



Minutes of 37th GST Council Meeting held on 20th September, 2019

The 37th Meeting of the GST Council (hereinafter referred to as 'the Council') was held on 20th September, 2019 at Double Tree by Hilton, Panaji, Goa, under the Chairpersonship of the Hon'ble Union 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) and XV Finance Commission, who attended the meeting is at **Annexure 2**.

2. The following agenda items were listed for discussion in the 37th Meeting of the Council:

1. Address/Presentation by the Chairman, Finance Commission, regarding need for a consultative mechanism between the GST Council and the XV Finance Commission
2. Confirmation of the Minutes of 36th GST Council Meeting held on 27th July 2019
3. Deemed ratification by the GST Council of Notifications, Circulars and Orders issued by the Central Government
4. Decisions of the GST Implementation Committee (GIC) for information of the Council
5. Decisions/Recommendations of the IT Grievance Redressal Committee for information of the Council
6. Review of Revenue position
7. Issues recommended by the Law Committee for the consideration of the GST Council:
 - i. Proposal for extension of last date for filing of appeals against orders of Appellate Authority before the GST Appellate Tribunal due to non-constitution of benches of the Appellate Tribunal
 - ii. Exemption to small taxpayers from filing of Annual Return
 - iii. Issues pertaining to interpretation of Section 10 of the IGST Act, 2017
 - iv. Restrictions in availing input tax credit in respect of outward supplies not furnished under Section 37 of the CGST Act, 2017
 - v. Proposed clarifications on refund related issues
 - vi. E-way bill for movement of Gold
 - vii. Proposed amendment to sub-rule (5) of Rule 61 of the CGST Rules, 2017 relating to FORM GSTR-3B
 - viii. Specifying the due date for furnishing of return in FORM GSTR-3B and details of outward supplies in FORM GSTR-1 for the period October-December, 2019
 - ix. Proposal for amendments to CGST Rules, 2017
8. Issues recommended by the Fitment Committee for the consideration of the GST Council
9. Developments regarding implementation of GST EWB System – FASTag Integration
10. Presentation on fake invoice menace, fraudulent refund, etc.
- 10(i). Interim recommendations of Committee of Officers on Risk Based Management of taxpayers under GST regime

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11. Status of Implementation of New Return System
12. Status of integrated refund system with disbursal by single authority
13. Status and progress in generation of electronic Invoice
14. Linking GST registration with Aadhaar and proposed changes in the GST Law and GSTN System
15. Update on change of share capital/ownership structure of Goods and Services Tax Network (GSTN) and transfer of shares of GSTN from Empowered Committee of State Finance Ministers (EC) & Non- Government Institution to Centre, State Governments & Union Territories
16. Minutes of 11th Meeting of Group of Ministers (GoM) on IT Challenges in GST Implementation for information of the Council and discussion on GSTN issues
- 16(i). Minutes of 12th meeting of the Group of Ministers (GoM) on IT Challenges in GST Implementation for information of the Council and discussion on GSTN issues
17. Quarterly Report of the NAA for the quarter April to June 2019 for the information of the GST Council
18. Creation of the State and Area Benches of the Goods and Services Tax Appellate Tribunal (GSTAT)
19. Amendments in GST Laws in view of creation of UTs of Jammu & Kashmir and Ladakh
20. Special Composition Scheme for Brick kilns, Menthol, Sand Mining Activities and Stone crushers
21. Status of payment of Advance User Charges by the States and CBIC and interest on delayed payment
22. Any other agenda item with the permission of the Chairperson
 - i. Resubmission of refund application after filing NIL refund in FORM GST RFD-01A
 - ii. Circular No. 107/26/2019-GST dated 18.07.2019 on supply of Information Technology enabled Services (ITeS services) –further clarification
 - iii. Single disbursement related amendments of rule 91 of the CGST Rules
 - iv. Doubts raised on treatment of secondary or post-sales discounts under GST
23. Date of the next meeting of the GST Council

Preliminary discussion

3. The Hon'ble Chairperson expressed deepest condolences on behalf of the Council on passing away of Shri Arun Jaitley, erstwhile Union Finance Minister, who had Chaired 32 GST Council Meetings. She stated that Shri Jaitley would always be remembered in this country as the person who made GST happen. He was a politician, statesman, legal luminary and above all a consensus builder and it was what the country needed to make GST a reality. He had his unique way of bringing most complex issues to the solution where no one ever felt aggrieved and left out from the decision-making process. As the first Chairperson of the GST Council, he had a challenging role cast out for him, which he carried out wonderfully by taking along everyone with him. The warmth that he brought to the GST Council melted most of the strongest stand taken on various issues. She added that he had a very special relationship with many of us including every Member of the GST Council cutting across the party lines. She added that even with the diverse political ideologies within the Council, he ensured that the Council was always one in all the decisions taken by it. While he has left a void, the principles that he has laid down for the functioning of the GST Council will always


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continue to guide us in our journey ahead. The Hon'ble Chairperson requested Hon'ble Members of the Council to stand up for a minute in the memory of Late Shri Arun Jaitley.

3.1. The Hon'ble Chairperson warmly welcomed Shri Basavaraj Bommai, Minister for Home, Karnataka, Shri T Harish Rao, Finance Minister, Telangana, Shri Suresh Khanna, Finance Minister, Uttar Pradesh who have been nominated as Members of the Council from their respective States. She also welcomed Shri Bikram Singh, Minister (Industries), Himachal Pradesh, Shri Brajendra Singh Rathore, Commercial Tax Minister, Madhya Pradesh and Shri Madan Kaushik, Minister for Urban Development, Uttarakhand who were nominated for this particular meeting from their respective States. The Council also placed on record its appreciation for contribution made by Shri Rajesh Agarwal, the erstwhile Council Member from Uttar Pradesh to the deliberations of the Council.

3.2. The Hon'ble Chief Minister of Goa formally welcomed the Members of the GST Council, Officials of Central and State Governments on behalf of the State of Goa to the 37th GST Council Meeting and stated that it was an honour to host the meeting of the Council in Goa and that all issues in the agenda items would be discussed and deliberated in arriving at suitable decisions. He stated that our Hon'ble Prime Minister of India had brought laurels to our nation by successfully implementing GST regime and it would be our collective endeavour to take this initiative to the next level and add value to make it comprehensive. He added that there were certain issues pertaining to the State of Goa with respect to hotel Industries and casinos, for which he had written separately to the Hon'ble Chairperson and he expected that both the issues would be resolved in this meeting. At the end, he thanked once again the Hon'ble Chairperson in giving his State an opportunity to host the GST Council Meeting and also appreciated Shri Mauvin Godinho, Council Member from the State of Goa in leaving no stone unturned in successfully organising the meeting.

3.3. After the preliminary discussions, the Hon'ble Chairperson thanked the Hon'ble Chief Minister of Goa and requested Dr. ABP Pandey, the Union Revenue Secretary and the Secretary to the Council (hereinafter referred to as the Secretary) to take up the individual agenda items for consideration of the Council.

Agenda Item 1: Address/Presentation by the Chairman, Finance Commission, regarding need for a consultative mechanism between the GST Council and the XV Finance Commission

4. The Secretary informed that the first Agenda Item was address by the Chairman, XV Finance Commission (FFC) Shri N. K. Singh and requested him to make his address. Chairman, FFC while expressing his gratitude to the Hon'ble Chairperson of the GST Council for having acceded to the FFC's request for granting them an audience before the Council, stated that it was a privilege and opportunity to share their thoughts and the way in which they were looking at macroeconomic framework, with the GST Council. At the outset, he stated that the FFC had a stake in the decisions taken by the GST Council emanating from the Constitution of India and the terms of reference of the FFC. He explained the stake of the FFC in the GST regime by illustrating that about 23.8 per cent of the gross tax revenues of the Union are from GST and that taxes subsumed in GST constitute about 42% of own tax revenues of the States. Therefore, they were greatly interested in the behaviour of how this large contribution of GST to the Union's overall taxes and that of the States really behave themselves in the foreseeable future and more so during the period of their award. It was

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further stated by him that as per the trends, the overall Tax-GDP ratio of India is about 17.2% while the said ratio by way of time series analyses based on India's current per capita income and GDP should be about 22.6% and therefore there was a gap of about 5.4%. Within this gap, there is a GST compliance gap which was about 2.4% of the GDP and the FFC was interested in understanding the compliance gap of 2.4% between the GST potential and GST realisation.

4.1. The Chairman, FFC stated that when the GST was originally adopted, it was expected that the GST with "one-nation-one-market-one-tax" would have a multiplier effect on growth, improve tax revenue buoyancy, incentivise efficiency and thereby promoting the virtuous cycle which exists between efficiency and growth and benefit to all the stakeholders which also had been the objective and has been the modalities in which the GST Council had functioned with rare unanimity.

4.2. He added that the experience of GST in the last 25 months reveals that the result has been a mixed-one, owing to several factors such as the GST rate structure and the modalities for compliance which have not been very simple, multiple adjustments in GST rates and its structure have made it difficult to ascertain the impact of GST on economic growth. As opposed to the expected buoyant expectations of the revenues, 21 of the 29 States have had to be compensated for revenue shortfall during 2018-19. He observed that this may be partly due to protection of GST revenue at a high 14% annualised growth from the base year of 2015-16., which was a part of the grand bargain (in the words of the iconic politician Late Shri Arun Jaitley) of the Union with the States. He stated that when the compensation rates were being fixed, at that time, the nominal GDP numbers were close to 12.6%. However, the observed growth in subsumed taxes in the five years preceding the implementation of the GST was only about 8 to 9% per annum whereas the compensation rate was determined at the rate of 14%. Therefore, in view of the relatively better macro-economic condition, the rate of compensation (14%) may not have been too difficult to accommodate which meant a tax revenue buoyancy in excess of one. Post-facto, with the containment of inflation under the targeting regime and some sluggishness in economic activity, the nominal GDP growth itself has been lower than expectations. Hence, the protection of revenues to the States at the annualized rate of 14% has placed a substantial demand on the GST system.

4.3. He further stated that the award period of the FFC was for a period of five years starting with FY 2020-21 and ending with 2024-25. While compensation to the State had been assured till 2022, the calculations by FFC had taken into account revenue growth of 14% for the remaining three years also. This will undoubtedly put a big burden on the Union's Finances. If the GST revenues of the States did not grow at the rate of 14% per annum on account of low tax buoyancy arising from lower efficiency gains then the Central Government and the State Governments had to worry about the certainty of the assured 14% compensation in case of shortfall. He also observed that the gap in amount of realisation from the compensation cess to that of compensation to be paid had also increased over a period of time. As a result of this, Centre's options were limited as to whether the Cess rate would have to be increased or more commodities besides Auto Sector, Coal, Tobacco etc. would have to be covered under the Cess or they could be a change in Act of Parliament to reflect the current macro-economic reality which included a much lower nominal GDP growth than the GDP numbers which were assumed or ., the compensation might have to be paid from the Consolidated Fund of India which would impact the vertical distribution of revenues from the


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Centre to the States. He informed the Council that almost every State's Finance Minister that the FFC had visited pleaded in one form or the other, either for a straight continuation of the 14% compensation of the balance three years that was covered by the award period of the FFC but not by the period of compensation or in some manner to find a solution which would enable them a softer landing for planning their resources in view of the 14% assured revenue growth. He stated that the FFC had a simple model based on the past estimates and nominal GDP numbers, the FFC gives a rate of growth to each State which would commensurate with the need of State and in a way commensurate with overall GDP of the country.

4.4. In this regard, the Chairman, FFC raised some issues and made some suggestions. The first important question ever since the inception of the GST in July 2017, there had been only GST rates cuts and rarely there had been rate increases. More so, rates had been adjusted downwards for a considerable number of items in the last 10 meetings of the GST Council. The rate revisions occurred in August, September, October and November of the initial year of 2017 and further in January, July and December of 2018 and later in February, March and July of 2019. He stated that this exercise upset the time frame during which all of us had expected that the GST would certainly would be revenue neutral/positive in which all stakeholders benefited. He stated, however as we looked at all decisions taken so far (downward revisions of rates), it made one feel that it's a race to the bottom where all were seeking competitively lower and lower rates on each commodity. This resulted in a cluttered rate structure, enormous challenges of compliance, challenges of technology. Therefore, he stated that the time had come to go back to the drawing board in spite of the fact that this may or may not be the appropriate time for it or else from where would the FFC consider its awards and devolutions to States. Apart from this, the threshold turnover and exemption limits had also been changed. He added that the multiple downward adjustments in the rate structure had two consequences. First, it had affected the revenue stream. Secondly, there was no clarity on the effective weighted GST rate currently in vogue. It was hence important to re-establish the revenue neutral rate. The Chairman, FFC suggested that rate rationalization was the need of the hour by simplifying the rate structure considerably around a three rate structure consisting of a Standard rate, a higher rate on luxury and sin goods, and, a lower Merit Rate with a view to configure everything around the standard rate which could be, say, 17%.

4.5. He added that the Council also needed to revisit the exemptions to recalibrate and rationalise them further. He also highlighted the need to visit the future course of compensation to States in view of the revenue gap vis-à-vis the assured growth. There were a number of issues centred around the compensation of revenue loss to the States, pre and post June-2022. GST compensation cess was imposed on a select band of items. There was little room for increasing the cess on automobiles given the slowdown currently observed in this sector. Increasing the cess on coal would have considerable cost implications for crucial sectors like electricity where coal is employed as a critical input. This limits the scope of raising the compensation only through a handful of items.

4.6. In view of the above, the Chairman, FFC stated that there was a need for clarity on the above issues to enable them to fulfil their constitutional obligations. There seems to be a certain amount of uncertainty about the gross tax revenue of the Union and its divisible pool of taxes. This assumes significance in so far as the stability of the finances in the States is concerned. Clarity about the net divisible pool of Union taxes over the award period and estimation of the gross tax revenue of the States was the basis for the scheme of fiscal

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devolution that will be instituted by the Finance Commission. Hence, resolution of the aforementioned issues was crucial to the decision-making of the Finance Commission. The Chairman, FFC ended his address by stating that the work of the GST Council and of the FC are essentially complimentary to each and both are constitutional bodies. He sought advice and guidance from the Hon'ble Members of the GST Council on the conundrum faced by the FFC as highlighted above. He suggested that a regular consultative mechanism between the GST Council and FFC might be established to facilitate a seamless consultation and resolution of issues that have relevance to the fiscal position of the States and resolution of issue that have a bearing on the Constitutional obligations of both the entities.

4.7. The Secretary thanked the Chairman, FFC for his opening address and invited the Hon'ble Members of the GST Council for their response to the suggestions put forth by the Chairman of FFC. Shri Manish Sisodia, the Hon'ble Minister of Delhi appreciated the issues raised by the Chairman, FFC and stated that it was the right time to tell the Council as to where we were headed. He also felt that it had been rightly pointed by Chairman, FFC that all the States should get rightful and equal devolution. He stated that unfortunately Delhi was not considered for the purpose of devolution by the Central Finance Commission since the last 18 years while they were being asked to set up State Finance Commission to devolve funds to the local bodies. He added that this Council treated Delhi as a State while the Central Finance Commission treated it as Union Territory. He stated that while the devolution by the Finance Commission to the States had increased from 32% to 42%, the amount given to Delhi has remained static at Rs 325 crore since 2011. Therefore, both Delhi and Puducherry should be treated as States by the Finance Commission for the purpose of devolution of funds.

4.8. Shri V. Narayanasamy, the Hon'ble Chief Minister of Puducherry offered his condolences to late Shri Arun Jaitley, the former Chairperson, GST Council and the Union Finance Minister of India and stated that Shri Jaitley was able to carry the entire Council with him. Therefore, this was the opportune time to recognise and remember his services rendered to the nation. He thereafter stated that the devolution of funds from the Central Finance Commission and UT Finance Commission are given to the States and UTs respectively. He stated that from the point of view of GST, the UTs of Delhi and Puducherry were treated as a State whereas they are treated as UT with respect to devolution of Funds by the Central Finance Commission. He stated that with the passage of Bill in Parliament with respect to UT of Jammu & Kashmir, there would soon be three UTs with Legislatures including UT of Delhi and UT of Puducherry. He informed that as per the Act passed in the Parliament, there was a clause that UT of Jammu & Kashmir would be included in the FFC. Therefore, the UTs of Delhi and Puducherry remained left out. He stated that in this regard Puducherry and Delhi were pursuing with Government of India to be included in the FFC devolution. He added that for the Grants given under Centrally Sponsored Schemes and Central Schemes, the UTs of Delhi and Puducherry were treated as a State and the Grants were given in the ratio of 60:40 unlike the past when they were treated as UTs and the Grants were received from Centre in the ratio of 90:10. While the devolution of Funds to States was 42% whereas as far as Puducherry is concerned the amount that was originally 90% in the form of Grant had decreased to approximately 26%. He stated that the revenue from Central Taxes that was collected from all the States including that of Delhi and Puducherry were going to the Consolidated Fund of India whereas UT of Puducherry and Delhi, were not getting any amount in the form of devolution therefrom. Therefore, there was every justification for Puducherry and Delhi to be included in the FFC. In this regard he stated that the CGST

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component of GST is collected in all the States including Delhi and Puducherry. Therefore, like any other States, Delhi and Puducherry are also entitled to 42% of CGST and that this anomaly needs to be addressed. The Chairman, FFC stated that they function in accordance with the terms of reference stipulated by the President of India and if the Terms of Reference had a mandate to include the claims of Delhi and Puducherry regarding devolution, then the same would be considered by the Finance Commission.

4.9. Dr. T. M. Thomas Isaac, the Hon'ble Minister from Kerala stated that he shared the concerns expressed by the Chairman, FFC regarding the current slowdown in the economy in terms of GDP growth. However, he disagreed with his views that because of slowdown the tax collection would remain low, leading to widening of compensation gap and therefore, we might need to re-work the compensation for the States in view of the burden on the finances of the Union. He stated that the Centre and States came together to bring GST based on consensus and in view of certain circumstances it should not be compromised. He was in agreement with the view that Union Finances should not be burdened but there was a mechanism in the Constitution itself to address the issue by which it can be addressed. Further, the Central Government could even borrow from the market which could be recouped by extending the period of levy of compensation cess for an year or two. He added that even during the times of slowdown/recession there is a need to address the concerns of the State but they did not have the right to borrow. Therefore, if the promises were not fulfilled then it would be difficult for the States carry on these obligations.

4.10. The Hon'ble Minister from Kerala stated that he agreed with the view of the Chairman, FFC regarding frequent downward revision and multiplicity of rates in GST and that the present rates were not revenue neutral. However, he disagreed with the idea of restructuring the entire GST edifice as it would be counterproductive. He added that we must not forget about the position from where we had moved. He stated that it must not be forgotten that in the pre-GST era there were a number of taxes including VAT levied by the State Governments and a multiplicity of VAT rates across the States. He stated that simplification could not be a guise to argue for reduction in tax rates in its third year of GST. He further stated that there was no annual return and no real time data from e-Way bill was being shared. He stated that under the guise of Ease of Doing Business, rates have been reduced and returns had been done away which was against all canons of equity. Most of the consumer durables had a pre-GST rate much higher than 28% while their rate under GST was mostly at 18%. Therefore, in his view, instead of again planning to reduce the taxes further, the system needed time to stabilise and see the experience. The Chairman, FFC responded that it was not his suggestion that compensation Cess as promised by the Act of Parliament should be changed. There were several options available that could be exercised in the context of the current macro-economic situation by the GST Council. His objective was to increase tax collections by making the tax rates revenue positive and certainly revenue neutral. As enough fiscal space was not available to the Union or States he did not want to decrease the revenue kitty. He had stated earlier that there was a case for increasing the Tax-GDP ratio of India vis-à-vis the peer group of countries in terms of same per capita income and similar stage of economic development. He agreed with the views of Hon'ble Minister from Kerala that equity must be an important driving consideration.

4.11. Shri Manpreet Singh Badal, the Hon'ble Minister from Punjab stated that the Chairman, FFC had shown us the mirror. The C&AG in its report for 2017-18 had stated that


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Union of India collected 10% less tax in 2017-18 over 2016-17. If it was assumed that there was an organic growth was of 10% to 12%, Government of India collected 20% less taxes in GST. In other words, the tax rates in GST were much lower by approximately 25% than the pre-GST regime. Therefore, there was a need to look at the entire gamut of tax rates and structural changes in tax rates may be carried out, if necessary. He observed that GST was a product of tremendous trust which the States had reposed in the Union. One of the contributing factor for the trust was that the States were given an assurance of 14% growth in revenue year-on-year. In his view, it appeared from this year's budget, the commitment was getting diluted indirectly. While total amount collected through Cesses and Surcharges had grown by 100% during the last year, there was no money available for the States through devolution. Therefore, he too agreed with the views expressed by Hon'ble Minister from Kerala that the tax rates should be revenue neutral in addition to bringing out more clarity on the devolution formula with respect to surcharges and cess.

4.12. Shri Suresh Khanna, the Hon'ble Minister from Uttar Pradesh stated that he agreed with the Hon'ble Chairperson of the GST Council on what she said about Late Shri Arun Jaitley and he offered his tributes to him. He stated that the concerns expressed by the Chairman, FFC were indeed serious and he too believed that there was a need to undertake a review of GST. He stated that just like there were Fitment Committee and Law Committee to look into changes in rates and law, there was a need to set up a Committee to check Tax Evasion.

4.13. Shri T S Singh Deo, the Hon'ble Minister from Chhattisgarh expressed his respects and deep condolences on untimely demise of Late Shri Arun Jaitley. He stated, in the charged political atmosphere where inter-political rivalries were acute, he was pleasantly surprised to see a facet of Shri Jaitley in the GST Council which was very warm and accommodating as Chairperson of the GST Council. In respect of the issues raised by Chairman, FFC regarding GST rates etc., he stated that many viewed that India had got a very complex GST structure and there was a need for its simplification in terms of having lesser number of slabs, may be one, two and certainly not more than three slabs in view of keeping with the objectives of GST to yield higher revenues and a fair playing field. He stated that while going through the C&AG report, he noticed that the report relating to revenue from Central Excise for the year 2015-16 highlighted that 97.37% of the total Central Excise revenue came from only 8 items and about 90.03% of this revenue came from 5 of these items. Therefore, in view of these, we must concentrate on evasion prone commodities and high revenue generating items rather on increasing tax rates. He stated that businesses with less than Rs 2 crore annual turnover constitute about 82.04% of assessee base while they contributed about 3.36% to the GST revenue and in his State most of the revenues came from very few tax payers, that is about 10% tax payers accounted for 95% of GST collection. Therefore, it was needed to ease the environment of business for smaller taxpayers and at the same time focus on checking leakages in high revenue contributing segments. Regarding the aspect of compensation to States he stated that there was a provision for compensation to States in case of shortfall till the year 2022. He informed that for a State like Chattisgarh, it was not able to increase the revenue on its own by more than 7%. He stated that the production of coal in 2018-19 was about 142 million tonnes and further explained that in pre-GST regime the State levied environmental cess on coal that was used by the State entirely and then there was a VAT of 5% which accrued to revenue of the State but with the new GST regime the GST rate was same as that of VAT rate i.e. 5% and Chhattisgarh got 2.5% as its share. Therefore, there was


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huge loss on account of revenue from Coal to the State. It was therefore, not desirable to have a discussion regarding having or not having compensatory framework to States at this stage and they might end up losing Rs 5500 to Rs 6000 crore by the year 2022.

4.14. Shri Nitinbhai Patel, the Hon'ble Deputy Chief Minister of Gujarat stated that Chairman, FFC had presented a general view with respect to GST implementation. However, he felt that the discussion regarding review of entire GST framework was not needed as it would undo the work done by the Council in its last 36 Council Meetings. Therefore, he suggested that the Council, based on the suggestions of Chairman, FFC, can discuss a full-fledged agenda separately in the Council. The Hon'ble Chairperson noted the suggestion of Hon'ble Minister from Gujarat and suggested that some more States might like to express their views about address of Chairman, FFC and they should be heard as well.

4.15. Dr. Amit Mitra, the Hon'ble Minister from West Bengal stated that two trends were clearly visible with regard to what the Chairman, FFC had highlighted. Firstly, the burden of development had slowly shifted from the Centre to the States. For instance, Sarva Shiksha Abhiyan, Right to Education, Food Security Act, all these were introduced by Centre and then after a while it was left to the States for implementation. He stated that almost 60% of developmental work in the States were carried out by the State's finances. Therefore, one of the trends was that the States were being made more and more responsible for creation of social and physical infrastructure in their jurisdiction. The second trend was whether GST in its current condition was sufficient as a resource provider for the aforesaid obligations of the States. He invited reference to the reply given by the Hon'ble MoS (Finance) in the Parliament that approximately Rs. 45,682 crore worth of GST evasion had been detected. He further stated that on one hand we were looking for resources in GST but the structure was unprepared that such large-scale frauds were happening around. Therefore, the GST revenues have turned out to be less than VAT for the States whereas the contribution of Cesses and Surcharges to the Union's revenue kitty as part of Gross Tax Revenue had increased from about 6.53% in 2009-10 to 12.24%. However, the cess and surcharge were not part of devolution package. Thus, we see a trend that the finances of States were getting squeezed.

