such suppliers and to overcome the above mentioned difficulty, **proposal before the Hon'ble Council is to waive the requirement of furnishing details of outward supplies in FORM GSTR-1 for FY 2019-20 for such taxpayers.**



  
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**Agenda Item 5A(vi): Filing of GSTR-9 (Annual Return) and GSTR-9C (Reconciliation Statement) (1/3)**



- A lot of negative feedback was received regarding filing of annual return and reconciliation statement for FY 2017-18. Most of the feedback is on non-working of the IT portal
- Due date for filing Annual Return and Reconciliation statement for 2017-18 was extended 7 times
- It has also been reported that the cost of compliance for filing of Annual Return and Reconciliation has been high especially for smaller taxpayers since this process requires engagement of a tax professional (Chartered Accountant or Cost Accountant) who reportedly insist that they should be engaged for the entire compliance management process throughout the year thus pushing the cost of compliance
- It is seen that additional tax of about Rs. 3176 Crores (Rs. 2079 Cr. In cash) additional tax and Rs. 575.76 Cr. interest thereon got collected from Annual Return GSTR-9.
- Additional revenue from GSTR-9C based on the Auditor's recommendations has been relatively low at Rs. 392 Cr. ( Rs. 261 Cr. in cash) and Rs. 81.16 Cr. as interest.

**Agenda Item 5A(vi): Filing of GSTR-9 (Annual Return) and GSTR-9C (Reconciliation Statement) (2/3)**



FOR GSTR-9 (FY 2017-18)							
Exemption upto	DRC-03	Exempted (Upto 2 Cr)	Net	% of total contribution	After exemption (%)	Number of taxpayers	% of total taxpayer base
At 5 Cr	1140	580	560	15%	85%	6.87	7%
At 10 Cr	1552	580	972	26%	74%	3.78	3.85%
Total Revenue (All taxpayers)	4324	580	3744				
FOR GSTR-9C (FY 2017-18)							
Exemption upto	DRC-03	Exempted (Upto 2 Cr)	Net	% of total contribution	After exemption (%)	Number of taxpayers	% of total taxpayer base
At 5 Cr	113	47	66	13%	87%	6.87	7%
At 10 Cr	164	47	117	23%	77%	3.78	3.85%
Total Revenue (All taxpayers)	553	47	506				

If GSTR-9 and GSTR-9C is prescribed only for taxpayers having turnover > Rs. 5 Cr for 2018-19, 85% of the revenue from annual return and 87% of the revenue from reconciliation statement will still be achievable whereas compliance burden will be reduced to 6,87,000 taxpayers instead of 12,42,000 taxpayers.

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**Agenda Item 5A(vi): Filing of GSTR-9 (Annual Return) and GSTR-9C (Reconciliation Statement) (3/3)**



- Law Committee has recommended that for FY 2018-19, the requirement of filing GSTR-9 and GSTR-9C may be **enhanced** to taxpayers having aggregate turnover exceeding **Rs. 5 Cr.** *However, certain States have expressed their reservation with the decision and have suggested maintaining status quo/change turnover for only GSTR-9C.*
- As the utility has not been made available till 29.02.2020 and even those taxpayers to whom the utility has been made available, many of the fields such as Table 8A are blank or not visible, the law committee recommended that the date of filing of these forms for 2018-19 may be **extended to 30.06.2020;**
- Some taxpayers with **turnover less than Rs. 2 Cr** have filed their returns for 2017-18. Since, all such returns are deemed furnished the law committee recommended that GSTN may be requested to **not apply late fee in cases for annual return / reconciliation return filed for 2017-18;**

Accordingly, the recommendations are placed before GST Council



**Agenda Item 5A(vii): Amendment of CGST Rules (1/3)**



Rule	Rationale
Rule 43	Various doubts have been raised by the field formations regarding determination of reversal of input tax credit in respect of capital goods partly used for affecting taxable supplies and partly for exempt supplies under rule 43 (1)(c). To clarify the same it proposed to amend rule 43 <u>w.e.f. 01.04.2020.</u>
Rule 48	It is proposed that rule 48(4) need to be amended to include Debit note/credit note, export invoice, self invoice under RCM and other document for the purposed of e-invoicing.
Rule 86	It is proposed to allow for re-credit of wrongly paid/excess tax paid through ITC in the electronic credit ledger as in the present refund system the whole excess paid tax is refunded to the taxpayer in cash as there is no provision under rules which allows tax authorities to re-credit the ITC in the electronic credit ledger of the taxpayer. This has resulted in easy monetisation of ITC and in some cases rejection of refund on grounds that it cannot be sanctioned in cash.
Rule 89	The intent of the refund on zero rated supplies is to offset the tax paid on the inward supplies, it is proposed that a ceiling may be fixed for the value of the export supply for the purpose of calculation of refund as there is possibility for taking undue benefit by inflating the value of the zero-rated supply of goods. Accordingly changes are proposed in rule 89.



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**Agenda Item 5A(vii): Amendment of CGST Rules (2/3)**



Rule	Rationale
Rule 92	In view of the amendments proposed to be made to rule 86, it is proposed that the amount of refund sanctioned is proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period. Accordingly it is proposed to amend rule 92.
Rule 96	To clarify that where the benefit of the Notification No. 78/2017-Customs dated 13.10.2017 and Notification No. 79/2017-Customs dated 13.10.2017 would not be considered to have been availed only where the registered person has paid IGST and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.
Insertion -Rule 96B	To provide for recovery of refund of unutilized input tax credit or integrated tax paid on export of goods where export proceeds are not realised within the time prescribed under FEMA.

**Agenda Item 5A(vii): Amendment of CGST Rules (3/3)**



Rule	Rationale
Rule 141	Section 67(8) as well as proviso of rule 147(7) empowers the proper officer for the disposal of goods of perishable or hazardous nature; whereas rule 141(2) empowers the Commissioner for the disposal of seized goods or things perishable or hazardous in nature. To resolve this inconsistency it is proposed to substitute the word "Commissioner" with "proper officer" in rule 141.
FORM GST-RFD-01	In view of the proposed insertion of rule 96B above, which provides for recovery of refund of unutilized input tax credit or integrated tax paid on export of goods where export proceeds not realized, it is proposed to insert an undertaking in FORM GST RFD-01.

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**AGENDA ITEM 5A(VIII): AMENDMENTS TO THE CGST ACT (1/4)** 

Sections	Purpose
16(2)(a)	To mandate that ITC on invoices or debit notes may be availed only when the details of such invoices have been furnished in the details of outward supplies by the concerned supplier
35/44	To waive off compulsory filing of GSTR-9C and merge reconciliation statement with Annual Return –power to prescribe time lines and format through the Rules-revised draft circulated in Officers' meeting
75(12)	To provide for recovery of tax on liability declared in FORM GSTR-1 for which FORM GSTR-3B is not filed

**AGENDA ITEM 5A(VIII): AMENDMENTS TO THE CGST ACT (2/4)** 

Sections	Purpose
109 / 110	<p>To implement the decision of the Madras High Court in regard to the Appellate Tribunal and its benches. The salient amendments are:-</p> <ul style="list-style-type: none"> <li>• Only one technical member;</li> <li>• Only Judge of Supreme Court or Chief Justice of High Court to be eligible to become President;</li> <li>• Officer of Indian Legal Services not to be eligible for Judicial Member;</li> <li>• Technical Member (Centre) must have completed 20 years in Group A service;</li> <li>• Technical Member (State) must have completed 25 years in service;</li> <li>• Appointment of members by Selection Committee.</li> </ul> <p><i>States have desired that in case of only one Bench, State Officer from same State should be on the Bench first and then Central Member can come in next turn (Technical Members on rotation basis).</i></p> <p><i>Also request for selection Committee to have same State HC Chief Justice</i></p>

  
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**AGENDA ITEM 5A(VIII) :AMENDMENTS TO THE CGST ACT (3/4)**



Sections	Purpose
151	To have efficacy of the collection of statistics, Commissioner, or an officer authorised by him, may, by order seek information as per requirements on a case to case basis. <i>Tamil Nadu has suggested continuation of this provision for calling for Statistics and another Section for information.</i>
152	To remove restriction that information sought under section 150 & 151 may not be used for any proceedings under this Act as some action may get initiated after processing of this information.
168	Consequential change because of amendment proposed in section 151.