4.16. The Hon'ble Minister from Bengal further stated that the Chairman, FFC in his remark suggested to review the basic GST architecture, look at three rate structure, revise the compensation matter etc. In this regard, he submitted that the tax incidence in many commodities in the pre-GST was much higher than in the GST regime. He stated that he had been saying that we should move away from levy of 28% on goods other than the Sin goods and Luxury items to 18% without cherry-picking when some stability in revenue structure was achieved. He observed that unfortunately, the revenue structure had worsened instead and States were being compensated by the Central Government. He stated that it was not clear as to what would happen to the State's finances post 2021-22 when the compensation as provided for under the Compensation Act was over. He felt that one solution could be by way of increasing devolution to States now or probably by extending the Compensation to States by three years at a lower rate, say 10%, beyond 2022 till the year 2025. He felt that may be by that time the GST structure would stabilise. In this backdrop, he wondered as to whether the Finance Commission could recommend extension of the period of Compensation to States till GST structure stabilised. He further suggested that in the meantime as suggested by Chairman, FFC there was a need to go back to the drawing board. Therefore, he requested to provide the States with a head room because GST was not likely to stabilize for a few more


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years. As opposed to this, VAT stabilized in three years. The Hon'ble Minister from Gujarat agreed with views expressed by the Hon'ble Minister from West Bengal regarding the possibility that Finance Commission may recommend to the GST Council or the Central Government to extend the period of compensation so that the States were assured that the Centre would continue to help the States for few more years beyond 2022.

4.17. Shri Sushil Kumar Modi, the Hon'ble Deputy Chief Minister of Bihar expressed his condolences on demise of late Shri Arun Jaitley and stated that he was a great consensus builder. He stated that the real tribute to him would be offered to him by continuing the spirit of consensus in the Council. Thereafter, he stated that when VAT was introduced the States were scared of revenue loss and therefore the Government of India promised compensation to them for the loss suffered for three years. However, no compensation was required by any State after two years of introduction of State VAT. He stated that going by the trends, he felt that the revenue figures were not as depressing as it was being projected and that he was confident that after three to four years of implementation very few States would be left eligible for getting compensation from Centre. However, he requested that the Finance Commission may recommend GST Council or the Government of India to extend the period of compensation by two years. He drew reference to clause 18 of the 101st Constitutional Amendment Act which guaranteed compensation to the States for loss of revenue on account of implementation of GST for a period of five years. Therefore, it would require Constitutional amendment so as to extend the compensation period by another two years. He observed that the revenue shortfall seemed to have reduced in the year 2018 and 2019 vis-à-vis 2017 and 2018. He further stated that the average monthly collection under GST for 25 months was about Rs. 96,438 crore with a standard deviation of about 6.85% which was within the tolerable limits.

4.18. The Hon'ble Minister observed that, apart from Brazil, Canada and few more countries, nowhere in the world dual GST was administered and collected in a dual manner. For instance, Singapore and some other smaller countries had only single rate GST, the European Union also had tax rates between 15% and 29%. Therefore, it might not be possible to have a single rate under GST even in India. He further stated except one or two countries, nowhere in the world invoice matching was carried out. He stated that he agreed with views expressed by Hon'ble Minister from Gujarat that the most of the issues flagged by Chairman, FFC had already been discussed at length in the 36 GST Council Meetings held so far. Therefore, it might not be the right time to discuss restructuring of GST framework. He felt that most of the issues were related to simplification of processes and rationalisation of rates and the Council was working on those lines already. He stated that when decision regarding rate of compensation was being taken, the subsumed taxes growth rate was about 11% but compensation to States was guaranteed at 14% as grand bargain. He strongly felt that assurance given by the Act of Parliament should be abided and the compensation rate should not be reduced from 14% at any cost for five years, otherwise faith of States would be affected. He added that he would send separate memorandum to FFC with regard to notes circulated earlier on behalf of the FFC. He requested Chairman, FFC Finance Commission to recommend continuation of compensation Cess till the term of FFC i.e. 2025.

4.19. Dr. Himanta Biswa Sarma, the Hon'ble Minister from Assam stated that it was a historic day for Indian economy as corporate tax rate had been reduced from 30% to 22%/15% and a new era of growth would begin. He felt that there should be no increase in

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GST tax rate on this historic day. He stated that he was optimistic about the Indian economy and he did not feel that last few months should be made the basis to carry out long-term structural changes in GST. He felt that the efforts of the Government of India, GST Council, States, NITI Aayog and all the stakeholders should be synchronised and that would automatically lead to economic growth and increase the tax revenues. He stated that Compensation to States was guaranteed under the Constitution @14% per annum over the base year 2014-15 as per the deal between the Centre and the States. Therefore, if at a later stage, if the States felt that they needed compensation for another 2 years then they would discuss with the Government of India bilaterally. He requested the FFC to give a balanced award to the States. He wished that the Finance Commission shouldn't dampen the spirits prevalent today.

4.20. Shri Mauvin Godinho, the Hon'ble Minister from Goa expressed his deep condolences on demise of late Shri Arun Jaitley. He stated that Shri Jaitley through his interjections ensured true consensus within the Council and every decision was taken unanimously. With regard to concerns raised by Chairman, FFC, he differed with him based on merit. He stated that India was a very diverse country and Union of several States and therefore it was not proper to compare it with any of the peers. He added that GST was giving monthly revenue of about Rs. 1 crore which spoke of big success of the new regime of Indirect Taxes. Therefore, a slight slowdown in economy should not lead us to taking knee jerk reaction. Our response needs to be matured. He congratulated Hon'ble Union Finance Minister for taking the bold step of reduction in Corporate Tax rates to improve the investment sentiments and boost the economic growth. He stated that the GST rates on few items had been lowered in response to sentiments of Indians and there should be no tinkering with GST architecture as it would send a wrong message. He suggested that efforts such as invoice matching etc should be made to plug revenue leakage on account of evasion which would automatically bring in buoyancy in collection.

4.21. Shri D. Jayakumar, the Hon'ble Minister from Tamil Nadu stated that their views had been recorded in his written speech, which was been laid before the Members of the Council. The Hon'ble Minister from Tamil Nadu in his written speech expressed that the Council must tread very cautiously on reduction of rates on auto and cement as it had serious revenue implication. Further, the pre-GST rates on these items were at the same level as in post-GST era. It was suggested that rationalisation should be considered only when there was high buoyancy in tax revenue and the economic conditions were conducive. Further, Tamil Nadu did not support any withdrawal of exemptions as they were very sensitive and based on items either produced or consumed by vulnerable sections. Tamil Nadu was, in principle, strongly opposed to bringing petroleum products and electricity under the scope of levy of GST as an issue of State's fiscal autonomy. Further that Tamil Nadu did not support any differential treatment of States by FFC. This was for the reason that there was no differential impact on the States arising from GST since compensation was being paid to all the States in proportion to the amount in the base year. It was stated that one of the reasons for the persistent shortfall in GST revenue could be due to repeated reduction in the rates of tax made by the Council in the past two years since the roll out of GST. Therefore, Tamil Nadu also strongly favoured continuation of compensation to States even after the mandatory five-year period, although the rate at which such compensation was to be provided and other modalities could be worked out by this august Council in future. Alternatively, the Compensation Cess may be merged into the GST rate, which will increase the revenue flowing to States.

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4.22. Shri Madan Kaushik, the Hon'ble Minister from Uttarakhand stated that at the time of its formation, the State got about Rs. 233 crore from Uttar Pradesh. He informed that on advice of the then Prime Minister late Shri A.B Vajpayee the State worked to attract industries to Uttarakhand which led to a huge increase in its own tax revenue at the rate of 17-18% every year. When GST came these industries did not have an incentive to remain in Uttarakhand and there had been loss of tax revenue. Therefore, there was a need to extend the compensation to States beyond 5 years.

4.23 Shri Niranjana Pujari, the Hon'ble Minister from Odisha offered his condolences on passing away of Late Shri Arun Jaitley. With regard to observation of Chairman, FFC, he agreed to the suggestion of relook into the rate structure in GST. He stated that State of Odisha also suffered losses in GST regime due to structural changes, the change in levy approach from origin to destination State resulted in the loss arising from CST to the tune of Rs. 1,000 crore. They also suffered loss of VAT to the tune of Rs 600 crore on account of paddy and pulses. He stated that he concurred with the views expressed by the Hon'ble Minister from Chhattisgarh regarding the loss of revenue with respect to mineral resources such as iron, coal etc in GST regime vis-à-vis pre-GST regime. Therefore, he requested that to fill this revenue gap the Compensation to States must be continued. He further suggested Chairman, FFC to reward the States additionally who performed well in population management criteria.

4.24. Shri Brajendra Singh Rathore, the Hon'ble Minister from Madhya Pradesh stated that the Centre and the State came together for implementation of GST based on trust and therefore it was important for the Centre to uphold the commitments made to States. He also requested for extension of Compensation to States after the five-year period, albeit with reduced rates. The Hon'ble Chief Minister of Puducherry stated that the Compensation to States at the rate of 14% had been arrived at after deliberations over four sessions of GST Council. He stated that smaller States like Puducherry has been disadvantaged in GST arising from loss from CST and the change in principle of taxation from origin to destination. Therefore, the suggestion from Chairman, FFC that the compensation to States should be revisited in view of the prevalent macro-economic situation may not be prudent.

4.25. Shri Basavaraj Bommai, the Hon'ble Minister from Karnataka expressed his condolences to Late Shri Arun Jaitley. He stated that the Chairman, FFC had raised two fundamental questions, the first being on Compensation and the other being on rates. In his view, the intention of the FFC was to look into the ways and means to achieve the desirable results. He stated that compensation was the bonding spirit for GST and was critical to the States. He further stated that the growth in revenues during the VAT regime was about 13% to 14%. It was, therefore, essential to extend the period of compensation, as demanded by the States. He suggested that to avoid the abrupt fall at the end of compensation period of 2022, there could be a decremental compensation. He stated that rationalisation of rates had to be done at the right time when the revenue stabilised. The GST Council was required to ride two horses of efficiency and equity and had to be done collectively by Centre and States together.

4.26. Shri T. Harish Rao, the Hon'ble Minister from Telangana expressed his condolences on the demise of Late Shri Arun Jaitley and paid tributes for the leadership role played by him. He stated that though tax incidences had reduced after GST, but there has been not much improvement in economy. The reasons for the same are required to be ascertained. Therefore, there should be no further rate cut in GST rates. He stated that petroleum and alcohol should


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not be brought into GST. Information should be provided in respect of GST pertaining to other States, which would enable the States to reduce tax evasion.

4.27. The Hon'ble Chairperson subsequently invited the Chairman, FFC, to respond to the views expressed by the Hon'ble Members of GST Council. The Chairman, FFC thanked for the valuable and diverse views expressed by the Hon'ble Council Members. He clarified that it was not the Finance Commission's intension or purpose to detract from the optimism generated by Hon'ble Union Finance Minister's recent announcements and that they did not want to spread pessimism. If the optimism triumphed, it would enable the FFC to conclude better. He assured that the award by the FFC would be just and appropriate. The Chairman, FFC stated that he agreed with the views expressed by Hon'ble Minister from West Bengal on the broader issue of burden of developmental projects on the States and particularly with respect to Centrally Sponsored Schemes. He informed that they were in consultation with the Ministry of Finance to lend more predictability in terms of financing and also to see the outcome of these schemes. He added that a very basic reason for malaise of GST appeared to be system itself and the compliance gap, as stated earlier, and the leakage/misuse needed to be plugged. He also stated that the views on whether or not to continue the Compensation Cess had been varied within the Council itself. In any case, this decision did not vest in the Finance Commission. However, the Finance Commission was obliged to look into the rates of growth of revenue while making Award to the States. He observed that there were variation of opinion regarding the modalities of Compensation being paid to States. He stated that it was a constitutional provision and the Finance Commission was not in a position to decide upon it. He also clarified that the Finance Commission was not giving any signal regarding the rate structure or for raising tax rates, as the decision again vested entirely in the Council. With regard to Cesses and Surcharges, he observed that they were not shareable under the Constitution, and therefore, they could not be devolved. He stated that some of the Members expressed their views on exemptions as to whether it should be continued or not and in his view this feature was again embedded in the Constitution and it was up to the Council as to decide as per the best international practises and its appropriateness.

4.28. The Chairman, FFC stated that the Finance Commission had a broad ranging terms of reference and they were bound to address those obligations. He further stated the Finance Commission was required to strike a balance between various vertical and horizontal imbalances under various macro-economic assumptions. He observed that the revenue deficit grant under Article 275 of the Constitution would depend upon the health of finances of the Union of India. However, they were concerned about the revenues of the Union and the divisible Pool, which together formed part of the gross tax revenues and must remain robust and adequate in terms of absolute numbers, and therefore, the FFC was a stakeholder. Finally, the Chairman, FFC thanked the Members of the GST Council for opportunity to express the FFC's views and stated, while he had to weigh various options, he hoped and prayed that the optimism shared by the Members of the GST Council come true.

5. For **Agenda item 1**, the Council took note of address by the Chairman, FFC and the views expressed by the Members of the Council.



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Agenda Item 2: Confirmation of the Minutes of the 36th GST Council Meeting held on 27th July, 2019

6. The Secretary introduced the Agenda Item and stated that it was discussed during the Officer's meeting held on 19th September 2019 and no comments were received from the States regarding the versions recorded in the draft Minutes. Therefore, he requested the Council to approve the Minutes of the 36th GST Council Meeting.

7. For **Agenda item 2**, the Council adopted and confirmed the Minutes of the 36th GST Council Meeting held on 27th July, 2019.

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

8. The Secretary informed the Council that the Agenda Item (presentation attached as Annexure 3 to the Minutes) was discussed in detail in the Officer's Meeting and it was agreed by all. Therefore, he requested the Council to approve the agenda item.

9. For **Agenda item 3**, the Council approved the deemed ratification of the following Notifications, Circulars and Orders issued after 27th July, 2019 till 11th September, 2019, under the GST law by the Central Government, which are available on www.cbic.gov.in.

Act/Rules	Type	Notification/Circular/Order Nos
CGST Act/CGST Rules	Central Tax	35 to 41 of 2019
	Central Tax (Rate)	12 and 13 of 2019
UTGST Act	Union Territory Tax (Rate)	12 and 13 of 2019
ITGST Act	Integrated Tax (Rate)	12 and 13 of 2019
ROD Orders	Under CGST Act	7 of 2019

9.1. The Notifications 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 4: Decisions of the GST Implementation Committee (GIC) for information of the Council

10. The Secretary informed the Council that the Agenda Item (presentation attached as Annexure 3 to the Minutes) was discussed in the Officer's Meeting and it was agreed by all. Therefore, he requested the Council to approve the agenda item.

11. For **Agenda item 4**, the Council took note of the decisions taken by the GIC between 20th July, 2019 and 6th September, 2019.

Agenda Item 5: Decisions/Recommendations of the IT Grievance Redressal Committee for information of the Council

12. Introducing this Agenda item, the Secretary stated that the Minutes containing decisions/recommendations of the 6th and 7th Meeting of the IT Grievance Redressal Committee (ITGRC) were circulated to the States (attached as **Annexure 1 and 2** respectively


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of the Minutes of the respective ITGRC Meetings in Agenda item 5). The presentation covering the issues relating to the Agenda item was attached as **Annexure 3** to the Minutes.

12.1. As per the Agenda item, of the 32nd GST Council Meeting, Council had approved to extend the scope of ITGRC to also consider on merits, the specific cases covered under the orders of the Hon'ble High Courts as sent by any State or Central authority, to the GST Council Secretariat having certain **non-technical issues** viz. errors apparent on the face of record, where certain conditions were satisfied. The GST Council Secretariat had received 179 cases in response to extended scope of ITGRC and analysis of these cases was also presented before the committee.

12.2. The ITGRC in its 6th Meeting held on 27th May 2019 had decided and recommended the following: -

A. Cases where technical glitches in filing TRAN-1 was claimed by Taxpayers; analyzed and presented by GSTN (682 Cases):

- a. To allow filing of TRAN-1 in total **172 cases of Category 'A'**, as per Annexures mentioned in column No. 3 and 4 of Table-2 (of the 6th ITGRC Minutes) on account of technical/system issues as explained at para 6 of Minutes, in accordance with the Law Committee recommendations regarding consequential benefits related to filing of TRAN 1.
- b. **Not to allow remaining 510 cases of Category 'B'** as per Annexures mentioned in column No. 3 and 4 of Table-3 (of the 6th ITGRC Minutes), in absence of any evidence of technical/system errors in these cases as explained at para 7 of Minutes, as was decided in similar cases in past five IT-GRC.

B. Cases presented by GST Council Secretariat reported as non-technical glitch in terms of extended scope of ITGRC (179 Cases):

- a. **Not to allow re-opening of portal for Category A1 (04 cases), A2 (03 cases), A3 (03 cases), A4 (07), A5 (09 cases) (total 26 cases)** as the criteria laid down by 32nd GST Council Meeting were not fulfilled, while some of them could be resubmitted to ITGRC after correcting the deficiencies.
- b. Cases of Category **B1 (12 cases), B2 (12 cases) and D (92 cases) (total 116 cases)**, having reported technical error or were not fulfilling parameters as recommended by 32nd GST Council were recommended for forwarding to GSTN for further analysis and placing before the next meeting of ITGRC in terms of circular dated 03.04.2018.
- c. Cases at **Category B3 (19 cases)** had been presented in the 1st to 5th ITGRC and recommended by ITGRC, hence no action required.
- d. Cases at **Category C (18 cases)** had been presented in the 1st to 5th ITGRC but not recommended by ITGRC and now again forwarded by CGST/SGST tax authorities without recommendation, hence Committee had directed State/CBIC tax authorities to re-examine these cases and forward properly, only if they fulfil, the parameters/conditions as decided in 32nd GST Council Meeting.

12.3. The ITGRC in its 7th Meeting held on 11th June 2019 decided and recommended the following: -

- a. **To allow** filing of TRAN-1 in total **98 cases** of Category 'A', as per Annexures mentioned in column No. 3 and 4 of Table-2 (of Minutes) on account of technical/system issues as explained at para 4 of Minutes, in accordance with the

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Law Committee recommendations regarding consequential benefits related to filing of TRAN 1.

- b. **Not to allow** remaining **151 cases** of Category 'B' as per Annexures mentioned in column No. 3 and 4 of Table-3 (of Minutes), in absence of any evidence of technical/system errors in these cases as explained at para 5 of Minutes, as was decided in similar cases in past six IT-GRC.
- c. It was also decided by the committee that in all such cases where Court had directed to allow the filing of TRAN-1 manually or electronically, without giving any consideration to the fact that technical glitches were there or not, jurisdictional tax authorities should take legal opinion of Government Counsel to file appeal/review petitions as deemed fit and proceed legally as per CGST/SGST/UTGST Act, law and rules. Commissionerate/States might either file an appeal against the above-mentioned order or, if it was found to be a fit case in terms of 32nd GST Council decision regarding extended scope of ITGRC for non-technical issues also, then the case might be recommended by the Commissioner following the prescribed procedure. The Commissionerate/States may obtain the status of Technical Glitches in the cases where decisions were to be taken for filing of Appeal or enabling taxpayers for filing of TRAN-1/TRAN-2 in compliance of Hon'ble High Courts orders, where ever such information was not available on record.

12.4. The Secretary also stated that the agenda was discussed during the Officers Meeting held on 19th September 2019 and was being placed before the Council for information. The Council took note of the decisions/recommendations of the 6th and the 7th Meeting of the ITGRC.

13. For **Agenda item 5**, the Council took note of the decisions/recommendations of the 6th and 7th Meeting of the IT Grievance Redressal Committee.

Agenda Item 6: Review of Revenue position

14. The Secretary invited Joint Secretary (Revenue), Department of Revenue (DoR), to make a presentation on the GST revenues, trends in Return filing etc. Shri Ritvik Pandey, Joint Secretary (Revenue), DoR, made a presentation on the agenda item (attached as **Annexure 4** to the Minutes) and informed that revenue trends of last 5 months of the Financial Year 2019-20 had been highlighted in the agenda note. He highlighted that the regular IGST settlement between the Centre and the States had increased substantially from July-August, 2019 onwards. This was on account of change in the law. Therefore, the IGST settlement had been on expected lines. He further highlighted that the trends in total gross GST revenues had been captured in Figure 1 at page No. 43 of the Agenda Notes, which showed that the total GST revenues were on the rise. He drew attention of the Members of the Council to page No. 42 of the Agenda Notes relating to compensation fund and stated that Rs. 65,151/- crore had been released as Compensation to States in the FY 2019-20 which also included the last bi-monthly instalment of the year 2018-19. He also stated, the projections indicated that compensation amount available at the end of February, 2019 would be close to compensation requirement at the end of January, 2019. He informed that in general the average revenue shortfall for the period April-August, 2019 had gone up.


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14.1. The Secretary added that as seen from Table 3 of the Agenda item, the closing balance of compensation collected and compensation released in the year 2018-19 was Rs 47, 272 crore whereas till end of August 2019, the balance was Rs. 23, 695 crore. He informed the Council that for the month of June-July, 2019, approximately Rs, 28, 000 crore was released as compensation whereas the average monthly collection was around Rs. 7, 000 crore only. The Hon'ble Minister from West Bengal wondered as to what would be the expected shortfall in terms of collection and requirement of compensation to States by February, 2020. The Secretary informed that the shortfall was expected to be around Rs. 10, 284 crore.

14.2. The Hon'ble Minister from Punjab drew attention of the Council to page no 28 of report No 11 of 2019 (Indirect Taxes – Goods & Service Tax) presented by the C&AG wherein it was mentioned that devolution of IGST was in contravention of the provisions of Constitution of India as Article 270 (1) of the Constitution excludes duties levied under Article 269 (A) (i.e. IGST) from list of taxes and duties to be distributed between the Union and the States. Further, devolution of funds using Finance Commission formula also has the impact of distribution of IGST funds among the States in a manner quite different from the ratio in which funds would have gone to the States in normal course as ITC cross utilisation or apportionment is based on Place of Supply concept. He stated that to this the Central Government had replied that in 2017-18 devolution of IGST was done, pending finalisation of accounting procedure for accounting of IGST balance, with the opinion of the Department of Legal Affairs, Ministry of Law and Justice. The C&AG report stated that the reply of the Ministry was silent on the aspect of corrective action taken by it for setting right the IGST amount devolved during the year 2017-18. The reply of the Ministry was also silent on the aspect of impact on State revenues due to adoption of Finance Commission formula for distribution of IGST balance. In view of the above, he wondered as to whether the States were entitled to get higher amount of revenue than what was given to them out of IGST balance of Rs. 1,76,688 crore shown to have been received by Centre in 2017-18. He stated that in his view, if the correction were carried out then the entire amount were to be distributed in the ratio of 50:50 and out of the balance 50% amount with the Centre, the States were again entitled for 42% through devolution route. He also wondered, if for some reason the devolution of IGST provisionally was not warranted then whether at any stage the States would get their share when the provisionally distributed IGST was finally apportioned either by way of adjustment towards CGST or finally settled for IGST on B2C supplies.

14.3. The Hon'ble Minister from Punjab stated that Rs.1,000 crore had been denied to Punjab on account of Compensation, which was due to the State, based on the Accountant General-certified base year revenue. He further stated that one of the concerns had been highlighted already by him i.e. the States getting less on account of cesses and surcharges as they could not be devolved to the States. He requested the Hon'ble Chairperson to look into these issues objectively without any bias and to evolve a mechanism to resolve these disputes in a fair manner.

14.4. The Hon'ble Deputy Chief Minister of Delhi stated that their State had also suffered a loss of Rs. 3,200 crore on account of distribution of IGST between the Union and the States on the basis of the Finance Commission's formula, which should have been done subsequent to settlement of IGST funds based on Place of Supply Rules. He requested the Chairperson to set things right in view of the report of the C&AG and the issue raised by Hon'ble Minister from Punjab. The Hon'ble Chief Minister of Puducherry stated that they had also suffered

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losses of approximately Rs. 219 crore for reasons similar to that of Delhi. He stated that Delhi and Puducherry were not being considered in the devolution to States by the Central Finance Commission. He further stated that Puducherry was entitled to 0.27% of the IGST amount apportioned to the States which would work out to Rs. 219 crore. However, out of the apportioned IGST amount which was used to give compensation to States, Puducherry and Delhi were left out by the Finance Commission. He too requested the Hon'ble Chairperson to address this issue.

14.5. The Secretary stated that in the year 2017-18, the settlement mechanism was not clearly prescribed. Therefore, as on 31st March 2018, the IGST money lying in the Consolidated Fund of India was devolved as per the Finance Commission's formula to the States. He informed that this was done after taking formal opinion from the Union Ministry of Law and Justice about the constitutional position which was also conveyed to the C&AG. Further, there was no provisional settlement mechanism prescribed/formalised in this period. The Hon'ble Minister from Punjab wanted to understand the implication of what was done in 2017-18. He stated that whereas the States got 42% of the IGST money, they should have got instead 71%. The Secretary stated that the decision was taken as per the prevailing constitutional provision and the money was devolved accordingly. He added that some States might have received little less or more amount in terms of devolution but as far as compensation was concerned the same had been given. He stated that if we were to revisit the devolved shares of the States, then some amount might have to be recovered from few States. The Hon'ble Minister from Delhi stated that prior to the decision taken by the Government of India to put the money in Consolidated Fund of India, there was already a precedence of settling the IGST amount and the same should have been followed instead of putting the money in Consolidated Fund of India. He requested the Hon'ble Chairperson to correct the anomaly. The Hon'ble Minister from Puducherry concurred with the views of Hon'ble Minister from Delhi.