**AGENDA ITEM 5A(VIII): AMENDMENTS TO THE IGST ACT (4/4)**



Sections	Purpose
16	<ul style="list-style-type: none"> <li>Zero rated supply of goods or services to be made under LUT only, as a default route i.e. without payment of IGST. <i>Till the time amendment is made, exemption of IGST in case where place of supply is outside India, may be considered.</i></li> <li>Government may notify a class of suppliers / supplies who can make zero rated supply on payment of IGST and claim refund.</li> <li>supply made to a SEZ developer / unit <i>for authorized operations only</i> to be treated as zero-rated supply;</li> <li>to make provision for submission of foreign exchange remittances in case of export of goods within the time period prescribed under Foreign Exchange Management Act (FEMA), 1999.</li> </ul>

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**TABLE AGENDA ITEM 11(IV): AMENDMENTS TO THE CGST ACT**

Sections	Purpose
83	<p>To remove the ambiguity arising out of interpretation of the phrase "during the pendency of proceedings" in Section 83 it is proposed to amend Section 83 to provide for provisional attachment where proceedings under chapter XII, Chapter XIV or Chapter XV have been initiated</p> <p><i>Commissioner or an officer authorised not below the rank of Joint Commissioner should exercise the power of provisional attachment or it should be given to an officer</i></p> <p><i>Gujarat has suggested providing for investigation and allowing attachment during investigation</i></p>
74 / 107 / 129 / 130	<ul style="list-style-type: none"> <li>• To make proceedings under Section 129 independent of Sec 130;</li> <li>• To omit Section 129 and 130 from explanation to Section 74 so as to allow seizure and confiscation a separate proceeding from recovery of tax under section 73/74;</li> <li>• To insert a new sub-section in 107 for providing payment of 25% of penalty imposed under section 129 for filing appeal.</li> </ul>



**TABLE AGENDA 11(VIII) : AMENDMENT TO SECTION 7 OF CGST ACT, 2017 TO INCLUDE SUPPLY BY INCORPORATED/UNINCORPORATED ASSOCIATION OF PERSONS TO ITS MEMBERS (1/2)**

- The Hon'ble Supreme Court of India in the case of *Chief Commissioner of Central Excise and Service Tax & Ors. Vs. M/s Ranchi Club Ltd. and State of West Bengal vs. Calcutta Club Limited* laid down the following ratio:
  - From 2005 onwards, the Finance Act of 1994 does not purport to levy Service Tax on member clubs in the incorporated form. (Para 84)
  - The doctrine of mutuality continues to be applicable and that there cannot be a sale transaction between a club and its members. Clubs or associations in law have no separate existence from that of the members. (Para 49)
  - The judgment covers two aspects:
    - a) leviability of sales tax on supply of food and drinks by a member club to its members; and
    - b) leviability of service tax on the services provided by a member club to its members.



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**TABLE AGENDA 11(VIII) : AMENDMENT TO SECTION 7 OF CGST ACT, 2017 TO INCLUDE SUPPLY BY INCORPORATED/UNINCORPORATED ASSOCIATION OF PERSONS TO ITS MEMBERS (2/2)**



- Proposal to save the GST levy :
  - Amend Section 7(1) of the CGST Act, 2017, to insert new clause followed by an explanation with retrospective effect:
 

“(e) the supply of goods or services or both, by an association or a body of persons, whether incorporated or not, to its members, for cash, deferred payment or other valuable consideration.

*Explanation.-for the purpose of this section, an association or a body of persons, whether incorporated or not, and member thereof shall be treated as distinct persons”*

*Maharashtra view is that amendment is not required in view of definition of 'business' and 'person' in the GST Act*



**Agenda Item 5A(ix): Know Your Supplier (1/2)**



To enable every registered person to have some basic information about the suppliers with whom they propose to conduct business, Law Committee recommended 'Know your Supplier' scheme. A new rule to be inserted for display of following parameters in respect of a given GSTIN: -

- a) Month and Year of registration Under GST;
- b) Whether a Composition dealer or normal dealer;
- c) Aggregate Turnover (Slab) (0 to 40 lakhs, 40 lakhs to 1.5 crores, 1.5 crores to 5 crores, 5 Cr to 25, 25 and above);
- d) Percentage of tax payment in cash (Slab) (% cash set-off i.e. percentage of liability discharged through cash, in totality; 0 to 2%, 2 to 5%, 5 to 10%, 10 to 20%, 20% and above);
- e) Details of last twenty returns furnished (As available on portal- to be increased from ten to twenty);
- f) E-way bill blocking history;
- g) Gross Total Incomes (slab same as point no. (c) above);



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### Agenda Item 5A(ix): Know Your Supplier (2/2)



Further, based on the feasibility as per GSTN, following parameters may also be included: -

- a) Number of months or quarters, as the case may be, for which FORM GSTR-1 not submitted;
- b) Number of months in which FORM GSTR-3B not submitted on time;
- c) Any default in furnishing FORM GSTR-3B for more than three months;
- d) Any default in furnishing FORM GSTR-1 for more than three months or two quarters, as the case may be;

The Law Committee recommendations are placed before GST Council for approval.