14.6. The Hon'ble Minister from Chhattisgarh wanted to know whether the IGST funds were required to be split equally between the Union and the States and thereafter, the remaining 50% of the Centre's share was required to be devolved to the States in accordance with the Finance Commission's formula. The Hon'ble Minister from Punjab wondered as to whether the ratio in which the IGST amount was shared with the States had been corrected. The Joint Secretary (Revenue), DoR, responded by stating that the 2017-18 position has been corrected from 2018-19 and now we had a continuous system of *ad hoc* IGST settlement happening every two months between the Union and the States. The IGST funds are apportioned as CGST and the SGST. The SGST component went to the respective States whereas 42% of the CGST amount went to States by way of devolution. Dr. T V Somanathan, Additional Chief Secretary/Commissioner, State Tax, Tamil Nadu stated that the issue regarding settlement of IGST money for the FY 2017-18 had also been raised by Tamil Nadu. He stated that they too had lost substantial amount of IGST money due to them as it was devolved instead of sharing it by way of settlement. Shri V. K. Garg, Advisor (Financial Resources) to Chief Minister, Punjab stated that as clarified, he understood that even if the States got less by way of devolution, the rest of the money was given to the States by way of compensation in FY 2017-18. He further stated that Joint Secretary (Revenue), DoR had clarified that from FY 2018-19 onwards, the States had been getting the 42% of the Centre's share of the IGST money. However, he stated all these had led to one implication i.e. the States should have got 71% of the IGST amount for the FY 2017-18 but got 42% instead. As a



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result, the Centre ended up utilising the funds collected from compensation cess to pay to the Centre which actually belonged to the States and might have caused deficit in the compensation funds. He stated that if the anomaly was not corrected, the compensation cess stood utilised by the Centre.

14.7. The Hon'ble Chairperson suggested to constitute a Group of Ministers (GoM) to study in detail the issue of IGST settlement as on 31st March, 2018 and to address any possible dispute arising from the same. She stated that the concerns raised by Delhi, Puducherry, Punjab and Tamil Nadu could form the basis for the terms of reference of the GoM. It was also suggested that the GoM could consist of the Hon'ble Ministers from Delhi, Puducherry, Punjab and Tamil Nadu and would be chaired by the Union Finance Minister. It was proposed that the GoM would submit its report within a reasonable time.

15. For **Agenda item 6**, the Council took note of the latest revenue position. It also decided to constitute a Group of Ministers consisting of Hon'ble Deputy Chief Minister of Delhi, Hon'ble Chief Minister of Puducherry, Hon'ble Minister from Punjab and Hon'ble Minister from Tamil Nadu under the chairpersonship of the Union Finance Minister to study in detail the issue of IGST settlement as on 31st March, 2018 and to address any possible dispute arising from the same.

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

Agenda Item 7(i): Proposal for extension of last date for filing of appeals against orders of Appellate Authority before the GST Appellate Tribunal due to non-constitution of benches of the Appellate Tribunal

16. Introducing the agenda item, the Secretary informed that the issues under this agenda item were discussed in detail in the Officers' Meeting held on 19th September 2019. He invited Shri Yogendra Garg, Pr. Commissioner, GST Policy Wing, CBIC and Co-Convenor, Law Committee to present the recommendations made by the Law Committee for consideration of the Council. The Co-Convenor of the Law Committee made a presentation (attached as **Annexure 3** to the Minutes). He stated that the Agenda Item 7(i) was discussed during the Officers meeting and there was a unanimity among the Officers that the Removal of Difficulty Order, as enclosed at **Annexure 1** to the Agenda Notes was required to be issued so as to provide for a mechanism to enable filing of appeal before the GST Appellate Tribunal. The subject ROD order was necessitated on account of non-setting up of the GST Appellate Tribunals, which had led to lapsing of the time limit of three months' (six months for appeals by the Government) time for appeals before the Tribunal.

17. For **Agenda item 7(i)**, the Council approved and recommended issuance of Removal of Difficulty Order, as annexed to the said Agenda item so as to extend the period of limitation for filing of appeal by linking it to the date when the President or the State President enters office.

Agenda Item 7(ii): Exemption to small taxpayers from filing of Annual Return

18. The Co-Convenor of the Law Committee introduced this Agenda item and stated that the Law Committee had recommended for waiver of the requirement of filing **FORM GSTR 9A** for Composition taxpayers for the FY 2017-18 and 2018-19 as they would be required to


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file an annual return only from 2019-20 onwards. With respect to the second proposal of waiver of requirement of filing of **FORM GSTR 9** for taxpayers having an aggregate annual turnover up to Rs.2 crore for FY 2017-18 and 2018-19, he stated that GSTR-9 filing had been far below expectation. He further stated, it was felt the compliance requirement was more challenging for the small taxpayers compared to the large taxpayers, as the cost of compliance could be high in proportion to tax payable by them. He stated that the Law Committee had recommended waiver of requirement of filing of **FORM GSTR 9** for taxpayers having an aggregate annual turnover up to Rs.2 crore for FY 2017-18 and 2018-19 and to find the ways to further simplify the **FORM GSTR-9** to make it easier for rest of the taxpayers. The Secretary informed the Council that two views emerged during the officers meeting held on 19th September 2019 i.e. (i). Either we waive the requirement of filing of **FORM GSTR-9** for FY 2017-18 and 2018-19 for taxpayers having turnover less than Rs. 2 crore; or (ii) we could make certain fields optional as some fields were the means to correct / explain the discrepancy reported in earlier returns filed by them. He requested the Hon'ble Council Members to give their views on the alternate proposals.

18.1. Shri Shanti Kumar Dhariwal, the Hon'ble Minister from Rajasthan stated that he agreed with the proposal regarding the waiver from filing of **FORM GSTR-9A** by Composition taxpayers for the FY 2017-18 and 2018-19. However, he felt that filing of **FORM GSTR-9** may not be waived for small taxpayers but could be simplified as the small taxpayers might also need to carry out changes/corrections in their earlier declarations done in the monthly returns. The Hon'ble Deputy Chief Minister of Bihar supported the recommendations made by the Law Committee. He stated that the proposals are with respect to taxpayers with less turnovers. He added that the new Annual Return was put in public domain in September, 2018, after the end of the Financial Year 2017-18. Therefore, it was very difficult to contemplate in advance the details that may be required to be furnished in the Annual Return. He felt that it might increase the compliance burden on these small taxpayers without adding much to the tax revenue of the government. He, therefore, suggested that taxpayers with turnover less than Rs. 2 crore may be exempted from filing of **FORM GSTR-9** for the FY 2017-18 and 2018-19 and even for taxpayers with turnover more than Rs. 2 crore, the **GSTR FORM-9** may be simplified by constituting a committee of Officers to examine and recommend simplification of annual return.

18.2. The Hon'ble Deputy Chief Minister of Delhi stated that we had been extending the dates for filing of these returns and also hope that the taxpayers would be filing these returns in times to come. He stated that almost 80% of taxpayers had not filed these returns for the said period. He wondered as to what could be the legal consequences of non-filing of these returns as to whether non-filing of these returns would affect final IGST settlement. The Joint Secretary (Revenue) stated that very less ITC was involved with the taxpayers with lower turnovers. These taxpayers were mostly traders and he opined that there would be no/less reversals. He stated it would have miniscule effect on settlement. He further stated that IGST settlement was linked to only those taxpayers with Annual Return where they were not entitled for credit but they had not shown reversal in their monthly returns. The Hon'ble Minister from Delhi accepted the explanation in view of the ground reality and very little impact on settlement. The Hon'ble Minister from Uttar Pradesh agreed with the proposal of the Law Committee regarding **FORM GSTR-9A** and with respect to **FORM GSTR 9**, he stated that its format needed simplification. For instance, Column 8 of **FORM GSTR-9** was difficult to comply. Shri Arvind Agarwal, Additional Chief Secretary (Finance), Gujarat,


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stated that issue was discussed in detail in the Officers meeting and there was unanimity in accepting the recommendations made by the Law Committee with a rider that the words "at least initially" appearing in paragraph 5 at page 52 of the Agenda Notes should be deleted as it gave an impression that there would be waiver from filing of these returns by small taxpayers in future also. However, it might not be the intention. He also stated that there was a need to simplify **FORM GSTR-9** but it should not be waived off permanently. The Council accepted the suggestion made by ACS (Finance), Gujarat of deleting the words "at least initially" appearing in paragraph 5 at page 52 of the Agenda Note.

18.3. The Hon'ble Chief Minister of Puducherry stated that the formats of **FORMS GSTR 9, 9A and 9C** came in September, 2018, and therefore, it was difficult for the taxpayers to fill the said forms for the period 2017-18 and 2018-19. He stated that filing of **FORM GSTR-9** for taxpayers with turnover less than Rs. 2 crore may be waived. He also stated that the **FORM GSTR-9** needs to be simplified. He opined that an option may be given to taxpayers with turnover below Rs. 2 crore for filing **FORM GSTR-9**. The Hon'ble Minister from Kerala stated that invoice matching was very important element of the GST architecture and therefore exemption from Annual Return for any category might not be a good idea. He observed the data indicates that the compliance from the smaller taxpayers were better than the larger ones. He stated that he too believed that the Annual Return forms had to be simplified. But also emphasised that the Annual returns were required if GST had to be self-policing.

18.4. The Hon'ble Minister from Chhattisgarh stated that the Annual Return were the aggregation of the monthly/quarterly returns filed by the taxpayers. So, in his view, it was only providing an opportunity to the taxpayers to correct/explain any anomaly in the already filed returns. He wondered, if the Council was doing away with these returns then what was the way out through which these corrections could be carried out by the taxpayers. He also suggested that the filing of these returns could be made optional for smaller taxpayers. The Co-Convenor, Law Committee stated that, if the taxpayer had a liability then they had an option to file and make the payment through **FORM GST DRC-03**, which is independent of the Annual Return. Shri Sanjeev Kaushal, Additional Chief Secretary (E & T), Haryana stated he had been instructed by the Hon'ble Council Member from Haryana that it was apparent from the data that the taxpayers with turnover less than Rs. 2 crore had filed the maximum returns and there was no real demand for the waiver of this requirement. He also observed that during the initial years of any reform there would be some legacy issues. However, if the requirement of filing of these Annual Return were waived off then there would be expectation for waiver in the subsequent years also. Therefore, the Annual Return forms should be retained but we may continue to simplify the returns further. The Hon'ble Minister from Madhya Pradesh stated that **FORMS GSTR 9 and 9A** should be simplified, particularly column 8 of **FORM GSTR 9** should be removed.

18.5. The Secretary summed up the decision of the Members of the Council that while **FORM GSTR-9A** for Composition taxpayers should be waived off, **FORM GSTR-9** for small taxpayers, whose annual turnover is up to Rs. 2 crore, should be made optional for FY 2017-18 and 2018-19, and a Committee of officers may be constituted look into simplification of the Annual Returns which could suggest deletion of certain columns or making certain fields optional.



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19. For **Agenda item 7(ii)**, the Council decided to:

- i. waive off the requirement of filing **FORM GSTR-9A** for Composition taxpayers for the tax periods FY 2017-18 and FY 2018-19;
- ii. make the requirement of filing of **FORM GSTR-9** optional for those taxpayers who were required to file the said tax return having aggregate annual turnover up to Rs. 2 crore for the tax periods FY 2017-18 and FY 2018-19;
- iii. constitute a Committee of officers to examine the simplification of forms for annual return and reconciliation statement; and
- iv. delete the words "at least initially" appearing in paragraph 5 at page No. 52 of the Agenda Notes.

19.1. The Council also approved that suitable notifications shall be issued after due vetting by the Union Ministry of Law and that the States shall also be required to issue similar notifications.

Agenda Item 7(iii): Issues pertaining to interpretation of Section 10 of the IGST Act, 2017

20. The Co-Convenor of the Law Committee introduced the agenda and stated that the issue was discussed in detail during the Officers meeting held on 19th September, 2019 but there was no unanimity among the officers. He stated that the issue was regarding the supply of goods that were purchased over the counter (on OTC basis) in one State and thereafter transported to another State by the recipient. He informed that the issue relates to interpretation of Place of Supply under the provisions of the Section 10 of the IGST Act. The draft Circular annexed to Agenda Item 7(iii) proposes to clarify that when goods are supplied on OTC basis but the supply involves further movement of goods which is arranged by the recipient, the expression "movement of goods terminates" would mean the place where the movement of goods terminates when the goods reached the place of registration of the recipient or to the address that has been declared in the tax invoice, as the case may be. It was, accordingly, proposed to clarify that the place of supply in case of such supplies, i.e. where the recipient is registered or the address declared in the tax invoice (in case such recipient is not registered) in a State other than the State in which the supplier is located, shall be determined in accordance with the provisions contained in clause (a) of sub-section (1) of section 10 of the IGST Act. Accordingly, such supplies would be treated as inter-State supplies. He further stated that the draft Circular is in accordance with the views of States like Punjab and Himachal Pradesh i.e. such OTC supplies may be treated as the intra-State supplies where the supply was made to an unregistered person and the recipient's address was not available on record and inter-State supplies where the address of recipient is available. Shri Amit Kumar Agarwal, Commissioner, E & T, Haryana stated that they were opposed to the proposal as they felt that the proposal went beyond Section 10(1)(a) of the IGST Act and that the proposed Circular would affect the revenue flowing to his State in the form of GST revenue. The Hon'ble Deputy Chief Minister of Delhi also supported the views expressed by Haryana. The Hon'ble Minister from Kerala suggested to follow the destination principle and agreed with the views expressed by State of Punjab.


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20.1. The Hon'ble Minister from Gujarat stated that it appeared that if any person belonging to one State purchased goods in any other State and got the address of his/her residing State recorded in the invoice then the revenue would flow to the native State and not to the State where bill was actually issued. In his view, this would be a big change and it was not clear as to how would one verify the address of the buyer and what would be the mechanism of the revenue flow to the States etc. The Hon'ble Deputy Chief Minister of Delhi felt that the law was being grossly misinterpreted. In his view, the destination principle meant where the supply chain terminated and not necessarily the address of the buyer.

20.2 The Hon'ble Chairperson felt that the issue should be looked into afresh by the Law Committee as the destination principle was being questioned and the entire edifice of GST was based on it. She requested the States to give their opinion in writing along with reasons thereof for consideration of the issue afresh in the Law Committee.

21. For **Agenda item 7(iii)**, the Council recommended to refer the agenda back to the Law Committee for considering the issue afresh after obtaining opinion of the States in writing along with reasons thereof.

Agenda Item 7(iv): Restrictions in availing input tax credit in respect of outward supplies not furnished under Section 37 of the CGST Act, 2017

22. The Co-Convenor of the Law Committee introduced the agenda and stated that there was a large gap in filing of **FORM GSTR-1** and **FORM GSTR-3B** which resulted in huge unmatched credits. In absence of matching, the taxpayer availed ITC in **FORM GSTR-3B** on self-assessment basis without any restriction or in relation with the ITC reflected in his **FORM GSTR-2A**. With a view to impose reasonable restriction (to encourage the suppliers to file GSTR-1), the Law Committee recommended that ITC allowed to a registered taxpayer in respect of those invoices, the details of which have not been uploaded by the supplier as required under sub-section (1) of Section 37 of the CGST Act i.e. which is not reflected in **FORM GSTR-2A** shall not exceed 20% of the eligible credit available in respect of invoices and debit notes, the details of which have been uploaded by the supplier under Section 37(1) of GST Act. The Advisor (Financial Resources) to the Chief Minister of Punjab wondered as to whether the restriction imposed was supplier wise or on the total credit available. The Co-Convenor, Law Committee clarified that it was with respect to the total credit available and the wording would be changed accordingly (by the suppliers). The Additional Chief Secretary (E&T), Haryana stated that the credit may not be restricted and instead the existence of the supplier should be verified in a fixed time frame. He added that if the decision was in favour of the proposal then it was acceptable to him. The Hon'ble Minister from Bihar stated that by this proposal the genuine taxpayers who were availing ITC on the basis of **FORM GSTR-3B** were being encouraged to file **FORM GSTR-1**. The Hon'ble Minister from Odisha suggested that there should be a check in GST System where a registered taxpayer should not be allowed to file **FORM GSTR-1** unless he/she had file **FORM GSTR-3B** in previous month.

23. For **Agenda item 7(iv)**, the Council recommended imposition of restrictions such that ITC allowed to a registered taxpayer in respect of those invoices, the details of which have not been uploaded by the suppliers as required under sub-section (1) of section 37 of the CGST Act i.e. which is not reflected in **FORM GSTR-2A** shall not exceed 20% of the eligible credit available in respect of invoices and debit notes, the details of which have been uploaded by the suppliers under Section 37(1) of CGST Act. The Council also approved that suitable

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notifications shall be issued after due vetting by the Union Ministry of Law and that *pari materia* changes shall be carried out in the SGST Rules.

Agenda Item 7(v): Proposed clarifications on refund related issues

24. The Co-Convenor of the Law Committee introduced the agenda and stated that there was a complete unanimity during the Officers meeting held on 19th September, 2019 on the proposal to issue the draft Circular, as approved by the Law Committee, which was annexed to the Agenda Item 7(v).

25. For **Agenda item 7(v)**, the Council approved the issuance of a Circular laying down the procedure to claim a refund in **FORM GST RFD 01A** subsequent to favourable order in appeal or any other forum.

Agenda Item 7(vi): E-way bill for movement of Gold

26. The Co-Convenor of the Law Committee introduced the agenda item and stated that the Law Committee had two divergent views on the issue. He stated that the view of Kerala was that the movement of Gold would not be exposed to security issue as the data about e-Way bills were stored in the server and only authorised officials had access to it while others felt that since the movement of gold, diamonds etc. was not carried in a conventional way, e-way bill mechanism for movement which is largely by carriers (*angadias*) would not be suitable and may pose security risk. Therefore, these items should remain exempted from the requirement of e-Way bills. Further, the value limit, prescribed in e-Way bill, would necessitate generation of e-Way bills for virtually every consignment and even the small job worker would be liable to carry e-Way Bill. He further stated that this Agenda item was equally applicable to movement of gold, diamonds and precious stones.

26.1. The Hon'ble Minister from Kerala, while expressing the rationale of e-Way bill for movement of gold, stated that there had been a substantial fall in collections from supply of gold in the GST era *vis-à-vis* pre-GST era in his State. This was in spite of the fact that under VAT, the effective rate of tax on gold was 1.25%, which gave Kerala an annual revenue of Rs. 650 crore in the last year of VAT regime. On the other hand, even though the GST rate on gold was 3%, which was more than the rate under VAT, the annual collection was only Rs.300 crore in his State. There is, therefore, substantial evasion in gold and the question was how to plug it. On the issue that the sender's and the recipient's identity would be known to every one which was a security risk, it was suggested by the Hon'ble Minister from Kerala that the e-Way bill could be encrypted. If any State felt that the e-Way bill was a security risk, then it may exempt the intra-State movement of gold from e-Way bill. The Hon'ble Minister from West Bengal, however, disagreed with the views of Kerala for the reason that gold was not transported in conventional ways like other commodities and the reason that it would also make transportation of gold for job work very cumbersome. He also stated that West Bengal was the first State to introduce e- bills @ 1% for transportation into the State of West Bengal. However, they did not impose it on gold for two reasons stated above. He, therefore, requested Kerala to reconsider their point of view.

26.2. The Hon'ble Deputy Chief Minister of Gujarat stated that many diamond cutting/polishing and related jewellery industries were located in Surat. Gold, diamond and precious stones were being transported in un-conventional ways by *angadias* from Surat to Mumbai. Therefore, there is inter-State movement of these goods. He stated that prescription



of e-Way bill could pose security risk to these consignments and carriers as the details of sender, receiver, value of goods etc could be compromised. He was, therefore, against prescription of e-Way bill for their movement. The Hon'ble Minister from Karnataka stated that prior to GST, there was e-Way bill for movement of gold exceeding Rs. 20,000. He supported the views expressed by Kerala and stated that the e-Way bill limit could be increased or the intra-State movement of gold could be made optional and left to the State concerned.

26.3. The Hon'ble Minister from Punjab wondered as to a solution could be found to the issue. He stated that the job workers may be exempted from e-Way bill requirement and its provision should apply to only B2B transactions or by way of increasing the threshold limit for e-Way bill requirement upto Rs 5 lakh for movement of these goods. The Hon'ble Minister from Madhya Pradesh suggested that there should be no e-Way bill in intra-State movement of these goods whereas for inter-State movement the threshold limit for e-Way bill requirement could be raised to Rs. 5 lakh. The Hon'ble Chief Minister of Puducherry stated that evasion in these commodities was enormous and a lot of transactions were taking place outside the domain of GST. Therefore, there should be some regulations or at least the States should have an option to implement e-Way bill for intra-State movement of these goods.

26.4. The Secretary stated that different views were shared by the States and some suggestions were also made like giving an option to the State to mandate the requirement of intra-State e-Way bill for transport of gold, raising the limit for requirement of e-Way Bill or making it secure by way of some encryption etc. Therefore, he suggested that before taking any final decision we could refer the matter back to Law Committee to examine the issue afresh in light of suggestions given by the States. The Hon'ble Minister from Gujarat stated that the matter has been discussed many times in the Law Committee and the Council. Therefore, he stated that there was no need to carry forward this agenda item.

26.5. The Hon'ble Minister from West Bengal stated that the matter was not only intra-State issue but an inter-State issue. Therefore, it could not be left to States to implement or not implement the intra-State e-Way bill requirement of movement of gold. The Additional Chief Secretary (Finance), Gujarat supported the views expressed by the Hon'ble Minister from West Bengal and stated that most of the transactions were inter-State transactions as compared to the intra-State transactions. He also stated that the Law Committee was not able to arrive at any conclusion on the issue even after lot of deliberation. The Hon'ble Deputy Chief Minister of Gujarat stated that the business of job workers and *karigars* from other States coming to their State would be adversely affected if e-Way bill was prescribed for movement of gold. The Hon'ble Minister from Kerala stated that there was loss of revenue to the tune of 70% of the tax revenue potential. He felt that this could be prevented by implementing e-Way bill. He added that the problems of job workers and consumers etc. could be done away with by prescribing e-Way bill on these items for inter-State movements only or by raising the threshold of requirement of e-Way bill even up to Rs. 10 lakh. The Hon'ble Minister from West Bengal stated that there was 3% GST on gold and the issue was whether e-Way bill could prevent leakage of stipulated GST revenue. He stated that two issues were of his concern i.e. (i). Gold was sent to the State of West Bengal from across the country for job work and if e-Way bill was prescribed for inter-State movement of gold then it would affect the business in the State (ii). The Security and safety was the basis for exception to

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transportation of gold through e-Way and even the encrypted e-Way bill system might not be sufficient to address this issue.

26.6. The Hon'ble Chairperson stated that she saw merit in the argument of the Hon'ble Minister from West Bengal with respect to job workers and security concerns vis-à-vis inter-State movement of gold under e-Way bills and that we had to figure out another way of controlling evasion. She suggested that there could be a Group of Ministers with the Hon'ble Minister from Kerala as the convenor to address the concerns expressed by various States such as Gujrat, Karnataka, Kerala and West Bengal etc and to suggest mechanism for controlling tax evasion without compromising on security aspect that arises from implementation of e-Way bill requirement for movement of the precious metals and stones.

27. For **Agenda item 7(vi)**, the Council approved to constitute a Group of Ministers under the chairmanship of the Hon'ble Minister from Kerala to address the concerns expressed by the States and to suggest mechanism for controlling tax evasion without compromising on security aspect that arises from implementation of e-Way bill requirement for movement of precious metals and stones.

Agenda Item 7(vii): Proposed amendment to sub-Rule (5) of Rule 61 of the CGST Rules, 2017 relating to FORM GSTR-3B

28. Introducing this item, the Co-Convenor of the Law Committee stated that the Hon'ble High Court of Gujarat had passed an order dated 24.06.2019, in the case of AAP & India Vs Union of India stating the **FORM GSTR-3B** was not a return which led to further challenges such as legality of interest payable as **FORM GSTR-3B** was not considered as a valid return etc. Therefore, the Law Committee proposed an amendment to sub-Rule (5) of Rule 61 of the CGST Rules, 2017 to say explicitly that **FORM GSTR-3B** is a return under sub-section (1) of Section 39 of the CGST Act. He added that the proposed amendment was to be carried out retrospectively i.e. from 01.07.2017, so that the legality of tax liability or the interest liability could not be challenged on this account. It was also decided to challenge the order of the Hon'ble High Court of Gujarat.

29. For **Agenda item 7(vii)**, the Council recommended to amend sub Rule (5) of Rule 61 of the CGST Rules to prescribe FORM GSTR-3B as a return under Section 39(1) of the CGST Act retrospectively with effect from 01.07.2017 as provided in the agenda note. The Council also approved that suitable notifications shall be issued after due vetting by the Union Ministry of Law and that *pari materia* changes shall also be made in the SGST Rules.