### Agenda Item 5A(x): Information Return under Section 150



- i. Deliberation in the 2<sup>nd</sup> National Conference was done on seeking information return from Banks under Section 150(1)(e) of the CGST Act. A format for the same was also deliberated in the conference
- ii. Further Section 150(1)(p) of the CGST Act provides power to seek information from any specified person. Law Committee recommended that following may be notified: -
  - i. Credit information companies registered under CICRA Act, 2005
  - ii. Registrar and Transfer Agents of Mutual Funds
  - iii. Information utilities under Insolvency and Bankruptcy Code 2016 - NeSL (National E – Governance Services Ltd.) \*
- iii. Agenda is placed for approval of proposal of notifying above mentioned three agencies and seeking information from the bank in the said format.


\* National payment corporation of India (NPCI), TransUnion Cibil Ltd (CIBIL) and Association of Mutual Funds of India (AMFI) Information utilities has been replaced on request of Maharashtra in LC.




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**Agenda Item 5A(xi): Implementation of provision of Aadhar authentication** 


- In the Finance Act, 2019, Section 25 of the CGST Act was amended to provide for AADHAAR based authentication for existing taxpayers and new registrations;
- Law committee approved:-
  - Amendment of the CGST Rules for the same;
  - Exempting categories of persons registered under section 51, 52, OIDAR, non-resident taxable person, Company, Association of persons, anybody of Individuals or a Society, or a Trust from the provisions of Aadhar authentication;
- As on date, the functionalities for authentication for new registrations and existing registrations have not been rolled out by GSTN.
- Aadhaar authentication for new registrations is proposed to be operationalized from 1<sup>st</sup> April 2020
- Schedule for operationalisation of Aadhaar authentication of existing registered persons specially the refund claimants may decided on the basis of inputs from GSTN.

**Agenda Item 5A(xii): : Clarification in respect of appeal in regard to non-constitution of Appellate Tribunal** 

- i. Doubts have been raised by some appellate authorities in respect of the appropriate procedure to be followed in absence of appellate tribunal for appeal;
- ii. Pending clarity in this regard, appeals are not being heard in some jurisdictions
- iii. Law Committee recommended that a **circular** may be issued clarifying that appellate authority **shall continue to pass orders** and while passing order they may mention in the preamble that **appeal may be made to the appellate tribunal within three months from the President or the State President enters;**


Agenda is placed before the GST Council for approval of issuance of said circular.

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**Agenda Item 5A(xiii): : Exemption for certain class from e-invoicing and extension of dates for its implementation** 

- GSTN informed about certain changes with the notified schema which needs to be amended;
- Further, the Law Committee discussed and recommended following: -
  - i. **Debit note, credit note, export invoice, self-invoice** in case of RCM supplies needs to be **included in rule 48(4)**;
  - ii. E-invoicing to be implemented from **01st October, 2020** for the taxpayers whose aggregate turnover in a financial year exceeds **one hundred crore rupees**;
  - iii. **Certain class of taxpayers like an insurance or a banking company, a financial institutions, non-banking financial institution, GTA, passenger transportation service providers as IRCTC** may find it very unfeasible and difficult to generate an Invoice Reference Number. Hence they may be **exempted from the same**;
- Trial for generation of E-Invoice to continue on optional basis.

Agenda is placed before the GST Council for approval of above recommendations for rule amendment and issuance of said notification.

**Agenda Item 5A(xiv): Exemption for certain class from QR Code and extension of dates for its implementation** 

- Dynamic QR Code for B2C invoices mandated for **> Rs. 500 Crore** taxpayers w.e.f 01.04.2020
- Law Committee discussed and recommended following: -
  - NPCI is still to conduct awareness about the same hence deferment of date of implementation of QR code;
  - **Certain class of taxpayers like an insurance or a banking company, a financial institutions, non-banking financial institution, GTA, passenger transportation service providers as IRCTC** may find it very unfeasible and difficult and difficult to capture dynamic QR code on their B2C invoices. Hence they may be **exempted from the same**;
  - Exemption of OIDAR from capturing dynamic QR code on their invoices;
- Agenda is placed before the GST Council for approval of above recommendations by Law Committee and to implement the QR Code scheme w.e.f 01st October, 2020

  
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**Agenda Item 5A(xv): Extension of due dates for FORM GSTR-1, FORM GSTR-3B and FORM GSTR-7 for Ladakh**



- GSTN informed that the data migration activity for Ladakh was finally processed successfully on 28<sup>th</sup> February, 2020;
- Hence, Law Committee has recommended extension of due dates for FORM GSTR-3B for the month of January, 2020 till 20<sup>th</sup> March, 2020. Similar extension is also required for FORM GSTR-1, and FORM GSTR-7 for January, 20;
- *GSTN has asked for time till 31<sup>st</sup> March 2020*

Agenda is placed before the GST Council for approval of issuance of notification to extend the due dates till 31.03.2020



**Agenda Item 5A(xvi): Continuation of existing system of furnishing FORM GSTR-1 & GSTR-3B till September, 2020**



- The Law Committee has deliberated on the issues arising out of the revised plan for implementation of the new return system and has recommended that the present return system of GSTR-1 / 3B may be extended for 6 more months;
- Agenda is placed before the GST Council for approval of **issuance of notification to continue the existing system of furnishing FORM GSTR-1 & GSTR-3B till the month of September, 2020.**
- **FORM GSTR-3B** would be filed by 20<sup>th</sup> day of succeeding month for taxpayers having aggregate turnover more than 5 crore rupees. For others it would be done in a staggered manner (22<sup>nd</sup> /24<sup>th</sup> of succeeding month) as detailed in agenda note.



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**Agenda Item 5A(xvii): Transition Plan for merger of Union Territories of Dadra & Nagar Haveli and Daman & Diu** 

- A special procedure (similar to the reorganization of Jammu and Kashmir) has been recommended by Law Committee for the tax payers registered in the UT of Dadra and Nagar Haveli and Daman and Diu consequent to the merger of both the UTs. Salient Points are: -
  - Transition date to be decided in consultation with GSTN - tentatively **01.04.2020**;
  - State code of DNH shall be the new state code for the combined UT;
  - Merger was effective from 26<sup>th</sup> January, 2020. However, stakeholders have since issues invoices and filed returns.
  - Since, both were UTs earlier also, the tax collected is accrued to Centre only. GST transition can be made effective from a future date.
  - *GSTN has suggested transition date of 31.05.2020*
- Agenda is placed for approval of special procedure before the GST Council.



**Agenda Item 5A(xviii): Deferment of e-wallet Scheme** 

- GST Council in its 22nd Meeting had approved implementation of 'e-Wallet' scheme so that exporters could pay the GST by using the 'amounts' in their e-Wallets and to exempt upto 31.03.2018 the IGST and Compensation Cess payable on the imports made by the holders of Advance Authorization holders (AA)/ Export Promotion Capital Goods (EPCG) licenses and EOUs.
- Tax exemptions on imports under AA/EPCG and EOU scheme are expiring on 31.03.2020, which is causing uncertainty to exporters;
- Agenda is placed before the GST Council for deliberation and approval of following proposals:
  - Extension of the time to finalize the e-Wallet scheme upto **31.03.2021**;
  - Law Committee to examine viable alternatives to the e-Wallet scheme so that a final view can be taken on e-wallet scheme
  - Extension of the present exemptions from IGST and Cess on the imports made under the AA/EPCG/EOU schemes upto **31.03.2021**.



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**TABLE AGENDA 11(I) : REWARD/INCENTIVE SCHEME FOR B2C INVOICE:**



- Eligibility for B2C invoices for which payment has been done successfully using digital mode- RuPay Cards or UPI. Scheme proposed to be administered by NPCI.
- Financial transactions for Rs. 100 to Rs. 10,000/- to be eligible for the scheme.
- The prizes winner shall be identified by NPCI through a random selection from amongst the Digital transactions IDs. There will be a live cast of the draw.
- Reward sharing between Consumer and Supplier (Merchant) in ratio 3:1.
- Based on discussions in the 3rd National GST Conference held on 06.03.2020, the following prizes are proposed for 1 year-12 monthly draws
  - 1 Bumper Prize of Rs. 1 Cr
  - 100 prizes of Rs. 1 lakh each
  - 2000 prizes of Rs. 5000 each
  - 5000 prizes of Rs. 2000 each
- Total outlay : Rs. 48 Cr. Equal contribution by the Centre & the States from respective CWF

**Table Agenda 11(ii): Circular on refund related issues**



Based on the discussions in the 2<sup>nd</sup> National GST Conference and the recommendations of the CoO on Risk Based management of Taxpayers it is proposed to clarify following issues relating to refund:

- No refund of ITC under inverted duty structure in case the same is accumulated on account of reduction in rate of GST and where input and output supply are same.
- No refund in respect of those invoices, the details of which are not available in **FORM GSTR-2A**. Benefit of 110% as per 36(4) not to apply for refunds.
- To amend Annexure B to **FORM RFD-01** so as to seek details of HSN of the inputs and input service and capital goods.
- Applicants can file refund claim clubbing months which may be spread over two Financial Years (Circular 125 is modified to above extent).