Agenda Item 7(viii): Specifying the due date for furnishing of return in FORM GSTR-3B and details of outward supplies in FORM GSTR-1 for the period October-December, 2019

30. The Co-Convenor of the Law Committee introduced this Agenda item and stated that in view of the revised timelines for introduction of the new return system the present system for filing return on monthly basis in **FORM GSTR-3B** and monthly/quarterly furnishing of details of outward supplies in **FORM GSTR-1** were required to be notified for the period beyond September, 2019. He stated that the Law Committee recommended it to be extended till 31.12.2019. The Hon'ble Minister from West Bengal suggested that **FORM GSTR-3B** may be continued to be filed for the current Financial Year. The Hon'ble Deputy Chief Minister of Bihar stated that the issue of filing of the new returns was discussed during the


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12th Meeting of GoM on IT challenges in GST Implementation held on 14th September, 2019. It had recommended that the new return should be launched from 1st April 2020 because a major change in last quarter of a financial year was not desirable. He added the GoM recommended implementation of new return system for all taxpayers (large and small) in a staggered manner. Therefore, if the Council agreed to the proposal of GoM, then the filing of GSTR-1 and GSTR-3B will have to be extended till 31st March 2020.

30.1. The Chairperson suggested that the new return system could be implemented for everyone from 1st April 2020 and the **FORMS GSTR-3B** and **GSTR-1** may be continued to filed till the end of the financial year 2019-20. The Council agreed to the suggestion.

30.2. Shri K. K. Sharma, Advisor to Governor (I/c Finance), Jammu & Kashmir stated that in view of the connectivity issues in the State of Jammu & Kashmir, the taxpayers were not able to file their due returns in time. Therefore, he requested the Council to extend the due dates of filing of various returns in case of Jammu & Kashmir for the months of July and August, 2019 such as **FORM GSTR-3B**, **FORM GSTR-1** and **FORM GSTR- 7** to 20th October, 2019, 11th October, 2019 and 10th October, 2019 respectively. The Council agreed to the request.

31. For **Agenda item 7(viii)**, the Council decided that the new return system shall be introduced from 1st April, 2020 onwards while the **FORM GSTR-3B** and **FORM GSTR-1** shall continue to be filed for the period till the end of the current Financial Year i.e. 2019-20.

31.1. The Council also decided to extend the due dates of filing of various returns in case of Jammu & Kashmir for the months of July and August, 2019 such as **FORM GSTR-3B**, **FORM GSTR-1** and **FORM GSTR- 7** to 20th October, 2019, 11th October, 2019 and 10th October, 2019 respectively.

Agenda Item 7(ix): Proposal for amendments to CGST Rules, 2017

32. The Co-Convenor of the Law Committee introduced the Agenda item and stated it was discussed in detail during the Officers meeting held on 19th September, 2019. He stated that there was unanimity on all the amendments proposed (Rule 83A, Rule 97, Rule 117, Rule 142, **FORM GST RFD 01**, insertion of **FORM GST DRC-01A** except that of amendment proposed to rule 21A.

32.1. He informed the Council that with respect to the amendment to rule 21A, one view was that the dealer should not be allowed to carry on with the business during the intervening period and the other view was that we should not stop the registered person from doing business, however he should not be issuing taxable invoices during the intervening period. He stated that the Law Committee's proposal was to regularise the intervening period in case where the cancellation got revoked and also to get a consolidated return filed for the entire period based on which the tax could be collected as it was not possible to stop the taxpayers from carrying on his/her business during the period of suspension of his/her registration. Therefore, it was recommended to insert an explanation in Rule 21A of the CGST Rules, 2017 so as to ensure that the registered person did not issue a tax invoice and did not charge tax on supplies made by him during the period of suspension of registration. The Secretary suggested that the proposal of the Law Committee could be accepted for amendment to rule 21A. The Council agreed to the proposal of the Law Committee.

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33. For **Agenda item 7(ix)**, the Council approved the proposal for amendments to Rule 21A, Rule 83A, Rule 97, Rule 117, Rule 142, **FORM GST RFD-01**, insertion of **FORM GST DRC-01A** of the CGST Rules, 2017 as proposed in the agenda item. The Council also decided that suitable notifications shall be issued after due vetting by the Union Ministry of Law and that *pari materia* changes shall be carried out in the SGST Rules.

Agenda Item 8: Issues recommended by the Fitment Committee for consideration of the Council

34. The Secretary introduced the Agenda item regarding issues recommended by the Fitment Committee for consideration of the Council and requested that the Council might discuss the items in the order of the recommendations that had been proposed by the Fitment Committee in relation to goods: Annexure-I, Annexure-II and Annexure-III.

34.1. He then requested Shri G.D. Lohani, Joint Secretary, TRU-I (JS, TRU-I) to present the Agenda item 8 before the Council. JS, TRU-I then briefed the Council about how the Fitment Committee had come to the decisions about rates and clarifications. He stated that all the representations which came to the Fitment Committee were consolidated, indexed & examined in details. Then they were classified under 3 Annexures/ categories:

- Annexure-I: Items where the Fitment Committee had recommended for rate change or some clarification relating to rates of goods.
- Annexure-II: Items which were deferred by Fitment Committee for want of information and would be further examined when the information would be received; after which these items would be placed before the Council.
- Annexure-III: Items where the Fitment Commitment had recommended no change. A number of these items were already discussed in the GST Council recently but did not find favour for any change by the Council.

34.2. The rate change was in general recommended, only where there was accumulation of credit, inversion of duty/ tax rates which lead to distortion in the rate structure of the sector. After the preliminary details as explained by JS, TRU-I, the Secretary proceeded for seeking item-wise approval in respect of Annexure-I. The Council examined the list item wise.

34.3. Item No. 1 to 6 in Annexure-I were approved by the Council as per the recommendations of Fitment Committee.

34.4. On item No. 7 relating to Fishmeal and Meat cum Bone Meal discussion was initiated by the Hon'ble Minister from Goa stated that Fish meal was basically a waste product from fish which the poor fishing community collected, especially in the coastal areas thereby helping in maintaining clean environment. On the basis of circular the Fishmeal manufacturers were being expected to pay tax @ 5% for the period when nobody had collected the tax under the impression of being exempted which led to a strike. Although, the proposal was to make it exempt for the period from 01.07.17 to 31.12.2018, he requested the Council to exempt it from 01.01.2019 to the present date also.

34.5. The Hon'ble Chairperson intervened and stated that delegations from various coastal States met her on these issues. These delegations had specifically mentioned that since they had not collected tax for the period from 01.07.17 to 31.12.2018 i.e. prior to the clarification issued, it would be difficult for them to pay the tax @ 5%. The Secretary clarified that after the circular dated 31.12.2018 was issued, there was no confusion regarding payment of tax



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from 1st January, 2019 onwards. The Hon'ble Minister from Goa stated that since fishing activity continued for a limited period in an year, it would be better that exemption could be extended till 30th September, 2019 and it would do justice for this poor fishing community.

34.6. The Hon'ble Minister from Kerala stated that the memorandum he received in his State, was also to make the rate 'NIL' for fish meal wherein they had also stated the waste removable programme was linked with it. The Hon'ble Chairperson stated that essentially the issue of hardship in payment of GST relates to period prior to issuance of circular, the Fitment Committee had accordingly examined and recommended the proposal.

34.7. Shri Buggana Rajendranath, the Hon'ble Minister from Andhra Pradesh stated that if the Fishmeal was not to be used, it would have been a waste. In the pre-GST era, it was not taxed at least in Andhra Pradesh. Moreover, 40% of the country's export was from Andhra Pradesh and hence he would like the same to be exempted. The Hon'ble Minister from Kerala also supported the Hon'ble Minister from Andhra Pradesh and stated that since the revenue implication would be trivial, it could be exempted because the impact on the fishermen community would be large.

34.8. JS, TRU-I stated that Fishmeal is used as inputs in poultry and aquatic feed. These were manufactured items from the wastes of Fish and was rich in protein used as poultry feed & fertilizer. Similar other items like oilcake, soybean cake were also there in the same HSN. Hence, it would have a significant revenue implication as request for exemption would also be pressed for other items in the same Chapter. The Hon'ble Chairperson asked JS, TRU-I whether the tariff heading was same for Fishmeal and Meat cum Bone Meal in order to have a technical clarity, JS, TRU-I responded in affirmative.

34.9. The Hon'ble Minister from Uttar Pradesh stated that both items i.e. Fishmeal and Meat cum Bone Meal should be treated separately. Although, he agreed to exempting Fish meal as per recommendations of Fitment Committee, he stated that both the items should not be clubbed together but should be dealt in a separate manner. His State favoured Meat cum Bone Meal to be taxed @ 5% as in Uttar Pradesh alone Meat cum Bone Meal from 01.07.2017 onwards had turnover of about Rs. 600 crores. ACS (Finance), Gujarat however supported Government of Goa's view regarding exempting Fish meal till 30th September, 2019 and stated that the proposal merited approval of the Council.

34.10. The Hon'ble Chairperson in response to the submissions of the Hon'ble Minister from Andhra Pradesh stated that there were states like Maharashtra and Telangana where oilseeds were produced along with its by-product oilcake which was used as animal feed. She stated that the Hon'ble Minister from Andhra Pradesh should look at it from the point of view of potential export market awaiting outside the country. If the farmer's producer organisations and groups among fishing women could be formed, they could earn much higher profit by tapping the export market. Hence, it would be better if in place of giving temporary relief by exempting Fish meal, a systematic approach to tap potential export area was to be looked at for better prospects of the fishing community.

34.11. The Hon'ble Ministers from Tamil Nadu and Karnataka stated that they supported the proposal of Goa. The Hon'ble Minister from Odisha raised the issue that with this kind of proposal, the tax evaders would be encouraged, as those who did not pay would be benefitted, while those who paid would feel cheated. The JS, TRU-I clarified that the proposal was that those taxpayers who had collected the tax would have to pay the tax even if it was being

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exempted for a particular period, while those, who had not collected, would not have to pay the tax for the period for which relief is being given, i.e., 01.07.17 to 30.09.2019.

34.12. Hence, in view of the above deliberation, for item at Sl. No 7 of Annexure-I, the Council approved exemption to Fishmeal for the period 01.07.17 to 30.09.2019. The Council did not approve exemption to Meat-cum-Bone Meal for this period.

34.13. The Council thereafter was explained the reasons, as mentioned in the Agenda item 8 about S. No. 8 to 11 of Annexure-I and being satisfied the approved recommendation of the Fitment Committee for these items.

34.14. On item at Sl. No. 12 of Annexure-I, the Hon'ble Chief Minister of Puducherry stated that the Fitment Committee recommended rate rationalization and fixation of GST rate @ 12% for both handmade and mechanized Safety Matches (Sl. No. 12 of Annexure-I). He stated that this equalization of GST rate would penalize the women folk of Sivakasi and adjoining areas where the handmade Safety Matches were manufactured. Hence, the rate of handmade Safety Matches should not be increased from 5% to 12%, as it would penalize the cottage industry, especially where women were involved. Further, it was a significant employment generator also and the tax rate should not be changed at the behest of mechanised industry leading to loss of livelihood for women. However, ACS, Tamil Nadu stated that this proposal actually originated from Tamil Nadu and the fact of matter is that all the industry had now shifted to mechanized mode in some way or the other and there were actually no handmade safety matches industry in Tamil Nadu. Hence, with two different rates the Government was losing revenue as everybody claimed lower tax rate. So, his State had proposed for rate rationalization to 12%. The Hon'ble Chief Minister of Puducherry stated that since he had also received representations from some MPs of Tamil Nadu, he would look into the matter and bring the issue before the Council for necessary clarification. Hence, in view of the above discussion, the decision on Safety Matches was deferred.

34.15. As regards item No. 13 relating to Polypropylene/Polyethylene Woven and Non-Woven Bags and sacks, whether or not laminated, of a kind used for packing of goods, the ACS Gujarat wanted to know where was the incidence of tax of 5% and 18% on it. The JS-TRU-I explained that 5% tax was leviable on goods under HSN 6305 (below Rs. 1000 per pc); while the same item, if classified under HSN 3923 attracted 18% tax rate. Hence, in order to remove the ambiguity in application of GST tax rate, a uniform tax rate of 12% was proposed. The Council being satisfied, approved the proposal tax rate for items at Sl.No. 13 of Annexure-I.

34.16. As regards item No. 14 of Annexure-I, JS, TRU-I while explaining the agenda stated that the request was received from Tamil Nadu to reduce the tax on wet grinder and rationalise the tax rate across the Flour mill/rice mill/ and other machinery used in milling industry while the request was for reducing the tax rate on Wet Grinders (HSN 8509) comparing it with Atta Chakki (HSN 8437). During examination, it was noticed that the *Atta Chakki* was the only machinery at 5% in 8437 and hence instead of reducing the tax on wet grinders, it was proposed to increase the tax rate on *Atta Chakki* to rationalize the tax rate in its HSN entry to 12%. The ACS/CST, Tamil Nadu stated that in the last Council meeting, Tamil Nadu had raised this issue regarding flour mill, rice mill and other machinery used in milling industry and had stated that Wet Grinders should also be taxed @ 5% similar to other similar power operated items like as *Atta Chakki* Chairperson enquired from JS, TRU-I about the ITC availed by the persons manufacturing *Atta Chakki* and inversion, and the Hon'ble Minister


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from Chhattisgarh asked about revenue involved in the proposal. In response, JS, TRU-I stated that creating too many carve out in the same HSN at different rates leads to dispute and implementation difficulties. Hence, for all electrically operated Milling machines including *Atta Chakki* etc. the tax rate was proposed to be rationalised with GST rate of 12%, since 5% tax rate created inversion also. He further explained that during pre-GST, tax incidence on HSN 8437 was 8% and GST Council after discussion on different items, placed *Atta Chakki* at 5% tax while Wet Grinders were classified at 28% along with other electrically operated mixers and grinders. He further, explained that Tamil Nadu had also agreed to the proposed 12% tax rate for Wet Grinders along with *Atta Chakki*. As regards revenue implication, he informed that while exact volume of wet grinder is not ascertainable, as per available information the broad estimate of turnover volume of wet grinder is in the range of about Rs 3000 crore a year.

34.17. The Hon'ble Minister from Uttar Pradesh proposed that wet grinders should also be classified at lower tax rate instead of raising tax rate of *Atta Chakki*. The ACS/CST, Tamil Nadu explained that Wet Grinder was very sensitive issue in Tamil Nadu and repeated representations were being received for parity between *Atta Chakki* and Wet Grinders as both were of daily use. Thus, Tamil Nadu was pleading for rational unification of tax rate for both of them either at 12% or 5%, even if inversion of tax rate was there. He stated that reduction of GST rate on wet grinder may not have significant revenue implication. The Hon'ble Deputy Chief Ministers from Gujarat and Bihar suggested that Wet Grinders may also be placed at GST rate of 5%. The Hon'ble Minister from Punjab also supported the view. All the other Council members agreed to the proposal for which the Hon'ble Minister from Tamil Nadu thanked all the Council members. The Council therefore, approved the GST rate of 5% for Wet Grinders (consisting stone as a grinder).

34.18. For items at Sl. No. 15 to 18 of Annexure-I, the Council after going through the explanation provided in the proposal, approved the recommendations of the Fitment Committee. As regards items at Sl. No. 19 and 20; JS, TRU-I explained that these items were placed before the Council in terms of the Hon'ble High Court's directions where it had asked the Council to examine the representations made by the Solar Power Developer Association and Indian Wind Turbine Manufacturers Association against prescribing manner of valuation of the Solar Power plants and Wind Turbine based plants. The details of the issues were contained in Annexure-VIII with the recommendations of the Fitment Committee after detailed examination of representations and all other relevant information. The Fitment Committee after examination of issue had recommended that the *status quo* be maintained. The Council agreed with the proposal that the *status quo* should be maintained in respect of items mentioned at Sl. No. 19 & 20 of Annexure-I.

34.19. Smt. Renu Sharma, Additional Chief Secretary (Finance), Delhi raised the issue in respect of Annexure-I, Part B, Sl No. 1 where the Fitment Committee had suggested to lower the Compensation Cess on vehicles. She stated that the Delhi Government was not in favour of reduction of cess as proposed in this entry. The JS, TRU-I explained that this change had been proposed to bring parity in compensation rate on vehicles that have specification of length below 4000mm; engine capacity of up to 1200 CC for petrol vehicle and 1500 CC for diesel vehicle irrespective of seating capacity. Such vehicle having seating capacity of 9 people attracted compensation cess at the rate of 1%-3%, while vehicle with same specification having seating capacity of 10-13 people attracted higher compensation cess. He stated that a few vehicles with similar specification of length, i.e. below 4000 mm having

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same length and engine Cubic Capacity as the small vehicles, have been launched especially for rural transport (seating capacity of 10 – 13 people). Further, pre-GST incidence was also same on those two types of vehicles. Thus, parity had been recommended by the Fitment Committee *vis-à-vis* treatment in respect of cess.

34.20. The Hon'ble Minister from Odisha stated that it was not a parity issue, the Council should consider that as the Government was already falling short of revenue & cess, any reduction would further reduce the compensation cess kitty. The Chairperson intervened and explained that JS, TRU-I was using the term parity with reference to the technical specifications and not with reference to the number of seats. All the Members of the Council thereafter agreed with the proposal and approved the reduction in rate of cess for Sl. No. 1 in part B of Annexure-I.

34.21. In part B of Annexure-I proposing changes in the rate of compensation cess, JS, TRU-I explained that at Sl. No. 2 Caffeinated drinks like Red bull classified under Tariff Item 22029990 were similar to Aerated Water. These drinks deserve parity in rates with aerated water. He stated that Ministry of Health had also recommended in past higher tax on such products. Hence, the Fitment Committee had recommended increase of cess rate at par with aerated water. The Council being satisfied for item at Sl. No. 2 of part B i.e. Caffeinated Beverages, decided that the GST rate be increased to 28% from existing GST rate of 18% with a compensation cess of 12% being applicable to it. Further, item No. 3 of part B, Annexure-I being of the nature to plug a loophole in refund arising out of inverted duty structure in compensation cess rates of tobacco products, the Council approved that refund of inverted duty of compensation cess may not be allowed under Sub Section 3 of Section 54 of the CGST Act, 2017 for tobacco products, including the refund claims already filed.

34.22. The JS, TRU-I stated that Sl. No 1 to 9 of the Part C of Annexure-I contained only clarifications in respect of certain products to avoid confusion in levy of the tax.. The Council *prima facie* being satisfied, approved the recommendations of the Fitment Committee, and sought clarification in respect of Sl. No 8 below which was further discussed.

34.23. The ACS (Finance), Delhi stated that at Sl. No. 8 in Part C of Annexure-I, the Fitment Committee had suggested exemption for Spare parts temporarily imported by Foreign Airlines for repair. Since, Delhi was the hub of Aircraft maintenance, a number of spare parts were imported, hence, Delhi Government was not in favour of the exemption in view of the revenue loss. The JS, TRU-I explained that although spare parts were imported for maintenance of foreign aircraft all the aircrafts remained in 'Customs Area' and there was no revenue implication as they were re-exported out of the country leading to refund of Customs Duty & IGST (if paid) on it, and also as per Chicago Convention, this relief had to be granted. Further, because of the tax exemption on spares as parts of Maintenance and Repair Operations (MRO activity), revenue on MRO activity would increase i.e. if the activity increased and came to India due to its being profitable, there would be increased tax on this service. The Council members thereafter were satisfied with the explanation of JS, TRU-I and approved the proposal.

34.24. In respect of Annexure-II, the Fitment Committee had deferred its decisions for want of information in respect of certain goods as it required further examination. The Council approved the same for Sl. No. 1 and 2 of Annexure-II. The Hon'ble Minister from Goa referred to Sl. No 3 of Annexure-II regarding Cargo vessels and stated that the shipping industry was already in doldrums, hence, why should the Indian ships be charged 5% IGST

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and why preferential treatment should be given to foreign vessels and dredgers. The JS, TRU-I explained that as of now there was no exemption on any ship; both Indian and foreign ships attracted 5% tax. The proposal had come from Ministry of Shipping on which Fitment Committee had not taken any view due to lack of data and had deferred it. The Fitment Committee had requested for further inputs from the Ministry of Shipping in respect of volume *vis-à-vis* sizes before taking a final view. He also requested the Hon'ble Minister from Goa, if he had any inputs, the same could be sent to Fitment Committee which could be examined before final recommendations were suggested by the Committee. He further clarified that the item was not regarding taxation of passengers or cruise ships. The Council thereafter approved the Fitment Committee recommendations for the Sl.No. 3 to 10 of Annexure-II.

34.25. In respect of Annexure-II, the Fitment Committee had deferred its decisions for want of information in respect of certain goods as it required further examination. The Council approved the same from Sl.No. 1 to 10 of Annexure-II.

34.26. From item No. 1 to 11 of Annexure-III, the Council approved the recommendation of Fitment Committee. The Hon'ble Minister from Andhra Pradesh drew attention of the Council to Dried Tamarind i.e. item at Serial No.12 of Annexure III. He maintained that Dried Tamarind was staple food in South India, needed for all food preparations and was not considered as spice. Further, in pre-GST era, it was exempted. While in the British era looking at its importance, there was Tamarind Tree Act which banned felling of Tamarind tree so that there was no shortage of an item that was integral part of diet. Moreover, it could not be compared with dried apples, prunes or apricots or with other spices as it was part of poor men's diet. He also suggested that like parched gram, tamarind also did not undergo any change in its form as it was only sundried and hence, should be exempted. The Hon'ble Chairperson also agreed that it formed an important part of the staple diet of South India and could not be treated at par with spices. The Hon'ble Ministers from Tamil Nadu, Bihar, Goa and Chhattisgarh also agreed to the proposal to exempt it from GST. The Hon'ble Minister from Chhattisgarh stated that it was also an important source of income for the tribal people of Bastar, in Madhya Pradesh. JS, TRU-I submitted that if dried tamarind was exempted, similar representations would be received for the spice items like ginger, turmeric, jeera etc. claiming it to be sundried only. The Council unanimously agreed that the same being spices and different from Tamarind.

34.27. Following the above discussion, the Council agreed to exempt Dried Tamarind (i.e. item at Serial No.12 of Annexure III).

34.28. The Hon'ble Minister from Chhattisgarh stated that Mahua flowers listed in item at Sl. No. 6 of Annexure-III, when plucked and dried should be exempted as it was very common staple item for tribal culture. JS, TRU-I explained that Mahua had been examined earlier and was not exempted by the Council. Further, at the tribal village level, it remained exempted in view of threshold exemption. It got taxed in the hands of organized traders who dealt in bulk and when it was used for making intoxicants. The Secretary further explained that in respect many of the food items, if we started discussion again and asked for exemption citing examples of similar items, then it would set off a chain reaction which would be difficult to stop. If the Council thought it should be re-examined, it might again be referred back to the Fitment Committee for re-examination. Further, for small taxpayers with a Turnover limit of Rs.40 lakh, there was already exemption. Hence, all tribal people and small tax payers had already been exempted.

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34.29. From item No. 13 to 41 of Annexure-III, the Council approved the recommendations of the Fitment Committee. ACS (Finance), Gujarat raised the discussion on Roasted Groundnut (item No. 42 of Annexure-III) and stated that there was a case that when the GST tax rate on the *Roasted Chana* was being reduced to 5%, the tax on the Roasted Groundnut should also be reduced to 5% because it was a comparable item. JS, TRU-I explained that Roasted Groundnut was classified under HSN 2008 and all items in the heading were taxed at 12%. The Hon'ble Finance Minister from Uttar Pradesh observed that roasted Groundnut and roasted Chana were two distinct products and roasted Groundnut may continue to be taxed at 12% GST rate. The Hon'ble Finance Minister from Punjab stated that if the Council started examining the food items again, then it would not reach any end result and it could be the never-ending process of exempting such items. Hence, the Council should stick to the agreed principles such as healthy food, unhealthy food etc. while exempting or taxing any food item. The Hon'ble Chairperson also agreed to his views. The Council also did not agree to exempt Roasted Groundnut.

34.30. The Hon'ble Minister from Goa also wanted parity treatment between Bakery items and Sweets which was taxed at 5%. However, the Hon'ble Minister from Kerala reminded that in view of certain principles and the fact that Bakery items and Sweets could not be treated at par because it had huge revenue implications, these items had been distinguished in the past and further suggested that the Council should not be ready to take the brunt of revenue loss when the revenue situation was precarious.

34.31. From item No. 43 to 57 of Annexure-III, the Council had no objection and approved the recommendation of Fitment Committee. The Hon'ble Minister from Uttar Pradesh raised the issue about item at Sl. No. 58 of Annexure III i.e. Extra Neutral Alcohol (ENA). He stated that the Fitment Committee had recommended that the status-quo might be maintained and he agreed to the recommendation of the Fitment Committee. However, he requested for the replacement of a comment at Sl. No. 3 in column 6 of the table, which might be read as, '*However, in the interim period, the States may go by the decision of GST Council as recorded in the Minutes of the Council Meeting dated 5th August, 2017*'. The Council agreed to the proposal of the Hon'ble Minister from Uttar Pradesh. Thereafter, in respect of item No. 59 to 167 of Annexure-III, the Council approved the recommendation of the Fitment Committee regarding no change suggested for various goods.