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**Table Agenda 11(iii): Categorization of registration and corresponding spike rule (1/3)**

- To curb fake invoicing and fraudulent passing of ITC, categorization of the registration applications was recommended by Law Committee;
- It is proposed that physical verification of premises and Financial KYC to be a pre-condition for GST registration. This process shall be completed within 6 months.
- The existing system of registration to continue. However, pending verification, such persons not having any financial footprint will work under certain restrictions in the quantum of ITC that can be passed by him to the extent of rupees 3 lakhs per month. Further, Facility is proposed to be provided to pass on the additional ITC, beyond this limit on deposit of 20% of additional amount in cash ledger.
- Further, no refund on zero rated supplies by such registered persons would be allowed to taxpayers for the period during which the verification / KYC has not been completed
- Rules in this regard have been recommended by the Law Committee



**Table Agenda 11(iii): Categorization of registration and corresponding spike rule (2/3)**

Category: Liability Declared	Total GSTINs	% of taxpayers
NIL	515,384	41%
INR less than 3 lakh	644,124	51%
INR 3 lakh to 5 lakh	35,399	3%
INR 5 lakh to 10 lakh	31,831	3%
INR 10 lakh to 25 lakh	21,813	2%
INR 25 Lakh to 50 lakh	8,302	1%
INR 50 Lakh to 1 crore	4,926	0.4%
More than INR 1 crore	6,114	0.5%
Grand Total	1,267,893	100%

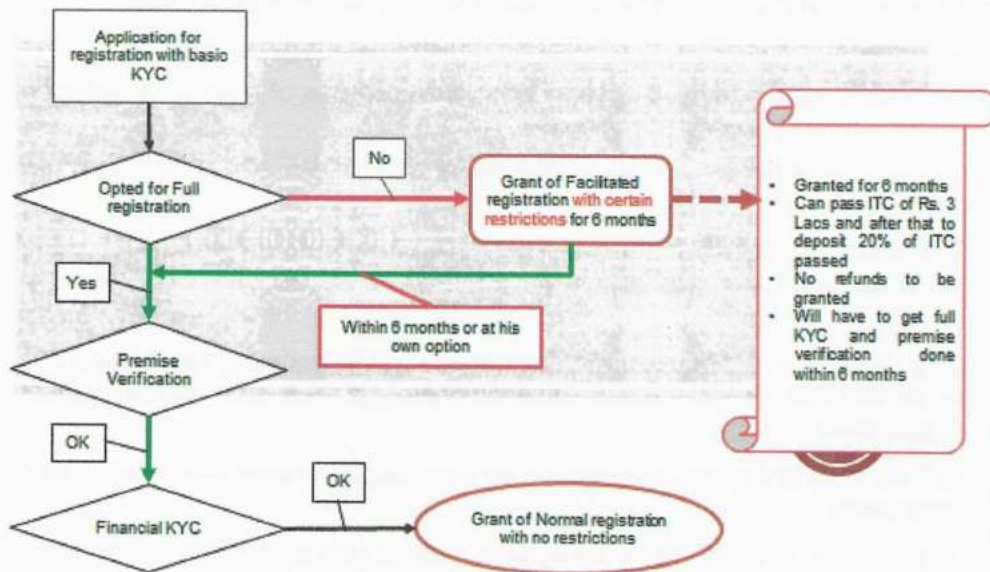
- in FY 2018-2019, a total of 12,67,893 new registrations were granted of which only 20,302 (about 2%) taxpayers were such whose liability of tax was greater than Rs. 3 lacs on an average per month in the first 6 months from registration.
- The limit of Rs. 3 Lacs of passing ITC per month translates into a turnover of approx. Rs. 3 Crores in B2B transaction only while B2C transaction remain unaffected.
- The issue is placed before the GST Council for deliberation and approval. The system related modalities would be decided by the GST Policy Wing in consultation with GSTN.