34.32. Shri Manish Sinha, Joint Secretary, TRU-II, (JS, TRU-II) stated that the Fitment Committee had recommended certain changes in rates and also recommended issuance of clarifications in relation to some services, which were appearing there in Agenda item 8 as Annexure-IV, V and VI. He stated that Annexure-IV contained details of items where Fitment Committee had agreed to change the GST tax rate, Annexure-V contained details of issues which had been deferred for want of information while Annexure VI contained details of issues where no changes in tax rate had been recommended by the Fitment Committee.

34.33. In respect of Sl. No. 1 of Agenda IV, the ACS (Finance), Gujarat, stated that this was a request from Gujarat and his State agreed to the recommendation of the Fitment Committee regarding on rate of GST on job work services on diamonds which were proposed to be reduced to 1.5%. However, Shri H. Rajesh Prasad, Commissioner, State Tax (CST), Delhi stated that Hon'ble Deputy Chief Minister of Delhi had asked them to submit that this would create a new GST rate of 1.5% and that the job work rate of 5% should be maintained for all kinds of job work discouraging any new rate. The JS, TRU-II explained that 1.5% was not a new tax rate and that under construction services, the construction of affordable housing was


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already having a tax rate of 1.5%. Further, Fitment Committee had proposed it by looking at inversion of tax rate in the sector, and hence, he requested the Council to approve the rate of 1.5% on job work services on diamonds which was agreed to by the Council.

34.34. He further explained that the item no. 2 of Annexure IV was regarding engineering job work where the GST rate was recommended to be reduced from 18% to 12%. He stated that analysis of data showed that GST tax rate of 18% was high, leading to cash flow problems for the sector. Hence, the Fitment Committee had suggested GST tax rate of 12% and there would not be any cash flow problem, as the cash revenue would shift to the principal from job worker. He also explained that this entry did not cover the body building activity of job work on the chassis supplied by the Motor Vehicle manufacturers. There was sufficient credit available to them on inputs, which were mostly at 18% while output was taxed at 28% (if the vehicle was sold) or at 18% (if the service activity of body building was done). The Council agreed and approved the recommendations of the Fitment Committee for Sl. No. 1 and 2.

34.35. Thereafter, Sl. No. 3 and 4 of Annexure IV were taken up for deliberations in the Council regarding rate rationalization in Outdoor Catering services and Hotel Accommodation service having tariff of Rs 7500/ and above. The JS, TRU-II then explained the proposal at item no. 3 i.e. Outdoor Catering to the Council where the Fitment Committee had recommended rates to be reduced to 5% without ITC, so that the GST tax rate could be at par with Restaurant Service. He explained that during the discussion in Fitment Committee, it had emerged that all banquet halls had started declaring a small restaurant inside the premises and were billing the supply of food as service from restaurant and paying GST of 5% (without ITC). Hence, the Fitment Committee had recommended the GST rate of 5% without ITC on outdoor catering. On being asked by ACS (E&T), Haryana about the revenue loss on the proposal, he stated that there might be a notional revenue loss of Rs. 400 crore had the tax authorities been able to collect GST of 18%. The ACS (E&T), Haryana stated that this rate reduction should be cautiously done as it would have huge revenue implication. The Hon'ble Minister from West Bengal stated that statement of JS, TRU-II seemed to be correct that it was a notional revenue loss as the tax authorities were not able to collect revenue from this sector due to malpractices and hence, it would be proper to agree to the recommendation of the Fitment Committee. ACS (Finance), Gujarat, supported the proposal. He stated that there was a question in his mind that in Five Star Hotels, we have put the GST rate of 18%, but since most of the catering i.e. about 95% would be taxed at 5%, would there be any logic to keep the catering in a Five Star Hotel at 5%. In response, JS, TRU-II stated that catering in Five Star hotel was a case of conspicuous consumption, which also had a lot of capital goods credit and hence, GST rate was proposed to be kept at 18% with ITC.

34.36. The Hon'ble Deputy Chief Minister of Bihar also stated that when he went to Bangalore for the meeting of the GoM, a big delegation from the catering association had met him for rate rationalization. He, therefore, suggested that a practical view should be taken while fixing the rate as there was no revenue coming from this sector, otherwise also due to evasion on account of high tax rate. The Hon'ble Minister from West Bengal supported the proposal and stated that as per the experience, these caterers were not paying any tax. He also stated a similar issue relating to GST tariff on hotels as suggested by the Hon'ble Minister from Goa was pretty similar and connected to this item, so both the items should be discussed together. Moreover, if the recommendation of the Fitment Committee was approved by the



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Council, compliance would increase due to low incentive for evasion and there would also be no outgo on account of Input Tax Credit (ITC).

34.37. The Hon'ble Minister from Goa stated that the Hon'ble Prime Minister in his speech on 15th August, 2019 had mentioned that India could become a Tourism hub, so all Indians should promote tourism as more jobs with less investment could be generated in this sector and it would strengthen the economy. He also stated that in various Council meetings, he had already raised the issue that in the interest of tourism and employment generation, the Council should lower the tax on the room rents of Five Star Hotels. He informed the Council that the GST rate had to be competitive in the region; in China tax rate was only 9% while in Thailand and Singapore only 7%. Thus, when tax rates were so low in foreign destinations even the domestic tourists preferred going abroad. Similar hotels with better facility have been built in India but the tax rate as high as 28% on room rents of Rs. 7500 and above was detrimental to the growth in tourism sector. In fact, this had led to 30% drop in tourist arrivals in Goa alone. He therefore stated that the Council had to take a long-term view instead of short term, by lowering tax rate, to flat 12%. He further stated that if the rates could be lowered from the present rate, it would generate more revenue. He also reiterated that in a similar manner, at present, many caterers were not paying tax on catering service by managing records. Hence, if the rate was reduced to 5% without ITC, their compliance would also increase. Moreover, if the foreign tourists were visiting India, it would generate employment as well as foreign exchange. In the last few years, the foreign charters had reduced their footfall in India resulting in reduced foreign exchange earnings and therefore, he requested the Council to take a pragmatic approach. He also reminded that earlier when the Union Finance Minister (Late) Shri Arun Jaitley was alive and he chaired the Council meetings, he had promised that when the GST Council meeting would be held in Goa, full relief to the tourism industry would be considered by the Council.

34.38. The Hon'ble Minister from Madhya Pradesh agreed with the submission of Hon'ble Minister from Goa and stated that in Madhya Pradesh also, there were beautiful tourist places. GST rate on hotel accommodation should be reduced as tourism sector involved minimum investment but generated a lot of employment. Further, both the Hon'ble Ministers from Punjab and Chhattisgarh, supported the reduction in tax rate and stated that the notional revenue loss would be made up by the increase in volume and development of the tourism sector. The ACS (E&T), Haryana raised a query at this juncture as to what would be revenue implication of reducing the GST rates in all categories of room rates as well as in the Outdoor Catering. He further desired to know that in case of banquets, which were also very elegant and luxurious ones, since there would be no rooms offered for rent of Rs. 7500/- and above per night, then how would this differential tax rate operate, and they would always pay tax at the rate of 5%.

34.39. The CST, Delhi stated that this rate reduction proposal would have serious revenue consequences for Delhi. He added that in Delhi, there were 37 Five Star Hotels with a capacity of about 10,500 rooms and most of the hotel rooms were charged Rs. 7500 and above per room night. The revenue that accrued to Delhi was around Rs. 360 crore and if GST rate was reduced from 28% to 18%, as suggested, then there would be 35% net loss i.e. Rs. 120 crores for Delhi city alone. He also stated that the Catering Service in Five Star Hotels should continue at 18%, in view of revenue loss but, Outdoor Caterers might be charged at the rate of 5% without ITC in view of rampant evasion in the sector.



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34.40. The Hon'ble Minister from Kerala also agreed to the proposal of reducing the rates and stated that at least, the slab of Rs. 7500 should be abolished to have a uniform tax rate across the hotels as it was causing distortion in the sector. The Hon'ble Deputy Chief Minister of Bihar stated that the proposed new slab of Rs. 10,000 to be created by Fitment Committee should not be agreed and the rate of tax should not be more than 18%. It was not a sin to stay in a Five Star Hotel or a good hotel and it looked awkward when tax was charged at 28% rate. On the other hand, hotels were also manipulating their daily room rate by splitting the charges for breakfast to keep room tariff per night below Rs. 7500. The Advisor to Governor (I/c Finance), Jammu & Kashmir also supported the view of Goa and stated that in pre-GST era there was no tax on hotel industry in Jammu & Kashmir and which added to huge tourists flow in their State. Hence, there was a strong representation from the hotel association of Pahalgam and Gulmarg to reduce the tax rate.

34.41. The Hon'ble Chairman summarised the view of Council Members and stated that the in view of the discussion held so far, the Fitment Committee members were suggesting a new proposal in order to promote tourism and employment, although it might be not agreeable to Delhi. For the consideration of the Council, the new proposal was read out as follows:

The new GST tariff might be framed for different slabs with different rates as below:

Room Rent in Rs.	Proposed GST rate
0- 1000	Nil
1001 - 10000	at the rate of 12%
10,001 and above	at the rate of 18%

34.42. The Council Members noted that it was a worth considering proposal and the Hon'ble Minister from Goa supported the proposal. He stated that in the long run, the State of Delhi may not have any problem of revenue loss. The Hon'ble Minister from West Bengal stated that any GST rates fixed should be ad-valorem and not linked to the rack rate. The JS, TRU-II stated that the shift away from the rack rates-based GST tax rate slabs had already been made in GST Council meetings held in the past. He also submitted that with these slabs, there would be serious revenue implications. Further, though slab-wise break up of revenue was not available, but the revenue loss could be around Rs. 2000 crore. The Hon'ble Minister from Chhattisgarh wanted to know as to how the calculation of revenue loss was made by JS, TRU-II i.e. whether it was based on room occupancy or any other criteria.

34.43. The JS, TRU-II stated that the Fitment Committee had observed in the past that the rate cuts usually did not lead to revenue growth directly. However, there would be increased room occupancy, but how much it would be, could not be estimated by the Fitment Committee. The Hon'ble Minister from West Bengal observed that since the Fitment Committee did not have any data on the elasticity of demand of various price points, they only seemed to have done a static analysis of revenue loss of around Rs. 2000 crores. However, as per his intuition, it would generate more revenue on account of increase in room occupancy. He asked the CST, Delhi about what was the aggregate revenue of Delhi from GST, who responded that it was around Rs. 26,000 crores. The Hon'ble Minister from West Bengal then remarked that a loss of Rs. 200 crores on Rs. 26,000 crores would have the impact of only 0.8%, which might be compensated by higher room occupancy. The Advisor (Financial Resources) to Chief Minister, Punjab stated that while the Council was recommending

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lowering of tax rates in Five Star Hotels, one practical aspect should be kept in mind. He elaborated that in a Five Star Hotel about 23 services were provided which were mostly taxed at 18% and when the GST on Accommodation Service was to be reduced to 12% then it would create a sea of evasion and practice of avoidance of tax. He gave an example that Five Star Hotels would provide both In-door and Outdoor Catering Services and they could be applying different rates to each. He, therefore, stated that in the process of encouraging tourism we should not make mess of GST in the sector because a lot of interpretation issues would surface with slab-wise structure in Hotel and Catering service like composite supply, bundled supply, mixed supply or separate services etc. He, therefore, cautioned the Council about the above issues.

34.44. Shri Bikram Singh, the Hon'ble Minister from Himachal Pradesh agreed to the proposal of reducing tax rates in Five Star Hotels. Dr. Prithvi Raj, Secretary (Finance & Revenue), Rajasthan also supported the proposal and stated that as pointed out by the Hon'ble Minister from Goa, even Rajasthan was facing competition with the hotels of South East Asian countries and there was at least 20% less booking in the hotels of Rajasthan on this account. So, with rate cut, the tourism industry would again be revived in India.

34.45. The Hon'ble Minister from Assam stated that every time when the Council reduced the rates, there were various discussions on tax buoyancy and increase of compliance etc. Hence, it was important to make an impact assessment on the items on which the tax had been reduced. The Hon'ble Chairperson stated that the Hon'ble Minister from Assam should suggest the subjects on which he would suggest impact assessment to be done. The Hon'ble Minister from Assam felt that studies could be made on items like white goods, motor vehicles parts and accessories, housing sector etc. so as to know whether the benefits had been passed to the consumers or not. He observed that the current GST tax rates were even below VAT on many items. The Hon'ble Chairperson then invited suggestions from all the Members present and requested them to submit the proposal in writing on the issues/ subjects they would like to have impact assessment study done so that the buoyancy in revenue could be studied and achieved.

34.46. The Deputy Chief Minister of Bihar stated that the revenue implication of foreign exchange earnings had not been factored in while suggesting the rates on hotels, but it looked very bad to charge tax at the rate of 28%. He stated that with rate reduction, all the States including Delhi would have tax gain and not loss. The Hon'ble Chairperson stated that there was a merit in lowering GST rates and Goa's suggestion was well established, but there would be loss of revenue for Delhi as suggested by them. The CST, Delhi stated that whatever, revenue loss figures, he had stated earlier were based on the proposal of Fitment Committee. However, the instant proposal had gone much beyond that and tax rate applicable was proposed to be brought down to 12% for very high room tariff range. Hence, he would require to go back and do fresh calculations. CST, Delhi further stated that although the Hon'ble Minister from Goa had maintained that there would be more room occupancy if there were lower room rates in Delhi, which could compensate the revenue loss; he had a different view on it. He stated that in Delhi about 4,000 rooms had already been added in the Aero-city Delhi and it was observed that only 60% hotel rooms were occupied in general in Delhi and therefore, there was already an excess capacity in Five Star Hotels. Further, by nature, the Five Star Hotels were more compliant and the revenue was easily collected from these Five Star Hotels. The Hon'ble Chairperson then requested as to what the Council would



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recommend for the hotels. The Hon'ble Deputy Chief Minister from Bihar suggested that Council could modify the proposal and recommend following GST rates: -

Room Rent in Rs.	Proposed GST rate
0 to 1000	Nil
1001 to 7499	at the rate of 12%
7499 +	at the rate of 18%

The Hon'ble Chairperson stated that this was exactly the proposal which the Revenue Secretary also had suggested her.

34.47. The JS, TRU-II stated that the recommendations of the Fitment Committee regarding the rates of 28% was in view of the pre-GST rate incidence and the same had been adopted by the Council after much discussion. However, the Fitment Committee having proposed for modification, would agree to any of the recommendation of the Council. He added, in fact, the proposal was to have 28% tax rate above Rs. 10,000 room rent, which came to US \$ 150 and internationally, Hotel room rent above US \$ 150 were considered as luxury.

34.48. The ACS (Finance), Gujarat agreed that the proposal made by the Deputy Chief Minister of Bihar seemed practical. He further, stated that the Council should also keep the observation of the Advisor (Financial Resources) to Chief Minister, Punjab in view, because it might create an anomaly of applicable tax rates i.e. with rooms taxable at GST of 12% and other services with GST rate of 18%, the tendency might be to manipulate records. The JS, TRU-II stated that this kind of tariff structure often led to shift of value from 18% to 12%. The Hon'ble Minister from West Bengal stated that market forces would take care of this kind of value shift.

34.49. The ACS (E&T), Haryana reiterated that like Delhi, Haryana also had 35 Five Star Hotels and they also would have rate cut impact on their revenue, but since it was a decision of the Council, they would try to absorb the revenue loss.

34.50. The Hon'ble Chairperson thanked the Council for accepting the proposal of the Deputy Chief Minister of Bihar. The Hon'ble Minister from Goa welcomed the decision and agreed to the proposal requesting for minor modification that instead of slabs being distinguished by Rs. 7499, it be distinguished by Rs.7500/-. Thus, the Council approved to reduce the rate of GST on hotel accommodation service as below: -

Transaction Value per Unit (Rs) per day	Applicable GST Rate
Rs 1000 and less	Nil
Rs 1001 to Rs 7500	12%
Rs 7501 and more	18%

The Council also agreed to reduce rate of GST on Outdoor Catering Services other than in premises having daily tariff of accommodation in rooms of Rs. 7501 and more from present 18% with ITC to 5% without ITC. It was also agreed that the rate shall be mandatory for all kinds of catering. Further, catering in premises where daily tariff of accommodation in rooms was Rs 7501 and above, the applicable GST rate shall remain at 18% with ITC.

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34.51. Further, as regards Sl. No. 5 to 30 of Annexure IV, the Council after going through the explanation provided in the proposal, approved the recommendation of the Fitment Committee on services.

34.52. The Hon'ble Minister from Goa, thereafter raised the issue pertaining to his State related to Casino which the Secretary explained to him that this would go to GoM on Lottery, as discussed in previous GST Meeting. However, since the Convenor of the GoM on Lottery was the Hon'ble Minister from Maharashtra, it was necessary to appoint a new Convenor as early as possible, since Maharashtra was shortly going to have elections, and the present Convenor might be busy with election related work. The new Convenor of the GoM could then convene meeting of the GoM in the meantime and discuss the issues of Lottery and Casino. Moreover, he stated that no coercive action on Casino should be taken by the Governments to recover the tax based on interpretation, till the GoM took a final view on the same.

34.53. In respect of Sl. No. 1 to 12 of Annexure-V, the Fitment Committee had sought time for further examination to which the Council agreed. Similarly, in respect of items from Sl. No. 1 to 61 of Annexure-VI, the Fitment Committee on services had not proposed any changes, to which also the Council agreed.

34.54. The JS, TRU-II stated that in respect of Annexure VII, there were two issues which had been referred to the Fitment Committee by the Council in its 35th Meeting held on 21st June 2019 and the Hon'ble Finance Minister from Punjab. There, in respect of first item, the Council was to decide on rate of GST on Lottery after the legal opinion of the Ld. Attorney General, as directed by it, was received. The Ld. Attorney General had provided his opinion and mentioned that State run Lottery and State authorized Lottery were two different supplies, therefore, there could be two different tax rates or a uniform rate of GST as the Council might recommend. Moreover, the Ld. Attorney General had also mentioned that Article 304, which applied to State Legislatures, would have no bearing on fixing of differential GST rates on two types of Lottery for the reason that the two kinds of lotteries may well be said not to constitute similar goods and that the state authorised lotteries may also be sold within the boundaries of the state authorising it as also in other states and the GST rate of 28% would apply in both cases. Hence, the GST Council was free to decide any rate they might deem fit for Lottery.

34.55. The Secretary requested the Council to give their views on the issue as the opinion from Ld. Attorney General had come. The Hon'ble Finance Minister from West Bengal stated that the *status quo* should be maintained and his State preferred dual GST rates; for State run Lotteries GST of 12% and higher rate of 28% for State authorized or licensed Lotteries, as it was consistent with the opinion of the Ld. Attorney General. He further stated that since the State collected significant amount of revenue, a Corporation had been formed and it had become acceptable to the people due to transparency. Thus, States having this type of model should be allowed to maintain two rates as any rate reduction would lead to massive revenue loss. Further, he was of the view that if the Council decided to recommend a uniform GST rate, he would like the GST rate to be fixed at 28% as Lottery was a 'sin' good. The Hon'ble Minister from Kerala stated that the Ld. Attorney General's view regarding the rates had upheld his views and arguments on the issue, presented in the Council from time to time, that it was absolutely legal to keep two rates in lottery. Thus, the *status quo* should be maintained.


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34.56. The Hon'ble Minister from Assam stated that in North Eastern States, there was no capability to have State-run Lottery, hence they would have to close down the Lottery business and seek compensation from the Government of India for the probable loss of revenue. Further, the proposal of Minister from Kerala, that he had placed in Council earlier stating that he would run the Lottery for North Eastern States; seemed attractive but it undermined the autonomy of State. He added that North Eastern States were having a giant neighbouring State running Lottery and fixing lower rate to State-run Lottery would give protection to neighbouring state run Lottery. Thus, GST rate would protect revenue of their neighbour instead of protection being given to revenues of smaller North Eastern States. He stated that, if in a simple good like Lottery, it was interpreted to be two different goods, one being State run and the other being State authorized Lottery, then this issue might come up in respect of many other goods for example a car manufactured by a PSU and a car manufactured by a private company to be differentiated. Following that logic, there shall be different tax rates for all the supplies under GST based on the distinction of being State-run or otherwise; akin to Lottery. Hence, he requested the Council to keep in view the concerns of the smaller States, so as not to discriminate between State run and State authorized Lotteries. He stated that he had no issue, if the rate was to be raised to 28% for all kinds of Lottery but the distinction should be removed. He, therefore, asked that the revenues of North Eastern States should be protected either by making the tax rate on the State run and State authorised Lotteries equal or providing compensation for longer period, as it was the question of survival.

34.57. The Hon'ble Minister from Punjab thanked the Hon'ble Chairperson for obtaining the Ld. Attorney General's opinion and stated that since the Attorney General's opinion confirmed that these were two distinct supplies, hence, the *status quo* should be maintained, if possible. The Hon'ble Deputy Chief Minister of Bihar further suggested that the Council should ban Online Lottery, as it was causing lot of disruption among youths and though Paper Lottery was banned in Bihar, youth were spending money online. The Hon'ble Finance Minister from West Bengal stated that Online Lottery was already banned in West Bengal.

34.58. The Hon'ble Minister from Kerala stated that he wanted to raise a few points for the consideration of the Council without getting into the argument with the Hon'ble Minister from Assam. He cautioned that let the Council consider as to what income was arising to these States out of lottery before taking any decision. It was two-fold i.e. 'Minimum Guarantee Money' (MGM) offered by the authorised person to run Lottery and the GST on its sale. Further, GST would be shared between Central Government and the destination/consuming State. Thus, the only income North Eastern State Government got was the MGM offered by the authorised person. Hence, he offered that he can guarantee double the income for every North Eastern States from the MGM, which it would otherwise collect from State authorized lottery. In Kerala State, there would be law and order problem as Lottery had its vices which had to be controlled. The Hon'ble Minister from Assam stated that in that case, Kerala should form an agency and participate in the tender, otherwise how the State would know as to what revenue it was being offered as MGM.

34.59. The Hon'ble Chairperson stated that based on the discussion so far, she would come up with a fair proposition which the Council might consider. She further stated that, since every member was of the view that Lottery was a 'sin' good, it should have a uniform rate and the Council might also suggest to Union Ministry of Home Affairs to amend the Lottery Regulation Act, in order to address the issues relating to law and order, monitoring and

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compliance etc. She also stated that Council might also recommend banning of online lottery. She then asked the views of the House on this three-pronged proposal. The Hon'ble Minister from Kerala suggested for division of votes in the Council. The Hon'ble Minister from West Bengal opined that either the *status quo* should be maintained or the GST rate of 28% might be recommended.

34.60. The Hon'ble Minister from Punjab stated that online Lottery should be banned and to respect the divergent sentiments of the House, the status quo should be maintained. The Hon'ble Minister of Assam was against the differential rate and also asked for division of votes to settle the issue. The Hon'ble Minister from Goa also stated that he was of the same view as the Hon'ble Minister of Assam that there should be a single GST rate. Moreover, banning Online Lottery in Goa would mean losing revenue. So, he appealed to the Council to take some more time and again to have a detailed discussion in the GoM for a final view. The Hon'ble Minister from Uttar Pradesh stated that the Lottery was banned in his State however, the matter should be discussed in the GoM. The Hon'ble Minister from Punjab also favoured that discussion be again done and a view might be taken by the GoM in this regard. The Hon'ble Minister from Goa stated that for best solution, since Casino issues were also referred to the GoM on Lottery, one more round of deliberation in the GoM would be proper. He further explained to the Hon'ble Chairperson as to why this issue was pending in GoM for so long. He stated that the GoM had discussed it amongst themselves and wanted to have a meeting with the then Chairperson also, who was first busy with elections and thereafter unfortunately fell sick. Thus, the matter could not be discussed with him.

34.61. The Hon'ble Minister from Chhattisgarh and Telangana also favoured that the decision of GST rate on Lottery should not be finalized in haste but it should be discussed in the GoM along with Casino and Horse Racing. He further stated that over the past 6-7 months, he had observed that the conflicting views had mellowed down and the gap between the views had also moved from outright confrontation towards reconciliation. The Hon'ble Minister from Telangana also suggested that the pending issues of Horse Racing be also referred to the GoM on Lottery. The Hon'ble Minister from West Bengal also favoured that since there was skill involved in Horse Racing, the matter should also be discussed in the same GoM.

34.62. The Council then decided to refer the matter to the GoM on lottery along with issues relating to Horse Racing and Casino.

34.63. ACS/CST, Tamil Nadu raised the issue of exclusion of aerated waters from the Composition Scheme. Regarding Composition Scheme on aerated water; the JS, TRU-I explained that this issue had come up for discussion during the Officers' Committee meeting and it was submitted by the officers from various States that there was a lot of evasion in this area. There was a representation from ACS/CST, Tamil Nadu also regarding manufacturers of aerated water to be taken out of the Composition Scheme. He informed that the Fitment Committee had agreed to it and the officers committee on 19.09.2019 had also accepted it. The Council also approved that the manufacturers of Aerated water be henceforth taken out of the benefit of Composition Scheme.

34.64. The Hon'ble Minister from Punjab requested attention of the Hon'ble Chairperson and also of Council regarding the issue of taxation of "Long term Leasing" and stated that the Secretary had informed him that the issue would be taken up in the GoM on Real Estate. The

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Chairperson agreed that the same might also be referred to the GoM on Real Estate if the Council Agreed. The Council agreed for the same.

34.65. The Hon'ble Chairperson enquired from the Secretary about the status of various GoMs constituted by the Council and asked questions that how many GoMs had been constituted; that when were they constituted; that as to when did they last meet; that whether they had come to the closure of their subject and submitted their final report or not. The Secretary then requested, JS, TRU-II (being the Secretary of some of the GoMs) to inform the House regarding the status of the GoM. JS, TRU-II stated that there was one GoM on Lottery, which was headed by the Hon'ble Minister from Maharashtra. The second GoM was on Real Estate headed by Deputy Chief Minister from Gujarat and the third GoM was on IT Challenges headed by Deputy Chief Minister from Bihar which were still in existence. He further stated that all the GoMs, except GoM on IT Challenges which met frequently; had not met for some time. He also informed that usually, it was the Convenor of the GoM, who called the Meetings. The Hon'ble Minister from Goa pointed out that there was also a GoM on Revenue Analysis which had also not met for some time and submitted its report. The Hon'ble Deputy Chief Minister of Bihar stated that though GoM on IT issues had not met for some time but the Committee of Officers on IT was meeting regularly and sorting out the issues. Then the Hon'ble Chairperson appealed to the Council that, as she understood, GoMs were driven by the Convenors of the GoM. She appealed that GoMs should meet at the earliest and she assured the Members that reports of the GoMs would be brought before the Council.

34.66. The Hon'ble Minister from Punjab raised the issue of Long-Term Leasing of Land and stated that it was against his self-respect and nature of people of Punjab to seek the compensation. Punjab was however, one of the highest revenue deficit State in GST and seemed to have become a deficit state in perpetuity. He stated that while Punjab contributed hugely in producing food grains for whole country for ages, it had become revenue deficit State as it agreed to subsume the purchase tax on food grains. Thus, in GST, the time had come for Punjab's economy to diversify from food grains into industry and services. Drawing the Council's attention to historical perspective, he stated that in 1947, Punjab and West Bengal had borne the brunt of partition. Thereafter, during the 60's and 70's, Punjab saw three wars – 1962, 1965 and 1971, where people of Punjab were affected. Then terrorism too affected the people in Punjab. He also stated that the special concessions given to their immediate neighbouring States like Himachal Pradesh, Jammu & Kashmir and Uttarakhand too affected industrial growth. Hence, he stated that Punjab's economy was always affected due to various associated circumstances. He further stated that now Punjab wanted to industrialise. 'Invest in Punjab' Summit was to be held soon where investors from Dubai, Japan and Singapore would be invited. Further, land was precious and scarce and Punjab would look forward to transfer of land in large industrial estates for investments on Government to Government basis. He requested the Council to consider the issue of levy of tax on lease of land on long term basis. He stated further that in GST, there was no entry where tax could be levied separately by both Centre and the States except for 'long term leasing of land', which attracted 18% GST. Moreover, there was 5% to 7% of Stamp Duty on it making a total tax of about 25% which would not be eligible for ITC in certain situations and hence made the entire project costly and unviable. Thus, it became a big challenge for a border State like Punjab to attract industry. Most of the companies, he stated, were moving out from China to Vietnam at present. He also reiterated the views held by the Chairman, XV Finance Commission, regarding certain States falling off the cliff in 2022, and stated that it



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might be true for Punjab if they were not allowed to diversify. Thus, having gone ahead with Corporate Tax reforms recently, the Governments should also look at this aberration in GST. Thereafter, he apologised for taking so much of time of the Council and making an emotional appeal for addressing this issue.

34.67. The Hon'ble Minister from Kerala supported Punjab's view by stating that since land registration and stamp duty had not been subsumed in GST, it was affecting all the States. and the Punjab minister should not apologize for his statement before the Council. Both, The Hon'ble Ministers from West Bengal and Uttar Pradesh also supported the views of Punjab that leasing of land should not suffer levy of GST. The Hon'ble Minister from West Bengal stated that there was 18% tax plus Stamp Duty on registration of long lease which was akin to sale of land. Thus, the new industry had to face double taxation, on same set of transaction. Hence, it would be better if a decision was taken to avoid double taxation on this issue. He further stated that the private sector was building big industrial parks, where they were bringing investors but they were reluctant to move forward due to double taxation. Further, if there could be double taxation avoidance between two nations then why it could not be sorted out between Centre and the States. He therefore, proposed that the council could consider exempting the double taxation of long-term lease of land in a format where the State could utilize the land and give it on lease in partnership with private sector in industrial park kind of format, instead of sending it back to GoM.

36.68. The Hon'ble Chairperson requested ACS (Finance), Gujarat to request his Minister, who was also the Convenor of the GoM on Real Estate, to convene a meeting at the earliest, to take a view on the issue. The ACS (Finance), Gujarat stated that he would convey the message to the Hon'ble Deputy Chief Minister, Gujarat. However, he made following observations on the issue raised by Punjab.

- a. If land was leased for long term by a State PSU such as Punjab Industrial Development Corporation or a similar body then GST would not be applicable, as it was already exempted.
- b. Further, Punjab had taken one of the arguments behind seeking exemption from the long-term lease of land on the grounds that the exemption had been granted to International Financial Services Centre (IFSC) in Gujarat, which may also be extended to long term leasing for the industrial purpose. However, IFSC in Gujarat, being the only international financial services hub in India, did not draw any parallel with the exemption to the long-term leasing of land from tax. Hence, this argument might be separated and kept aside.

36.69. The Hon'ble Minister from Madhya Pradesh also agreed to the Punjab's views and stated that in Madhya Pradesh also efforts were being made to encourage tourism industry to develop in Madhya Pradesh. For this purpose, a PSU might be formed and hence issue of long-term leasing of land for developing hotel and tourism facilities should also be taken up by the GoM. The Hon'ble Minister from Punjab thanked the Council for its assurance and decision to refer the matter to the GoM on Real Estate.

36.70. The Hon'ble Minister from Punjab requested for a clarification with reference to item at Sl.No. 18 of Annexure IV as to whether there would be a circular or a notification which was proposed to be issued. The JS, TRU-II explained that the decision in this regard to levy no tax on Liquor Licence Fee had been taken by the GST Council long back but there was no legal instrument approved by the Council to implement it. Further, some disputes were being


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raised by companies before the court of law, such as, in a case relating to levy of GST on Spectrum Fee in telecom, that it was similar to Liquor Licence Fee, hence, it should also not suffer GST. Thus, to address the situation there were three ways suggested by the Fitment Committee, as contained in Agenda. In the Budget 2019 for the past period, the Liquor Licence Fee had been retrospectively exempted from the Service Tax. For future, it would be proper, if a notification under Section 7 (b) (ii) of CGST Act, 2017 declaring it as "no supply" would be issued followed by the issue of a suitable clarification that this Notification would not be applicable to other Licences which were granted by Government for a consideration. The Council agreed to the proposal.

36.71. The Secretary stated that one important decision that the Council had to make was regarding the effective date of implementation for the rate changes and decisions taken on the recommendations of Fitment Committee. He suggested that these decisions be made effective from 01.10.19, to which Council members agreed.

37. For **Agenda item 8**, the Council approved the following for Goods and Services: -

A. In respect of GST Rate on Goods, the Council decided as follows:

- a. In respect of Part A of the Annexure I of Agenda item 8 recommending changes in the GST rate of the Goods:
 - i. The Council approved the Fitment Committee recommendations in respect of Sl. No 1 to 6, Sl. No 9 to 11 and Sl. No 13 to 20 of the Part A of the Annexure I.
 - ii. The Council in respect of Fish meal appearing at Sl. No 7 of the Part A of the Annexure I agreed for granting exemption for the period 01.07.17 to 30.09.19 in view of the doubts as regards taxability of fishmeal in view of the interpretational issues. However, any tax collected for this period shall be required to be deposited. Council did not agree to make any change for meat cum Bone Meal.
 - iii. The Council in respect of Sl. No 8 of the Part A of the Annexure I approved 12% GST rate during the period 01.07.2017 to 31.12.2018, on pulley, wheels and other parts (falling under heading 8483) and used as parts of agricultural machinery. However, any tax collected at higher rate for this period shall be required to be deposited.
 - iv. The Council deferred the discussion based on Fitment Committee recommendations in respect of Safety Matches appearing at Sl. No 12 of the Part A of the Annexure I and that it would be taken up after the Hon'ble Chief Minister of Pondicherry provided his feedback.
- b. In respect of Part B of the Annexure I of Agenda item 8, recommending changes in the GST rate as well as Compensation Cess rate of the Goods:
 - i. The Council approved the Fitment Committee recommendations in respect of Sl. No 1 of the Part B of the Annexure I. Passenger vehicles of engine capacity 1500 CC in case of diesel, 1200 CC in case of petrol and length not exceeding 4000 mm designed for transport of upto 9 persons attract compensation cess of 1% for petrol and 3% for diesel vehicle. The Council recommended same compensation cess rate for vehicles having these specifications (length 4000 mm and engine capacity of 1200 CC for petrol vehicle,

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1500 CC for diesel vehicle) but designed for transport of 10 to 13 persons. (presently these vehicles attract compensation cess at the rate of 15%)

- ii. The Council approved the Fitment Committee recommendations in respect of Caffeinated Beverages appearing at Sl. No 2 of the Part B of the Annexure I to change the GST rate from present 18% to 28%. The Council also approved that it shall also attract Compensation Cess of 12%.
 - iii. The Council also approved that the refund of Compensation Cess on Tobacco Products arising out of inverted duty structure in Compensation Cess in respect of Sl. No 3 of the Part B of the Annexure I not to be allowed under Section 54 of the CGST Act, 2017, including on the refund claims already filed.
- c. In respect of Part C of the Annexure I of Agenda item 8, recommending issue of clarification in respect of the GST rates of the Goods:
- i. The Council approved the Fitment Committee recommendations in respect of Sl. No. 1 to 8 of Part C of the Annexure I of Agenda 8, to issue the clarification.
 - ii. The Council approved the Fitment Committee recommendations in respect of Sl. No. 9 of Part C of the Annexure I of Agenda 8, to issue the notification exempting it.
- d. In respect of Annexure-II of Agenda item 8, the Fitment Committee had deferred making any recommendations for want of information, and the Council approved the Sl. No. 1 to 10 of Annexure-II for further examination.
- e. In respect of Annexure-III of Agenda item 8, the Council approved the Fitment Committee recommendations for no change in respect of Sl. No. 1 to 11; Sl No. 13 to 57 and Sl No. 59 to 167.
- f. In respect of Annexure-III of Agenda item 8, Sl. No. 12; the Council approved that the Dried Tamarind shall be charged 'NIL' rate of GST.
- g. In respect of Annexure-III of Agenda item 8, Sl. No. 58 i.e. Extra Neutral Alcohol (ENA), the Council approved the Fitment Committee recommendations and for the replacement of the comment at Sl. No. 3 in column 6 of the able, which might be read as, *'However, in the interim period the States may go by the decision of GST Council as recorded in the Minutes of the Council Meeting dated 5th August, 2017'.*
- B. In respect of GST Rate on Services, the Council decided as follows:
- a. In respect of the Annexure IV of Agenda item 8, recommending changes in the GST rate of the Services or for issuance of clarifications in relation of Services:
 - i. The Council approved the Fitment Committee recommendations in respect of Sl. No 1 and 2 of the Annexure IV. The Council recommended to reduce rate of GST from 5% to 1.5% on supply of job work services in relation to diamonds and to reduce rate of GST from 18% to 12% on supply of all job work services which are not currently eligible for 5% rate, such as in engineering industry, except supply of job work in relation to bus body building.



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- ii. The Council recommended in respect of Sl. No 3 of Annexure IV to reduce rate of GST on outdoor catering services, other than in premises having daily tariff of unit of accommodation of Rs 7501 from present 18% with ITC to 5% without ITC. The Council also approved that the rate shall be mandatory for all kinds of catering. Catering in premises with daily tariff of a unit of accommodation of Rs 7501 and above or catering by entities providing such accommodation of entities located in such premises shall remain at 18% with ITC.
- iii. The Council recommended in respect of Sl. No 4 of Annexure IV to reduce the rate of GST on hotel accommodation service as below: -

Transaction Value per Unit (Rs) per day	GST
Rs 1000 and less	Nil
Rs 1001 to Rs 7500	12%
Rs 7501 and more	18%

- iv. In respect of Sl. No 5 of Annexure IV, the Council recommended to issue a notification under Section 13(13) of IGST Act, 2017 notifying the place of supply of specified R&D services (such as Integrated discovery and development, Evaluation of the efficacy of new chemical/ biological entities in animal models of disease, Evaluation of biological activity of novel chemical/ biological entities in in-vitro assays, Drug metabolism and pharmacokinetics of new chemical entities, Safety Assessment/ Toxicology, Stability studies, Bio Equivalence and Bio Availability Studies, Clinical trials, Bio analytical studies) provided by Indian pharma companies to foreign service recipients, as the place of effective use and enjoyment of a service i.e. location of the service recipient.
- v. In respect of Sl. No 6 of Annexure IV, the Council recommended to clarify that the place of supply of chip design software R&D services provided by Indian companies to foreign clients by using sample test kits in India is the location of the service recipient and section 13(3)(a) of IGST Act, 2017 is not applicable for determining the place of supply in such cases.
- vi. In respect of Sl. No 7 of Annexure IV, the Council recommended to exempt services provided by an intermediary to a supplier of goods or recipient of goods when both the supplier and recipient are located outside the taxable territory.
- vii. In respect of Sl. No 8 of Annexure IV, the Council recommended to exempt prospectively services by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibers such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, *tendu leaves*, rice, coffee and tea.
- viii. In respect of Sl. No 9 of Annexure IV, the Council recommended to allow RCM to suppliers paying GST at the rate of 5% on renting of

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vehicles, when supplied by person other than body corporate (LLP, proprietorship etc.) to body corporate entities.

- ix. In respect of Sl. No 10 of Annexure IV, the Council recommended to issue a clarification, clarifying the scope of the entry 'services of exploration, mining or drilling of petroleum crude or natural gas or both'.
- x. In respect of Sl. No 11 of Annexure IV, the Council recommended to issue a circular giving appropriate clarification in respect of Sl. No. 3(iv)(a) of the Notification 11/2017- Central Tax (Rate) dated 28.06.2017 that the explanation having been issued under Sub-section 3 of Section 11 of the CGST Act, 2017 was effective from 21.09.2017.
- xi. In respect of Sl. No 12 of Annexure IV, the Council recommended to delete the word 'Registered' appearing in Para 2A of the Notification No 11/2017- Central Tax (Rate) dtd 28.06.2017.
- xii. In respect of Sl. No 13 of Annexure IV, the Council recommended to insert an explanation in the Notification No 4/2018- Central Tax (Rate) dtd 25.01.2018 that *"nothing contained in this notification shall apply where development rights are supplied on or after 01.04.2019"*.
- xiii. In respect of Sl. No 14 of Annexure IV, the Council recommended to amend the Notification No 7/2019-Central Tax (Rate) dtd 29.03.2019 to provide that on purchase of Cement from an unregistered supplier, the builder shall pay GST under RCM.
- xiv. In respect of Sl. No 15 of Annexure IV, the Council recommended to issue clarification clarifying taxability of Passenger Service Fee (PSF) and User Development Fee (UDF) levied by airport operators.
- xv. In respect of Sl. No 16 of Annexure IV, the Council recommended to extend the validity of conditional exemption of GST on export freight by air or sea by another year, i.e. till 30.09.2020.
- xvi. In respect of Sl. No 17 of Annexure IV, the Council recommended to amend the entries in Notification 12/2017-CT (Rate) to reflect correctly the threshold exemption decision of the GST Council taken in the past.
- xvii. In respect of Sl. No 18 of Annexure IV, the Council approved to notify grant of Liquor License by State Governments against payment of license fee as a "no supply" under Clause (b) to Subsection 2 of Section 7 of the CGST Act, 2017 to remove ambiguity in implementation on the subject. The effect of exemption shall apply from 01.07.2017.
- xviii. In respect of Sl. No 19 of Annexure IV, the Council recommended to issue clarification to the Truck Operator's Association that compulsory registration under any Act was exempt from GST.
- xix. In respect of Sl. No 20 of Annexure IV, the Council recommended to amend and correct the classification entries under Notification No 11/2017-CT (Rate) dtd 29.06.2017 with consequent change in scheme of classification annexed to the said notification so as to align the



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- scheme of classification under GST with the United Nation's Central Product Classification (UNPCPC), as proposed and enclosed at 'Enclosure 2 & Enclosure 3' of Annexure IV, Agenda 8.
- xx. In respect of Sl. No 21 to 24 of Annexure IV, the Council approved the recommendations of the Fitment Committee to issue appropriate clarification to the respective organization who had made the reference.
 - xxi. In respect of Sl. No 25 of Annexure IV, regarding taxation of PSLC certificates, the Council recommended to maintain *status quo* as the service providers had settled under RCM method of tax payment.
 - xxii. In respect of Sl. No 26 of Annexure IV, the Council recommended to exempt services related to FIFA Under-17 Women's World Cup 2020 similar to existing exemption given to FIFA U17 World Cup 2017.
 - xxiii. In respect of Sl. No 27 of Annexure IV, the Council recommended to exempt services related to "BANGLA SHASYA BIMA" (BSB) crop insurance scheme of West Bengal Government.
 - xxiv. In respect of Sl. No 28 of Annexure IV, the Council recommended to exempt services related to life insurance business provided or agreed to be provided by the Central Armed Paramilitary Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the respective Group Insurance Schemes of these Central Armed Paramilitary forces
 - xxv. In respect of Sl. No 29 of Annexure IV, the Council recommended to allow payment of GST on securities lending service under Reverse Charge Mechanism (RCM) at the merit rate of 18% and to clarify that GST on securities lending service for period prior to RCM period shall be paid on forward charge basis. IGST shall be payable on supply of these services and in cases where CGST/SGST/UTGST have been paid, such taxpayers will not be required to pay tax again
 - xxvi. In respect of Sl. No 30 of Annexure IV, the Council recommended to allow the registered authors an option to pay GST on royalty charged from publishers under forward charge and observe regular GST compliance.
 - b. In respect of Sl. No 1 to 12 of the Annexure V of Agenda 8 seeking deferment of certain issues for examination due to lack of information, the GST Council approved the same.
 - c. In respect of issues at Sl. No 1 to 61 of Annexure VI of Agenda 8 recommending no GST rate change, the GST Council approved the recommendations.
 - d. In respect of the 2 issues at Sl. No 1 and 2 of Annexure VII of Agenda 8, the GST Council recommended as follows:
 - i. In respect of Sl. No 1 of Annexure VII, the Council decided to refer the issues of Lottery to the GoM on Lottery for reconsideration along with issues associated with Horse Racing and Casino. The concerned

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States may refer the outstanding issues, if any, to the GoM through the Secretary to GoM.

- ii. In respect of Sl. No 2 of Annexure VII, the Council decided to refer the matter to the GoM on Real Estate along with issue raised by Hon'ble Minister from Madhya Pradesh, who shall refer the issues, if any, to the GoM through the Secretary to GoM.

- C. The Council took note of item at Annexure IX relating to filing of SLP in the Hon'ble Supreme Court, against lapsing of accumulated ITC on fabric for the period prior to 31.7.2018.
- D. The Council also invited suggestions from all the members present and requested them to submit the proposal in writing on the issues/ subjects they would like to have impact assessment study done so that the buoyancy in revenue could be studied and achieved.
- E. The Council Also approved that the Aerated Drinks manufacturers shall henceforth be excluded from the ambit of Composition Scheme.
- F. The Council also approved to issue notifications giving effect to the above recommendations of the Council from 1st October, 2019.

Agenda Item 9: Status update on Report of the Committee of Officers on Use of RFID Data for Strengthening of E-Way Bill System Under GST

38. The Secretary stated that the agenda was discussed in the Officers' Meeting held on 19.09.19 and the officers were in agreement of the proposal. The presentation made during the Officers' Meeting is attached as **Annexure 5**. He stated that the status of the Integration of EWB (e-Way Bill) with the FASTag was now placed for the information of the Council. He stated that the Council had earlier agreed, in principle, to the implementation of the recommendations of Committee of Officers (submitted on 2nd August 2019) on use of RFID data for strengthening of e-Way bill system under GST. In pursuance of that decision, it was requested to NIC and GSTN to coordinate and develop a plan of action and implement it. The present status of the NETC-EWBS integration, as per Agenda item, was as follows:

38.1. Two meetings were held between officers of NHAI, GSTN and NPCI to discuss the modalities to integrate EWB with FASTag. It was also discussed that MoRTH was targeting 100% digital toll payments via FASTag by 1st December, 2019 and it was suggested that GST Council might also consider preponing the date of FASTag mandate for EWB generation, from existing timeline of 1st April 2020 to 1st February 2020. Status of work done so far was as follows:

- i. Number of APIs prepared by NIC: 5 (heartbeat check, FASTag data push, toll plaza data push, transaction data push, data recon API).
- ii. APIs were ready and available on sandbox. Testing to be completed by 15th October, 2019.
- iii. NPCI to extend its network to NIC EWBS by end October 2019.

38.2. **Strengthening of E-Way Bill System by Using Data of Vahan:** Another meeting was held on 11.09.2019 under the chairmanship of Additional Secretary (Revenue) with officers from NIC, GSTN, DoR, CBIC, MoRTH and GST Council Secretariat to utilise VAHAN database to identify cases where wrong or non-existent vehicle data was used to


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generate e-Way bill. The entire data of vehicles used in e-Way bill system, was shared with VAHAN to validate the same. The result shared by VAHAN showed huge gap between e-Way Bill database and VAHAN database, which was significant in some States. Accordingly, it was desired by the Additional Secretary, DoR that MoRTH should conduct the following exercise:

- i. Study the data base of some States for correctness.
- ii. Identify the duplicate entries in the VAHAN data base and clean them.
- iii. Develop a firm strategy to correct discrepancies in data base in time bound manner, so that EWB linkage with FAS Tag for issue of EWB may be made mandatory.

38.3. The Secretary placed the Agenda regarding the status of the Integration of EWB with the FAS Tag for the information of the Council.

39. For **Agenda item 9**, the Council took note of the status of the Integration of EWB with the FASTag.

Agenda Item 10: Presentation on fake invoice menace, fraudulent refund, etc.

40. Introducing the Agenda item, the Secretary stated that it was connected with Table Agenda item 10(i). However, there was very little time to see the presentation, as significant time had been taken up by the discussion on Agenda item 8. Thus, the Council might discuss the Agenda item 10(i) directly. The Hon'ble Minister from West Bengal stated that it was a very important agenda and should not be skipped or hurried like this but should be discussed in detail as some measures were required to check the tax evasion. The Secretary stated that the presentation was made before the officers in the meeting a day before i.e. on 19.09.2019 and discussed in detail. Hence, in view of the paucity of time to see the presentation, the Council might discuss the more important aspect of as to how to curb the menace of fake invoices as per the recommendation of the Committee of Officers on Risk Based Management of taxpayers. The presentation would be shared with the States subsequent to the meeting. Further, the measures suggested in the Agenda item 10(i) were of administrative & procedural nature and the GSTN would also take time to develop these checks into the work flow. Thus, in principle approval of the Council would be required on priority. The Council agreed to discuss the recommendations of the Committee of officers as per Agenda item 10(i).

Agenda Item 10(i): Interim recommendations of Committee of Officers on Risk Based Management of taxpayers under GST regime

41. The Secretary introduced the agenda and stated that it was discussed in the Officer's Meeting held on 19.09.19. The presentation was attached as **Annexure 3**. He stated that it was necessary to place the agenda before the Council as in principal approval of the Council was required on these administrative and procedural matters. He then requested the Shri Yogendra Garg, Principal Commissioner, GST Policy Wing, CBIC to present the agenda item.

41.1. Principal Commissioner, GST Policy Wing, CBIC stated that the Agenda item was proposed as a follow up of a presentation by Shri Sandeep M. Bhatnagar, Member (GST & Investigation), CBIC on the subject of fake invoices and fraudulent availment of ITC, IGST Refunds and Drawback in the Officers Meeting held on 20.06.2019. It was decided to



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constitute a Committee of Officers (CoO) on risk-based management of taxpayers with an intent to establish certain checks and balance *vis-à-vis* the risky taxpayers. Accordingly, a CoO on risk-based management of taxpayers, having members from Centre and States had been constituted on 15.07.2019 with the mandate, *inter alia*, to study and suggest the modalities of KYC verification of a taxpayer; parameters for risk-based profiling of a taxpayers; reasonable restrictions/interventions to be imposed on taxpayer based on his risk parameters to regulate issue of invoice, utilization of ITC, passing of ITC, refunds etc. Further, a suggestion was received by the GST Council Secretariat from the GST Policy Wing to assess and recommend offence data requirements and modalities for data sharing between Centre, States and various other agencies. Further, in view of suggestion for sharing of evidences of cases on fake invoices by Shri Rajiv Jalota, CST, Maharashtra, two more Terms of References were added in the mandate of the said CoO and an officer of Maharashtra Government was also invited in the proceeding of the CoO.