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**Table Agenda 11(iii): Categorization of registration and corresponding spike rule (3/3)**



**Table Agenda Item 11(v): Clarification in respect of issues for companies under Insolvency and Bankruptcy Code, 2016**

- Issues are being faced by entities covered under Insolvency and Bankruptcy Code, 2016 in complying with the provisions of GST Act. A special process needs to be prescribed for collection of GST during the resolution period;
- Law Committee has recommended to issue a notification specifying the **special procedure** for such taxpayers stipulating the process of registration, filing of the statement of outward supplies and filing of returns under GST for the period when an **interim resolution professional / resolution professional** has been appointed;
- Law Committee also recommended issuance of circular clarifying several issues related to corporate debtors undergoing corporate insolvency process;

Agenda is placed before the GST Council for issuance of circular and notification in this regard.

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**TABLE AGENDA FROM TAMIL NADU 11(VI): REMOVAL OF DIFFICULTY ORDER FOR EXTENDING TIME LIMIT FOR REVOCATION OF CANCELLATION OF REGISTRATION :**



- GST law does not permit revocation of cancellation orders after:
  - time-period for making application for revocation of order of cancellation of registration (30 days) is over; and
  - time-period for making appeal under Section 107 of the CGST Act is over.
- Recently, authorities have cancelled registration as per the provisions of Section 29 of the CGST Act, particularly, for not furnishing returns for six consecutive months
- It has been observed that many such persons are still continuing operations (E.g. in Tamil Nadu 66,977 persons are still continuing even after cancellation of registration)
- ITC for such taxpayers will lapse in case these taxpayers are made to take a new registration
- RoD may be issued to allow revocation wherein the cancellation order passed till 14.03.2020 may be allowed to file application for revocation of cancellation till 30.06.2020



**TABLE AGENDA 11(IX): RAJASTHAN HIGH COURT DB CIVIL WRIT NO. 15239/2017 (1/2)**



- Hon'ble High Court of Rajasthan vide order dated 01.08.2018 in the matter of Rajasthan Tax Consultants Association vs UoI and Ors. (D. B. Civil Writ No. 15239/2017 ) ordered as under:

*"3. In our considered opinion, it will be appropriate that the GST Council will decide the issue. However; the question regarding delay in filing of return, registration or late fees will not be changed and the same will be complied with pursuant to earlier order of this Court. The return which are filed late because of not proper functioning of the computer will not be attributed to the assess between 01.07.2017 to 30.09.2017."*

- Para 4 of the previous interim order of the Hon'ble High Court dated 20.09.2017 (enclosed as Annexure - B) reads as follows:

*"4. In the meantime, no coercive action (penal interest, late fees and prosecution) against any of the client of the petitioners members who are referred in the petition and are informing by email, will be protected. The composition scheme is extended upto 30.09.2017, therefore, desirous assessee can apply."*



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**TABLE AGENDA 11(IX): RAJASTHAN HIGH COURT  
DB CIVIL WRIT NO. 15239/2017 (2/2)**



- Since, under GST law there is no provisions for waiver of interest for delayed filing returns and therefore, Misc. Civil application (WMAF-199/2019 ) was filed before Hon'ble Court with plea to modified order to such extent that the waiver of interest for delayed filing of return may be deleted or modified as per the order of Court.
- In this regard, Order dated 28.02.2020 of Hon'ble Court is reproduced below:

*"List the matter on 18.03.2020 for orders.*

*In the meantime, learned counsel for the Union of India is directed to obtain instructions as to whether the direction contained in the order dated 01.08.2018 directing the GST Council to decide the issue in para-3 of the order; has in-fact, been considered by the GST Council or not, and if so, what is the decision of the GST Council."*

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



**TABLE AGENDA 11(X): IMPROVING INDIA'S RANK IN  
PAYING TAXES CATEGORY- EODB RANKING (1/3)**



- i. Overall ranking of India in EoDB has improved substantially by 57 ranks in past 4 years. However, the improvement under paying taxes has gone up by only 21 ranks.
- ii. The different indicators which are used for measuring the score under the head of paying taxes and the score obtained by India against these indicators in 2018 are:

Indicators	2018	Score
Number of tax payments	11	86.67
Time to comply with the tax system (hours per year)	252	68.64
Total Tax Rate	49.7%	65.80
Post-filing Index	2018	Score
(A) Time to comply with a VAT refund (Capital Goods)	No refund	0
(B) Time to obtain a VAT refund	No refund	0
(C) Compliance time to correct CIT error (including review time)	3.0 hrs	97.25
(D) Time to complete CIT review, where applicable	Review likelihood <25%	100
Score for post filing index (average of A, B, C & D)		49.31
Overall Paying Taxes Ranking	115	67.63