41.2. Principal Commissioner, GST Policy Wing, CBIC further stated that the CoO had submitted the following interim recommendations:

- a. To initiate the Aadhar based verification process of all new taxpayers.
- b. Develop modalities and timelines for similar verification of all the existing taxpayers.
- c. In absence of Aadhar validation, compulsory physical verification of premises.
- d. For risky new taxpayers (Proprietor, new PAN with no Income Tax or Business turnover, financial credentials) restrict ITC on supplies made by them to Rs. 20 lakh per month i.e. Block GSTR-2A auto population to Rs. 20 lakh per month for first 6 months.
- e. Further ITC to be linked to their depositing a certain percentage of the ITC sought to be passed on in cash ledger. Considering that the average cash to allowed credit ratio was 20:80, the credit allowed to be pushed above the limit of Rs. 20 lakh should be 5 times the amount deposited in the cash ledger.
- f. GST Council Secretariat with help of GSTN to get an offence database developed and all enforcement wings to share suspect GSTINs, DINs from GST and pre-GST periods in the said database.
- g. Till new return was rolled out, transpose information from GSTR-1, GSTR-2A and GSTR-3B to identify taxpayers claiming excess ITC or taking ITC of duty/taxes not paid.

41.3. The Principal Commissioner, GST Policy Wing, CBIC, while referring to his presentation, explained that in the recommendations at paragraph 41.2.(d) above, Rs. 20 lakh ITC per month should be read as ITC of Rs. 3 lakh per month (Turnover was wrongly mentioned as ITC). With these changes, he placed the above interim recommendations before the Council for consideration and for in-principle approval, as a lot of IT related procedural issues had to be taken into consideration before a final view was taken.

41.4. The ACS (Finance), Gujarat stated that under-invoicing was a major component of evasion. In the earlier regime, the inspectors could assess the market value, if they thought any item was under invoiced; but for ease of doing business, that provision had not been kept in

GST. Thus, in Gujarat, the Hon'ble High Court had quashed the assessments done by the officers in this situation, quoting that there was no such provision in law for reasonable market value. He requested that the officers' committee should also examine under-invoicing problem. The ACS/CST, Tamil Nadu also expressed that detailed discussion on this issue was required.

41.5. The Secretary stated that the Officers' committee which has already been formed to deliberate on fake invoice-based evasion and other compliance issue, should also study this issue in detail and develop various modalities to check evasion. He further stated that a suggestion had also been received in the Officers' Meeting that this Committee on Risk based Management of Tax payer might be broad based and turned into a Standing Committee to assesses and manage the risky taxpayers on continuous basis. The above proposal was placed before the Council for in principal approval.

42. For **Agenda item 10(i)**, the Council in-principle approved, -

- a. The recommendations of the committee of officers keeping in mind the necessity to tackle the menace of fake invoices and fraudulent refunds. The Council further approved that the recommendations of the committee on passing of credit by risky taxpayers including other restriction on risky new taxpayers could be analysed by the Law Committee for required changes in the statute and the corresponding Rules.
- b. The Council also approved that this Committee on Risk based Management of Tax payer be broad based and turned into a Standing Committee to assesses and manage the risky taxpayers on continuous basis.

Agenda Item 11: Status of Implementation of New Return System

43. The Secretary stated that a detailed presentation was given by Shri Prakash Kumar, CEO, GSTN in the Officer's Meeting held on 19.09.2019 regarding the status of implementation of 'New Return System'. He suggested that in view of the paucity of time, the copy of the presentation would also be circulated to the members of the Council after the meeting. The said presentation is attached as **Annexure 5**.

43.1. The Secretary stated that the GST Council in its 35th Meeting held on 21.06.2019 had decided that the implementation of new return should be carried out in a phased manner. As per agenda item, the trial version of annexures of supplies and inward supplies were to be made available for trial in July, 2019 with following implementation schedule:

- a) ANX-1/2 to replace GSTR-1/2A effective Oct'19
- b) Run GSTR-3B and ANX-1 in parallel for 2 months for Monthly Filers
- c) GSTR-3B would be phased out from Jan'20 for Monthly Filers
- d) New Return would become functional for all taxpayers from Jan 2020.

43.2. The transition plan envisaging parallel run of old and new system had many challenges, summarised as below:

- (A) Refund of exports made on payment of IGST would be affected as it was dependent on GSTR 3B and GSTR 1 and would have to undergo multiple time changes which would be a challenge in itself.



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(B) Facility to amend invoices/documents GST ANX-1A by exporters would also be required to be provided as the exporters might need to make amendment in the earlier reported documents details for the period of transition.

(C) ITC Refund was processed on the basis of GSTR-2A and would be impacted if GSTR-2A is not available for the period when GSTR-1 will not be there. In new regime, refund could be processed based on GST ANX-2 (data auto-drafted from GST ANX-1). Since, no GST RET-1 would be filed during this period, GST ANX-1 would not be frozen till Jan, 2020. Thus, there would be scope of changes in GST ANX-1 after refund was processed, in case GSTR-3B was not integrated with GST ANX-1. Integration of GSTR-3B with ANX-1 was not in the plan and this would be an additional work requiring substantial manpower and time.

(D) Reconciliation of Return Filing data across old and new regimes would be required along with changes in backend processing and linking of old and new return.

Keeping in view the above-mentioned difficulties, complete switchover was proposed from 1st January 2020. RET module along with other modules impacted by New Returns were under development.

43.3. Further, going by past experience, large number of return filing was expected on 10th of following month, especially after end of Quarter when Monthly and Quarterly filers would upload ANX-1. Thus, like staggering of RET filing, staggering of ANX-1 upload was also recommended. Similarly accept/reject action on invoices in system generated ANX-2 would be done for the first time under GST. To ensure smooth filing on last three days, facility of accept/reject might not be allowed in these three days and the same could be done by taxpayers by 17th of the next month.

43.4. In view of the above, the Secretary proposed the following for consideration of the Council:

- i. GST Council had approved staggered filing of RET (large taxpayers by 20th and others by 25th of next month). Similarly, last date of upload of ANX-1 might be staggered as 10th and 13th of month following the tax period for monthly and quarterly filers respectively.
- ii. To ensure smooth filing on last three days, reject/pending action of invoices appearing in ANX-2 might be allowed upto 17th and not on 18/19 and 20th of the next month.
- iii. Parallel run of existing and New Return might be replaced by deployment of new returns for all types of taxpayers with effect from 1st January 2020.

43.5. The Hon'ble Deputy Chief Minister of Bihar during the discussion on Agenda item 7(viii) had stated that in the 12th Meeting of the GoM on IT challenges in GST Implementation held on 14th September 2019, it was suggested to launch of the New Return System from 01.04.2020, with no parallel return filing, no transitional period and all tax payers to implement the same at one go only in staggered manner. Thus, the Council first had to decide on the date of implementation of the New Return, whether 1st January 2020 or 1st April 2020. He submitted that since lot of changes were envisaged in the New Return, it



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would be preferable not to disturb the last quarter of the Financial Year but to start the same from the beginning of a new Financial Year instead of launching it on 1st January, 2020.

43.6. The Hon'ble Chairperson requested the Council to give their views. The Hon'ble Minister from West Bengal suggested the proposal of launching the New Return from 01.04.2020. However, the Hon'ble Minister from Punjab stated that although he agreed to the proposal but announcement should be made at a later stage as the tax payers might think that this proposal would again be delayed and would go in a lazy mode. The Council members discussed and concluded that the announcement regarding launch of New Return should be made in the press and the effective date should be 1st April 2020.

44. For **Agenda item 11**, the Council approved the proposal of New return system, earlier proposed from October, 2019, to be introduced from 1st April, 2020, in order to give ample opportunity to taxpayers as well as the GSTN to adapt the new return system. The due date for furnishing of return in **FORM GSTR-3B** and details of outward supplies in **FORM GSTR-1** for the period October, 2019 - March, 2020, might accordingly be modified and extended by the Central and State Governments. The Council also approved staggered filing of ANX-1 on 10th and 13th of the following month and no action of accept/reject/keep pending on 18th, 19th and 20th of the Month.

Agenda Item 12: Status of integrated refund system with disbursal by single authority

45. The Secretary stated that a detailed presentation was given by CEO, GSTN in the Officers Meeting held on 19.09.19 regarding the status of integrated refund system with disbursal by single authority and discussed in detail. The presentation is attached as Annexure 5. However, in view of the paucity of time, he suggested that the Council might discuss its implementation, as this was of administrative & procedural nature.

45.1. At present, the refund under GST System was divided into two parts, namely that relating to export of goods on payment of IGST and the other relating to export of goods on LUT, export of services, ITC refund etc. While the former was fully automated, the latter was semi-automated. For all the Refunds of second type, presently the refund business flow involved online/electronic as well as manual processing and transmission of information between the taxpayers and the tax officers. Though the Refund Sanction order was by one tax authority but disbursement of refund amount sanctioned was done by Centre for the CGST portion and by State/UT for SGST/UTGST portion.

45.2. The limitations of the present refund process due to manual processing of the refund claims were mentioned in the Agenda item as below:

- a. Tracking at various stages of the application by the taxpayers was not possible.
- b. Due to manual processing, the system was not able to capture the information at various stages of refund processing. It had direct impact on reliable MIS report creation.
- c. The complete audit trail of activities performed by the tax officer and the taxpayer was not available in the existing scheme.
- d. The disbursal process was tedious as multiple stakeholders involved viz central and state nodal officers, accounting authorities etc lead to delays in disbursal after sanction.


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- e. There was no validation of the bank account of the taxpayers claiming refund.
- f. The percentage of upload of RFD-01 B on GST portal by tax officers was low and even though they might have sanctioned/rejected claims in manual form (Form RFD-06), the details were not available in the system.

45.3. The aforementioned limitations were sought to be addressed by making processing of refunds online along with disbursal of refund by single authority. The end-to-end online processing was ready at GST and the tax officer after processing the refund application would issue the payment order on GST System which would be available online to the disbursement authority for making payment of the refunds sanctioned by both the Central and the State tax authority through the Public Financial Management System (PFMS) of the Controller General of Accounts (CGA), Government of India. The PFMS system would ensure that the bank account details were validated before refund was sanctioned to the taxpayer. The settlement of accounts between the Centre and the States would happen through the office of the Pr. CCA.

45.4. The Secretary further informed that the testing of refund functionalities had been completed by GSTN, CBIC and Model 1 States. It would be deployed in production by 24th September 2019 along with single disbursement system. After deployment, the entire refund business process would be online. The Secretary placed the agenda before the Council for information and approval for the launch of the of Integrated refund system with disbursal by single authority to from 24th September, 2019.

46. For **Agenda item 12**, the Council approved the proposal of Implementing refund system with disbursal by single authority from 24th September, 2019.

Agenda Item 13: Status and progress in generation of E-Invoicing

47. Introducing the Agenda item, the Secretary mentioned that, the Council in its 35th Meeting held on 21st June, 2019, the GST Council decided to introduce electronic invoicing system (e-invoice) in a phased manner for B2B transactions. Phase 1 was proposed to be voluntary and it was to be rolled out from Jan 2020. In view of the same a Technical Sub-Group was constituted to look into tech aspects of e-invoice, which mentioned that the e-invoice will be generated through GST portal.

47.1. He stated that the sub-group had submitted its recommendations which were of technical nature and required approval so that development could take place. The recommendation of the Technical subgroup, as per the agenda were as follows:

- a. The standard of template of e-invoice based on industry consultation.
- b. Format of Unique Invoice Reference Number (IRN) that will be based on the computation of hash of GSTIN of generator of document (invoice or credit note etc.), Year and Document number.
- c. Creation of multiple registrars to which e-invoice could be reported by taxpayers to obtain Unique Invoice Reference Number to ensure 24X7 operations without any break. NIC will be the first registrar.
- d. Digital Signing of e-invoice by registration portal.
- e. Generation of QR Code by the e-Invoice Registration Portal (IRP) containing the IRN (hash) along with some important parameters of invoice like GSTIN of seller


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and buyer, invoice number and date, taxable amount, total tax and HSN Code of major item, to help validation of registered e-invoice in offline mode.

- f. Multiple modes for getting invoice registered on IRP like Web, API, SMS, mobile app, offline tool, GSP.
- g. Direct printing from JSON to enable small taxpayers to directly print from a mobile app to a compatible printer.

47.2. He also stated that the presentation in this regard was made by CEO, GSTN in the Officer's Meeting held on 19.09.2019. However, due to paucity of time the presentation could not be made before the Council. The same would be circulated to the members of the Council and the issue would be discussed in detail in the next Council meeting. The Presentation is attached as **Annexure 5**. Since implementation of e-invoice would require development, the Secretary placed the Agenda item before the Council for approval.

48. For **Agenda item 13**, the Council took note and approved the recommendations of the technical subgroup on e- invoice as mentioned in paragraph 47.1. above.

Agenda Item 14: Linking GST registration with Aadhar and proposed changes in the GST Law and GSTN System

49. The Secretary stated that a detailed presentation was made during the Officers' Meeting held on 19.09.19 regarding linking GST registration with Aadhar and proposed changes in the GST Law and GST System. He suggested that due to paucity of time the same would be circulated to the States after the Meeting. The same is attached in **Annexure 5**. He stated that the agenda being procedural and urgent in nature might be approved as the development of the facility at GST System by GSTN would take time.

49.1. He stated that the approval of the Council on this issue was required so as to curb/check the menace of tax evasion in view of current easy registration process (granted in 3 working days and no field inspection with no check). GSTN had been asked to put in place mechanism for Aadhar based authentication. The taxpayers coming for new registration would be asked whether they intend to provide their Aadhar details or not. In case Aadhar details were not provided, facility of auto-approval of registration would not be available and a detailed physical verification process would be made operational so as to confirm their identity using other documents.

49.2. The Hon'ble Minister from West Bengal suggested that this issue needed discussion in greater depth later. The Secretary stated that the matter was discussed in detail in the GoM on IT Challenges headed by Hon'ble Deputy Chief Minister of Bihar so as to authenticate the identity of the promoters and authorised signatories; moreover *vide* the Finance Bill, 2019, a provision had already been inserted regarding use of Aadhar for linking the same with the GST registration in CGST Act for curbing the menace of fake invoice. Hence, if the Council agreed to approve the same, at least the implementation could start.

49.3. The Hon'ble Deputy Chief Minister of Bihar also confirmed and stated that the matter was discussed in detail in the GoM and he observed that this would not pose a problem in implementation for any State. He stated that from 1st January 2020 Aadhar based authentication will be made available; however, it would not be mandatory for registration. If the Aadhar was not provided, there would be recourse to physical verification to validate the identity before issue of registration. He also stated that GSTN/Infosys have been asked to work on it as a step to check fake invoices and fake registrants.

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49.4. The Hon'ble Minister from Odisha stated that if any taxpayer did not provide the Aadhar number, his refund should be restricted, till he complies. The Secretary replied that it might not be admissible as per law. The Hon'ble Deputy Chief Minister of Bihar stated that the Minister from Odisha was adding a new dimension and was suggesting that in addition to Aadhar being made mandatory for registration it should be also made mandatory for refund disbursement, which could be beneficial and required discussion. The Secretary placed the agenda for approval of the Council, to which Council agreed.

50. For **Agenda item 14**, the Council gave in-principle approval to link Aadhar with registration module of GSTN.

Agenda Item 15: Update on change of share capital/ownership structure of Goods and Services Tax Network (GSTN) and transfer of shares of GSTN from Empowered Committee of State Finance Ministers (EC) & Non-Government Institution to Centre, State Governments and Union Territories

51. The Secretary stated that a detailed presentation was given by the CEO, GSTN in the Officers Meeting held on 19.09.19 regarding the latest update on change of share capital/ownership structure of Goods and Services Tax Network (GSTN) and transfer of shares of GSTN from Empowered Committee of State Finance Ministers (EC) & Non-Government Institution to Centre, State Governments & Union Territories. The same is attached as **Annexure 5**. He further stated that the Council in its 27th Meeting held on 4th May, 2018 decided that GSTN would 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 26th 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.

51.1. 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 17th January, 2019 both have approved the revised shareholding pattern of GSTN as per Annexure-1 of this agenda.

51.2. In order to facilitate the above decision and consequent to the approval as accorded by the shareholders of GSTN in their Extra-Ordinary General Meeting (EGM) held on 21st June, 2019, the Empowered Committee of State Finance Ministers (EC) & all Non-Government Institutions had already offered their entire existing shareholding in GSTN through Share Transfer Notice for Sale/Transfer to Centre, State Governments and Union Territories accordingly in order to convert GSTN into a 100% Government-owned entity as per Annexure-2 of this agenda.

51.3. It was informed that the respective Transferees (Centre and States) were written letters during July 2019 – September, 2019 in this regard and they 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 were required to pay share purchase consideration to them accordingly.


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51.4. He further, informed the Council that pursuant to the above Share Transfer Notices, the Central Government, Government of Madhya Pradesh, Maharashtra, Nagaland, Manipur, Jharkhand, Puducherry and Delhi had accepted the proposal within the above timelines. The required action was still awaited from the remaining State and UT Governments through Purchase Notice, pay the respective share purchase consideration, execute necessary documentations including Shareholders' Agreement and send the same to GSTN.

51.5. The Secretary, therefore, placed the proposal before the Council to take note of the above developments and issue necessary advisory/directions to the remaining State Governments and UTs to accept the proposal within 30 days from the receipt of Share Transfer Notice and to make the Share Purchase Consideration thereafter accordingly, execute necessary documentations including Shareholders' Agreement and send the same to GSTN.

52. For **Agenda item 15**, the Council took note of the developments and requested the States to complete the requirements for conversion of GSTN into 100% Government owned entity. It also agreed that the necessary advisory would be issued by the GST Council Secretariat to the remaining State Governments and UTs to accept the proposal within 30 days from the receipt of Share Transfer Notice and to transfer the Share Purchase Consideration thereafter; execute necessary documentations including Shareholders' Agreement and send the same to GSTN.

Agenda Item 16: Minutes of 11th and 12th Meeting of Group of Ministers (GoM) on IT Challenges in GST Implementation for information of the Council and discussion on GSTN issues

53. The Secretary stated that the issue was discussed during the Officer's Meeting held on 19.09.2019. He further stated that the 12th meeting of GoM on IT was held on 14.09.2019 in Bangalore. The minutes of the said meeting were placed for the information of the GST Council which broadly discussed the following issues:

- a. Overall 50 functionalities out of 51 prioritized functionalities, had already been made operational on GST portal and one remaining functionality of Refund was likely to be completely automated by 24th of September 2019.
- b. Linkage of Aadhar with Registration under GST and the modalities thereto.
- c. Online refund processing system, disbursement through single authority and status of integration with CBIC/Model I States.
- d. New Return Development
 - i. Large scale training of taxpayers and tax consultants on Offline and Online Tools of ANX-1, ANX-2, Matching tool etc.
 - ii. Proposed deployment from 1/4/2020
- e. Status of Annual Return filing
- f. Development of more Business Intelligence Reports

53.1. The Secretary accordingly, placed the Minutes of the 11th and 12th Meeting of the Group of Ministers (GoM) on IT Challenges in GST Implementation for information of the Council.

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54. For **Agenda item 16**, the Council took note of the Minutes of the Meeting of the Group of Ministers (GoM) on IT Challenges in GST Implementation and discussion on GSTN issues and agreed to the proposed timeline of implementation of New Return System.

Agenda Item 17: Quarterly Report of the NAA for the quarter April to June 2019 for the information of the GST Council

55. The Secretary introduced the Agenda item pertaining to various issues related to the National Anti-profiteering Authority (NAA) and stated that the agenda had been discussed in detail in the officers meeting held on 19th September 2019.

55.1. Accordingly, the following performance report of National Anti-Profiteering authority in the 1st quarter (April, 2019 to June, 2019) of financial year 2019-20 was placed before the Council for information:

Performance of National Anti-Profiteering Authority:

Opening Balance	No. of Investigation Reports received from DGAP during the quarter	Disposal of Cases (during Quarter)				Closing Balance	Amount of profiteering established	
		Total Disposal during quarter	No. of cases where Profiteering established	No. of cases where Profiteering not established	No. of cases referred back to DGAP		No. of cases	Amount (Rs in crore)
41	36	27	13	10	4	50	13	4.38

56. For **Agenda item 17**, the Council took note of the performance of the National Anti-profiteering Authority.

Agenda Item 18: Creation of the State and Area Benches of the Goods and Services Tax Appellate Tribunal (GSTAT)

57. The Secretary introduced the Agenda and stated that in terms of Section 109 of the CGST Act, 2017, Goods and Service Tax Appellate Tribunal were being constituted by the Government on the recommendation of the GST Council. He further stated that the Council in its 35th Meeting held on 21.06.2019 recommended the creation of State/Area bench as per requests received from States and took note of constitution of Jammu & Kashmir GST Appellate Tribunal in terms of proviso to Section 109(6) of the CGST Act, 2017.

57.1. State and Area benches were accordingly notified vide Notification No. **S.O. 3009(E)** — [F.No. A.50050/150/2018-Ad.1C (CESTAT)] dated 21-08-2019 issued by Department of Revenue. He stated that requests from 4 States had thereafter been received for creation of State/Area benches. Accordingly, a proposal for creating State/Area benches was submitted before the GST Council for consideration as below:

Sl No.	Name of States/Union Territory	Location for State Bench	Location for Area Bench
1	Meghalaya	Shillong	No bench
2	Mizoram	Aizawl	-do-
3	Rajasthan	Jaipur	Jodhpur
4	Karnataka	-	Two Area benches at Bengaluru



57.2. During the course of discussion, the Hon'ble Minister from Uttar Pradesh stated that in view of the orders of the Hon'ble High Court of Allahabad and Lucknow to create the Benches at Allahabad and Lucknow, the proposal from the State government was to create the Bench at Lucknow.

57.3. Shri Anurag Singh Thakur, MoS (Finance), Government of India suggested that the orders of both the Hon'ble High Courts should be carefully studied before taking any final decision. The Hon'ble Chairperson agreed and stated that the orders of both the Courts should be studied carefully to avoid any contempt. She proposed that the Council Secretariat and Department of Revenue should give a thorough reading of the Court orders and take a view keeping in view the proposal of the Hon'ble Minister from Uttar Pradesh.

57.4. In view of the above discussion, the Secretary stated that the GST Council Secretariat and Department of Revenue would do detailed study of the Court Order issued by the Hon'ble Allahabad and Lucknow High Court and consider the records/Orders before taking a final view for the location of State Bench of GSTAT for the state of Uttar Pradesh.

58. For **Agenda item 18**, the Council approved the proposal as per the agenda for creating State/Area Benches. Further, for the state of Uttar Pradesh, DoR would consider the records/Court Orders issued by the Hon'ble High Court benches of Allahabad and Lucknow prior to taking a final view for the location of State Bench of GSTAT in view of the request made by the State of Uttar Pradesh.

Agenda Item 19: Amendments in GST Laws in view of creation of UTs of Jammu & Kashmir and Ladakh

59. The Secretary to the Council introduced this Agenda item and stated that the amendments proposed in the CGST Act, 2017 (as amended), UTGST Act, other States SGST Act and J & K SGST Act arise on account of changes in the status of the erstwhile State of Jammu & Kashmir. He requested the Council to approve the proposal so that the process to amend those laws could be started. The Hon'ble Minister from Punjab enquired as to whether IGST or UTGST would be applicable with respect to Pakistan Occupied Kashmir. The Hon'ble Chairperson stated that the Parliament of India had already claimed rightfully that POK was an integral part of Jammu & Kashmir. Therefore, the point raised by Hon'ble Minister was valid and before framing any laws legal opinion shall be taken.

60. For **Agenda item 19**, the Council approved the proposed amendments to the CGST Act (as amended), UTGST Act, other States SGST Act and J&K SGST Act which were necessitated on account of changes in the status of the erstwhile State of Jammu & Kashmir.

Agenda Item 20: Special Composition Scheme for Brick kilns, Menthol, Sand Mining Activities and Stone crushers

61. The Secretary stated that the Agenda was discussed during the Officers' Meeting held on 19.09.2019. He requested Principal Commissioner, GST Policy Wing, CBIC to apprise the Council about the issue. The presentation made during the Officers Meeting held on 19.09.2019 is attached as **Annexure 3**. Introducing the subject, Principal Commissioner, GST Policy Wing, CBIC stated that a Committee of Officers was constituted to examine whether a special Composition scheme for brick kilns, menthol oil and sand mining and stone crusher activities may be devised in view of the deliberations of the GST Council in its 35th Council

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Meeting. Basically, the issue as flagged by Haryana and Uttar Pradesh was that the revenue from these activities has fallen in the GST regime *vis-à-vis* the VAT era. Therefore, the GoM on Reverse Charge had recommended to consider denying the benefit of Composition to the above industries under GST. The Committee of officers deliberated on these issues and felt that the aforesaid industries could be excluded from normal Composition scheme and they may be brought under a special Composition scheme on the lines of the Composition scheme introduced for services/residual suppliers vide Notification No.2/2019-Central Tax (Rate) dated 7.3.2019. It was felt by the Committee that the option of levying tax on the basis of capacity was a legal challenge in view of the fact that such a method of taxation was not in accordance with the basic feature of GST, which is a consumption base tax (and not production-based tax). The other suggestion made was to increase the rate for normal taxpayers supplying brick kilns, sand mining activities and stone crushing from the present rate of 5% to 12%. Mentha-oil was found to be slightly different from these commodities because in the process of menthe-oil, the primary process of conversion of mint leaves to menthe-oil is generally carried out by the agriculturist himself. Mentha-oil is then aggregated by the traders and sent for further processing. Therefore, a special Composition scheme was not required for this and there was merit in bringing the commodities under reverse charge mechanism in terms of Section 9(3) of the CGST Act.