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**TABLE AGENDA 11(X): IMPROVING INDIA'S RANK IN PAYING TAXES CATEGORY- EODB RANKING (2/3)** 

- A study has been conducted by a case study company on the status of VAT for paying taxes in 189 Countries.
- As per the report, there are 107 countries where refund of VAT is available to the case study company.
- Out of these 107 countries in 26 countries refund of VAT is allowed after a carry forward period which ranges from 1 month in the Bahamas to 1 year in Pakistan.
- In addition, there are 26 more countries where no VAT is charged and 5 countries where no VAT is charged on capital purchases.
- China has recently started the VAT refund and the domestic companies operating in 19 industries meeting the industry criteria and having an appropriate tax credit rating can avail the cash refund of VAT.



**TABLE AGENDA 11(X): IMPROVING INDIA'S RANK IN PAYING TAXES CATEGORY- EODB RANKING (3/3)** 

- There are 50 countries including India which do not allow for VAT refund. Case study company for India based on GNI for current year would be about Rs. 29.6 Cr.
- Accordingly, the proposal is to provide for cash refund on ITC on Capital Goods to registered persons having aggregate turnover upto Rs. 30 Cr.
- If cash refund of tax paid on capital goods is given, the estimated impact on India's rank would be as under:
  1. Post filing Index: 49.4 → 89
  2. Indicator Rank: 115 → 76
  3. Overall Rank: 63 → 56
- Revenue implication based on CBDT data will be around Rs. 14000 Cr.
- GST Council may consider the proposal



  
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### TABLE AGENDA 11(XI): AD-HOC EXEMPTIONS ORDER(S) ISSUED UNDER CUSTOMS ACT, 1962

- It was decided in the 26th GST Council meeting that:
  - All ad-hoc exemption orders under Section 25(2) of the Customs Act, 1962 be issued with the approval of Hon'ble Finance Minister as was the case prior to the implementation of GST
  - Such orders be placed before the GST Council for information.
- Ad-hoc exemption order No. 01/2020 issued on 17.03.2020 placed before the Council for information. The GST involved is approximately Rs. 93 Lakh

S. No.	Date	Order No.	Remarks
1.	17 <sup>th</sup> February, 2020	AEO No. 01 of 2020	Request from the Ministry of Defence for Custom Duty exemption for import and re-export of Guns/equipment from Sri Lanka.

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Annexure 8

**INCREMENTAL IMPROVEMENTS TO EXISTING RETURNS (GSTR-1)**

- Date of filing of GSTR-1 for every invoice in GSTR-2A
  - GSTR-2B to be generated consisting of all the invoices on which credit can be taken (11<sup>th</sup> to 11<sup>th</sup>)
- Quarterly filers **at their option** may file GSTR-1 for first two months to pass credit
  - No late fee for GSTR-1 for first two months of a quarter for quarterly filers.
  - Quarterly limit to stay at 1.5 Cr
- Monthly filers to continue to file their GSTR-1
- Separate functionality to ask taxpayers if they want to file nil GSTR-1 at the time of filing GSTR-3B.
- Nil filing of GSTR-3B to be given by SMS.



**INCREMENTAL IMPROVEMENTS TO EXISTING RETURNS (GSTR-1)**

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- Monthly filers to continue to file their GSTR-1
- Separate functionality to ask taxpayers if they want to file nil GSTR-1 at the time of filing GSTR-3B.
- Nil filing of GSTR-3B to be given by SMS.



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### INCREMENTAL IMPROVEMENTS TO EXISTING RETURNS (GSTR-1)

Return Period	Total GSTR-1 Filers	Only B2C Transactions	Nil GSTR-1 filers	Total (B2C & Nil filers)	% of B2C + Nil filers for GSTR-1
1	2	3	4	5 = 3 + 4	(5/2)
Sep-19	8284247	1146263	2339435	3485698	42%
Oct-19	3262205	363146	754188	1117334	34%
Nov-19	3238847	357311	751770	1109081	34%
Dec-19	7062080	906798	1993657	2900455	41%

- GSTR-1 to be made compulsory only for :
  - Making B2B supplies
  - Making exports
  - Making amendments
- B2C and nil-filers of GSTR-3B to be exempted from filing GSTR-1.
- GSTR-1 filing to be staggered :
  - Before 10<sup>th</sup> for turnover greater than Rs. 1.5 Cr.
  - Before 13<sup>th</sup> for turnover less than Rs. 1.5 Cr.
  - GSTR-2B to be generated on 14<sup>th</sup> of the month



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