61.1. However, some of the Council Members observed that the issues covered under the Agenda would require detailed deliberation as there were huge revenue implications. Due to paucity of time the agenda was not discussed in detail. The Secretary proposed that this agenda may be referred back and examined jointly by the Law Committee and the Fitment Committee for further deliberations and come out with viable solution to the problem.

62. For **Agenda item 20**, the GST Council approved to refer the issue for examination in a joint meeting of the Law Committee and the Fitment Committee so as to decide the entire gamut of the proposed special Composition scheme for brick kilns, sand mining and stone crushers along with the consequent change in the GST rate, if any, and adoption of reverse charge mechanism for collection of GST on supply of mentha-oil.

Agenda Item 21: Status of payment of Advance User Charges by the States and CBIC and interest on delayed payment

63. The Secretary stated that in the Officers' Meeting held on 19th September 2019 in detail the agenda regarding the status of payment of Advance User Charges (AUC) by the States and CBIC and interest required to be paid by each of the shareholders on delayed payment.

63.1. As per the Agenda, GSTN had raised demand for the payment of AUC with the Central and State Governments for the FY 2017-18, 2018-19 and 2019-20. The status of AUC demanded and received as on 31st August 2019 was as under:

(Rs. in crores)

Financial Year	Amount demanded	Amount received	Amount Pending	Pending from States
2017-18 – 1 st Instalment	306.01	306.01	0	NA
2017-18 – 2 nd Instalment	266.06	262.19	3.87	Telangana: 3.87

Financial Year	Amount demanded	Amount received	Amount Pending	Pending from States
2018-19 – 1 st Instalment	261.43	251.33	10.10	Punjab: 5.29 Telangana: 4.81
2018-19 – 2 nd Instalment	261.43	117.69	143.74	As per Annexure -II of Agenda
2019-20 – 1 st & 2 nd Instalment	181.79	11.15	170.64	As per Annexure -II of Agenda

63.2. The Secretary requested all concerned for timely payment of User Charges to avoid further interest liability, as it was waived of only till July 2019 as per decision taken by the GST Council in its 35th Meeting held on 21st June 2019. A summary of interest payable by the Central and some State Governments for delay in remitting the AUC for the period up to 2018-19, after the expiry of waiver period, i.e. 31st July 2019 was also provided in the Agenda as follows:

Sr. No.	Name of the State/Centre	Interest on delayed payment of AUC (In Rs.)
1.	CBIC	1,57,916
2.	Andhra Pradesh	2,99,390
3.	Maharashtra	18,446
4.	Manipur	7,022
5.	Odisha	16,920
6.	Punjab	1,26,356
7.	Telangana	9,27,327
8.	Lakshadweep	310
	Total	15,53,687

The Secretary placed the Agenda item before the Council to take a note of the latest status of payment of Advance User charges.

64. For **Agenda item 21**, the Council took note of the pending payment of Advance User charges by the States & CBIC and also the summary of the Interest payable for delay in remitting the AUC after the expiry of waiver period, i.e. 31st July 2019, for the period up to 2018-19 and requested members to pay the outstanding AUC.

Agenda Item 22: Any other agenda item with the permission of the Chairperson

Agenda Item 22(i): Resubmission of refund application after filing NIL refund in FORM GST RFD-01A

65. The Co-Convenor the Law Committee introduced the Agenda item and stated that based on the representations received the Law Committee recommended to allow registered persons to re-file refund claims in **FORM GST RFD-01A** on the common portal for the period and the category under which a NIL refund claim has been filed inadvertently.

66. For **Agenda item 22(i)**, the GST Council recommended to allow registered persons to re-file refund claims in **FORM GST RFD-01A**, who had filed Nil refund claims inadvertently earlier, in accordance with the draft Circular annexed to the said Agenda item.



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Agenda Item 22(ii): Circular No. 107/26/2019-GST dated 18.07.2019 on supply of Information Technology enabled Services (ITeS) –further clarification

67. The Co-Convenor the Law Committee introduced this Agenda item and stated that the existing Circular No.107/26/2019-GST dated 18.07.2019 issued to clarify various aspects of supply of Information Technology-enabled Services (ITeS) had reportedly led to denial of export benefit in some situations. It was, therefore, necessary to clarify the situation. The Council agreed to the same.

68. For **Agenda item 22(ii)**, the Council approved to issue the Circular annexed to the Agenda item so as to clarify further doubts relating to supply of IT-enabled Services after issuance of Circular No.107/26/2019-GST dated 18.07.2019.

Agenda Item 22(iii): Single disbursement related amendments of Rule 91 of the CGST Rules

69. The Co-Convenor of the Law Committee introduced the agenda item and stated that several amendments, related to the single disbursement process, were carried out in Rule 92 of the CGST Rules vide notification No. 31/2019 – Central Tax dated 28.06.2019. Therefore, certain amendments were proposed to be carried out in Rule 91 of the CGST Rules, 2017 to bring it at par with Rule 92 for grant of provisional refund for single disbursement, as annexed to the said Agenda item. The Council agreed to the proposal.

70. For **Agenda item 22(iii)**, the Council approved the amendments proposed in Rule 91 of the CGST Rules, 2017, as in Annexure A to this Agenda item.

Agenda Item 22(iv): Doubts raised on treatment of secondary or post-sales discounts under GST

71. Introducing the agenda item, the Co-Convenor of the Law Committee stated that Circular Nos. 92/11/2019-GST dated 07.03.2019 and 105/24/2019-GST dated 28.06.2019 were issued to clarify issues related to treatment of sales promotion schemes under GST. He informed that several representations were received from consumer durable manufacturers and automobile associations with reference to paragraphs 3 and 4 of the Circular 105/24/2019-GST dated 28.06.2019 regarding its implication. Therefore, the issue was deliberated by the Law Committee. The Law Committee felt that the whole issue required a holistic examination and recommended to withdraw Circular No.105/24/2019-GST dated 28.06.2019 *ab-initio*. Accordingly, the Council agreed to the proposal of the Law Committee.

72. For **Agenda item 22(iv)**, the Council approved to withdraw Circular No.105/24/2019-GST dated 28.06.2019 *ab-initio*.

Other issues

73. The Secretary informed the Council that the amendments to GST Laws through the Finance Act (No.2) 2019 need to be carried out by the States. He stated that the draft for the SGST (Amendment) Bill, 2019 has already been circulated with the States. He informed that it was proposed to bring the same into effect from 01.01.2020 and that the States should initiate the process to complete the amendments well before that. He requested that the Hon'ble Council may take a decision in this regard.



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74. The Council approved the proposal to make the amendments to GST Laws through the Finance Act (No.2) 2019 effective from 1st January 2020. The States were requested to complete the process at an early date.

Agenda Item 23: Date of the next meeting of the GST Council

75. This agenda item was not taken by for discussion.

76. The meeting ended with the thanks to the Chair.

(Nirmala Sitharaman)
Chairperson, GST Council

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Annexure 1

List of Hon'ble Ministers who attended the 37th GST Council Meeting on 20th September 2019

Sl No	State/Centre	Name of Hon'ble Minister	Charge
1	Govt of India	Ms. Nirmala Sitharaman	Union Finance Minister
2	Govt of India	Shri Anurag Singh Thakur	Minister of State (Finance)
3	Andhra Pradesh	Shri Buggana Rajendranath	Minister for Finance and Legislative Affairs
4	Assam	Dr. Himanta Biswa Sarma	Finance Minister
5	Bihar	Shri Sushil Kumar Modi	Deputy Chief Minister
6	Chattisgarh	Shri T.S. Singh Deo	Minister for Commercial Taxes
7	Delhi	Shri Manish Sisodia	Deputy Chief Minister
8	Goa	Dr. Pramod Sawant	Chief Minister
9	Goa	Shri Mauvin Godinho	Minister for Panchayat
10	Gujarat	Shri Nitinbhai Patel	Deputy Chief Minister
11	Himachal Pradesh	Shri Bikram Singh	Minister (Industries)
12	Jammu & Kashmir	Shri K. K. Sharma	Advisor to Governor (I/c Finance)
13	Karnataka	Shri Basavaraj Bommai	Minister for Home
14	Kerala	Dr.T.M.Thomas Isaac	Finance Minister
15	Madhya Pradesh	Shri Brajendra Singh Rathore	Commercial Tax Minister
16	Odisha	Shri Niranjan Pujari	Finance Minister
17	Puducherry	Shri V. Narayanasamy	Chief Minister
18	Punjab	Shri Manpreet Singh Badal	Finance Minister
19	Rajasthan	Shri Shanti Kumar Dhariwal	Minister for Local Self Government, Urban Development and Housing, Law and Legal affairs, Parliamentary affairs
20	Tamil Nadu	Shri D. Jayakumar	Minister for Fisheries and Personnel & Administrative Reforms
21	Telangana	Shri T Harish Rao	Finance Minister
22	Uttar Pradesh	Shri Suresh Kumar Khanna	Finance Minister
23	Uttarakhand	Shri Madan Kaushik	Minister for Urban Development
24	West Bengal	Dr. Amit Mitra	Finance Minister

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List of Officials who attended the 37th GST Council Meeting on 20th September 2019

Sl No	State/Centre	Name of the Officer	Charge
1	XV Finance Commission	Shri N K Singh	Chairman
2	Govt. of India	Dr. A B Pandey	Revenue Secretary
3	Govt. of India	Shri Pranab Kumar Das	Chairman, CBIC
4	GST Council	Dr. Rajeev Ranjan	Special Secretary
5	Govt. of India	Shri Sandeep M Bhatnagar	Member (GST & Investigation), CBIC
6	XV Finance Commission	Shri Arvind Mehta	Secretary
7	Govt. of India	Shri Anil Kumar Jha	Additional Secretary, DoR
8	Govt of India	Shri Yogendra Garg	Pr. Commissioner, GSTPW, CBIC
9	Govt of India	Shri Sanjay Mangal	Commissioner, GSTPW, CBIC
10	GST Council	Shri Amitabh Kumar	Joint Secretary
11	GST Council	Shri Dheeraj Rastogi	Joint Secretary
12	Govt. of India	Shri G.D. Lohani	Joint Secretary, TRU I, DoR
13	Govt. of India	Shri Manish Kumar Sinha	Joint Secretary, TRU II, DoR
14	Govt of India	Shri Ritvik Pandey	Joint Secretary, DoR
15	Govt of India	Shri Vasa Seshagiri Rao,	Chief Commissioner of CGST, Pune Zone
16	Govt of India	Shri V. Soundarajan	Commissioner, CGST, Goa
17	Govt. of India	Shri Rajesh Malhotra	ADG (M&C)
18	Govt. of India	Shri Vipul Bansal	PS to Union Finance Minister
19	Govt. of India	Shri Karma Sonam Zangpo Lhasungpa	First PA to Union Finance Minister
20	Govt. of India	Shri Binod Kumar	PS to MoS (Finance)
21	Govt. of India	Dr. Abhishek Chandra Gupta	OSD to Chairman, CBIC
22	Govt. of India	Shri Suresh Kumar	PA to Chairman, XV Finance Commission
23	Govt. of India	Shri N Gandhi Kumar	Director, DoR
24	Govt. of India	Shri Amaresh Kumar	Joint Comm., GST Policy Wing
25	Govt. of India	Shri Vikash Kumar	Dy. Comm., GST Policy Wing
26	Govt. of India	Shri Siddharth Jain	Dy. Comm., GST Policy Wing
27	Govt of India	Shri Gaurav Singh	DS, TRU-I, DoR
28	Govt of India	Shri Rahil Gupta	TO, TRU-I, DoR
29	Govt of India	Shri Shikhar Pant	TO, TRU-I, DoR
30	Govt. of India	Shri Parmod Kumar	OSD, TRU-II, DoR
31	Govt. of India	Shri Harish Y N	OSD, TRU-II, DoR
32	Govt. of India	Dr. Sumit Garg	Dy. Comm, TPRU, DoR
33	Govt. of India	Shri Vivekananda Reddy	Dy. Commissioner, CGST, Goa
34	Govt. of India	Shri Satheesh Kumar	Asst. Commissioner, CGST, Goa


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Sl No	State/Centre	Name of the Officer	Charge
35	GST Council	Shri Rajesh Agarwal	Director
36	GST Council	Shri G.S. Sinha	Director
37	GST Council	Ms. Ujjaini Datta	Director
38	GST Council	Shri Arjun Meena	Under Secretary
39	GST Council	Shri Rakesh Agarwal	Under Secretary
40	GST Council	Shri Rahul Raja	Under Secretary
41	GST Council	Shri Mahesh Singarapu	Under Secretary
42	GST Council	Shri Krishna Koundinya	Under Secretary
43	GST Council	Shri Adesh Nayak	Superintendent
44	GST Council	Shri Rakesh Joshi	Inspector
45	GSTN	Shri Prakash Kumar	CEO
46	GSTN	Ms Kajal Singh	EVP (Services)
47	GSTN	Shri Nitin Mishra	EVP (Technology)
48	GSTN	Shri Sarthak Saxena	OSD to CEO
49	Andaman & Nicobar Islands	Shri Abhishek Dev	Deputy Commissioner/Commissioner (GST)
50	Andhra Pradesh	Dr D. Sambasiva Rao	Special Chief Secretary, Revenue
51	Andhra Pradesh	Shri Peeyush Kumar	Chief Commissione (ST)
52	Andhra Pradesh	Shri T.Ramesh Babu	Commissioner (ST)(GST)
53	Arunachal Pradesh	Shri Tapas Dutta	State Nodal Officer (GST)
54	Assam	Shri Samir Kr. Sinha	Principal Secretary, Finance Department
55	Assam	Shri Anurag Goel	Commissioner of Taxes
56	Bihar	Arun Kumar Mishra	Additional Secretary, CTD
57	Chandigarh	Shri Ramesh Kumar Chaudhary	Asst. Excise & Taxation Commissioner UT Chandigarh
58	Chhattisgarh	Smt Reena Babasaheb Kangale	Secretary and Commissioner, Commercial Tax
59	Delhi	Ms. Renu Sharma	Addl Chief Secretary, Finance
60	Delhi	Shri H. Rajesh Prasad,	Commissioner, State Tax
61	Goa	Shri Daulat Hawaldar	Secretary, Finance
62	Goa	Shri Dipal Banderkar	Commissioner, State Tax
63	Goa	Shri Ashok V Rane	Additional Commissioner, State Tax
64	Goa	Ms Sarita Gadgil	Additional Commissioner, State Tax
65	Gujarat	Shri Arvind Agarwal	Additional Chief Secretary, Finance
66	Gujarat	Shri J.P. Gupta	Chief Commissioner of State Tax
67	Gujarat	Shri Riddesh Raval	Dy Commissioner, State Tax
68	Haryana	Shri Sanjeev Kaushal	Addl. Chief Secretary (E&T)
69	Haryana	Shri Amit Kumar Agrawal	Excise and Taxation Commissioner


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Sl No	State/Centre	Name of the Officer	Charge
70	Haryana	Shri Vijay Kumar Singh	Addl. Excise and Taxation Commissioner
71	Haryana	Shri Rajeev Chaudhary	Joint Excise and Taxation Commissioner
72	Himachal Pradesh	Shri Sanjay Kundu	Principal Secretary (E&T)
73	Himachal Pradesh	Dr Ajay Sharma	Commissioner of State Taxes & Excise
74	Himachal Pradesh	Shri Rakesh Sharma	Jt. Commissioner of State Taxes & Excise
75	Jharkhand	Shri Prashant Kumar,	Secretary-cum-Commissioner, Commercial Taxes Department
76	Jharkhand	Shri Santosh Kumar Vatsa	Special Secretary, Commercial Taxes Department
77	Jammu & Kashmir	Shri P K Bhat	Commissioner of State Tax
78	Karnataka	Shri Srikar M.S	Commissioner of Commercial Taxes (Karnataka)
79	Kerala	Ms Tinku Biswal	Commissioner of State Tax
80	Kerala	Shri Mansur M I	Deputy Commissioner (Internal Audit)
81	Madhya Pradesh	Shri N S. Maravi	Director Commercial Tax
82	Madhya Pradesh	Shri Avinash Lavania,	Addl. Commissioner Commercial Tax
83	Madhya Pradesh	Ms Harshika Singh	Deputy Secretary Commercial Tax Dept
84	Madhya Pradesh	Shri Harish Jain	Asst. Commissioner State Tax
85	Maharashtra	Shri Rajiv Jalota	Commissioner, State Tax
86	Maharashtra	Shri Dhananjay Akhade	Joint Commissioner, State Taxes
87	Manipur	Ms Jaspreet Kaur	Commissioner of Taxes
88	Manipur	Shri. Yumnam Indrakumar Singh	Asst. Commissioner of Taxes
89	Meghalaya	Shri Arun kumar Kembhavi	Commissioner of Taxes
90	Meghalaya	Shri L. Khongsit	Joint Commissioner of Taxes
91	Mizoram	Shri Vanlal Chhuanga	Commissioner & Secretary to the Govt. of Mizoram, Taxation Department
92	Mizoram	Shri Kailiana Ralte	Commissioner of State Tax
93	Nagaland	Shri Kesonyu Yhome	Commissioner of State Tax
94	Nagaland	Shri Y. Mhathung Murry	Addl. Commissioner of State Taxes
95	Nagaland	Shri Wochamo Odyuo	Addl. Commissioner of State Taxes
96	Odisha	Shri Ashok Meena	Principal Secretary Finance
97	Odisha	Shri Sushil Kumar Lohani	Commissioner State GST
98	Puducherry	Shri K. Sridhar	Deputy Commissioner (ST)

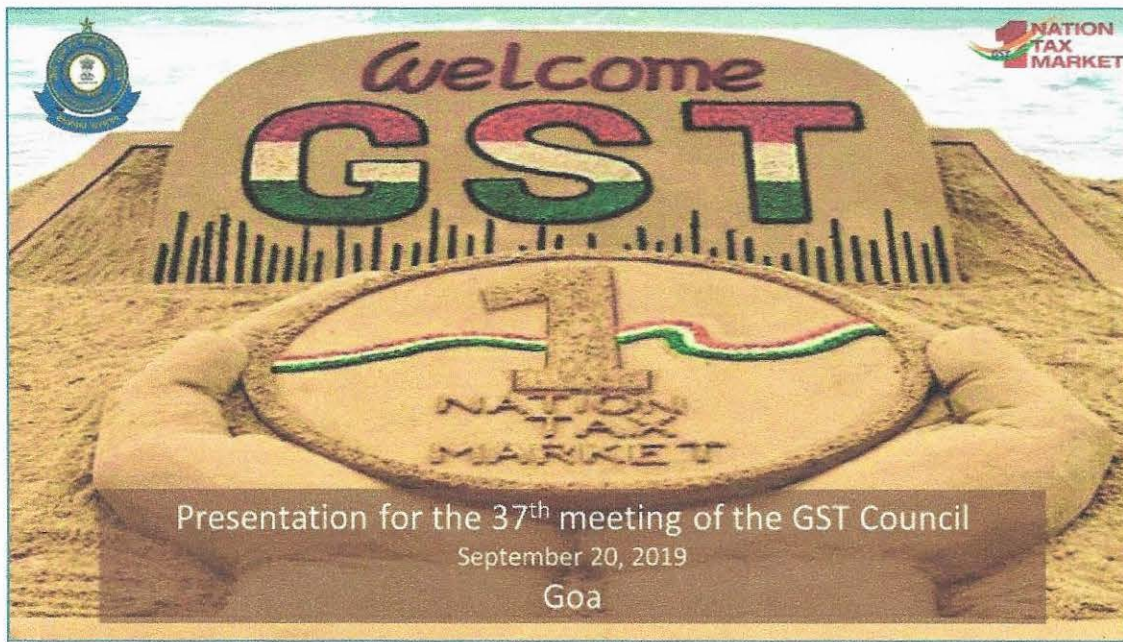
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Sl No	State/Centre	Name of the Officer	Charge
99	Puducherry	Shri L. Kumar	Commissioner (ST), Commercial Taxes Department
100	Puducherry	Shri S. Rajamanickam	OSD to Hon'ble Chief Minister
101	Punjab	Shri M.P. Singh	Addl. Chief Secretary (Taxation)
102	Punjab	Shri V.K. Garg	Advisor (Financial Resources) to Chief Minister
103	Punjab	Shri Vivek Pratap Singh	Commissioner of State Tax
104	Rajasthan	Dr. Prithvi Raj	Secretary, Finance (Revenue)
105	Rajasthan	Dr. Preetam B. Yashvant	Commissioner, State Tax
106	Rajasthan	Shri Ketan Sharma	Additional Commissioner (GST)
107	Sikkim	Shri Jigme Dorjee Bhutia	Commissioner, Commercial Taxes Division, Finance Department
108	Telangana	Shri Somesh Kumar	Special Chief Secretary to Government, Revenue (CT & Excise) Department
109	Telangana	Shri N Sai Kishor	Joint Commissioner, State Tax
110	Telangana	Shri Ramakrishna Rao	Finance Secretary
111	Telangana	Shri J. Laxminarayana	Additional Commissioner (ST) (Grade. I)
112	Tripura	Shri Nagesh Kumar B	Chief Commissioner of State Tax
113	Tripura	Dr. Sudip Bhowmik	Deputy Commissioner of State Tax
114	Tamil Nadu	Shri T.V. Somanathan	Additional Chief Secretary/Commissioner of Commercial Taxes
115	Tamil Nadu	Shri. Ka. Balachandran	Principal Secretary to Government
116	Tamil Nadu	Shri K. Gnanasekaran	Additional Commissioner (Taxation)
117	Uttar Pradesh	Shri Alok Sinha	Additional Chief Secretary
118	Uttar Pradesh	Ms Amrita Soni	Commissioner, State Tax
119	Uttar Pradesh	Shri Sanjay Kumar Pathak	Joint Commissioner, State Tax
120	Uttarakhand	Ms. Sowjanya	Secretary Finance & Commissioner of State Tax
121	Uttarakhand	Shri Piyush Kumar	Additional Commissioner, State Tax
122	Uttarakhand	Dr. Sunita Pandey	Deputy Commissioner, State Tax
123	Uttarakhand	Shri S. S. Tiruwa	Deputy Commissioner, State Tax
124	West Bengal	Shri H K Dwivedi	Additional Chief Secretary, Finance
125	West Bengal	Ms. Smaraki Mahapatra	Commissioner, State Tax
126	West Bengal	Shri. Khalid A Anwar	Sr. Jt. Secretary Finance


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Agenda (1/2)

Note No.	Description
3	Deemed Ratification of notifications issued post 36 th GST Council Meeting
4	Decisions taken by the GIC post 36 th GST Council meeting
5	Recommendations of the IT Grievance Redressal Committee
7(i)	Extension of last date of filing of appeal in Appellate Tribunal
7(ii)	Exemption from filing of Annual Returns
7(iii)	Issues pertaining to interpretation of Section 10 of the IGST Act, 2017
7(iv)	Restrictions in availing input tax credit
7(v)	Proposed clarifications on refund related issues
7(vi)	E-way bill for movement of Gold
7(vii)	Proposed amendment to sub-rule (5) of rule 61
7(viii)	Extension of FORM GSTR-1 and GSTR-3B

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Agenda (2/2)

Note No.	Description
7(ix) / 22(iii)	Proposal for amendments to CGST Rules, 2017
19	Amendments in GST Acts due to J&K Reorg. Act
20	Special Composition Scheme for Brick kilns etc.
22(i)	Clarification on wrongly filed Nil Refund
22(ii)	Circular on treatment of IT/ITeS Services
22(iv)	Clarification on Post Sale Discount
TA	Risk Based Management of Taxpayers under GST

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Agenda Item 3: Deemed Ratification of Notifications (1/2)

Central Tax Notifications and ROD under CGST Act

Notification No. 35/2019	Extension of the last date for furnishing FORM GST CMP-08 for the quarter April - June 2019 till 31.08.2019.
Notification No. 36/2019	Extension of the date from which the facility of blocking and unblocking of e-way bill facility as per the provision of rule 138E of CGST Rules, 2017 shall be brought into force to 21.11.2019.
Notification No. 37/2019	Extension of the due date for furnishing FORM GSTR-3B for the month of July, 2019.
Notification No. 38/2019	Waiver from filing of FORM ITC-04 for F.Y. 2017-18 & 2018-19.
Notification No. 39/2019	Bringing Section 103 of the Finance (No. 2) Act, 2019 in to force.
Notification No. 40/2019	Extension of the last date in certain cases for furnishing FORM GSTR-7 for the month of July, 2019.
Notification No. 41/2019	Waiver of late fees in certain cases for the month of July, 2019 for FORM GSTR-1 and FORM GSTR-6 provided the said returns are furnished by 20.09.2019.
Order No. 7/2019	Removal of difficulties regarding filing of Annual returns by extending the due date for filing of Annual return / Reconciliation Statement for the Financial year 2017-18 in FORMs GSTR-9, GSTR-9A and GSTR-9C to 30th November, 2019.

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Agenda Item 3 :Deemed Ratification of Notifications (2/2)

Rate Notifications

Notification No. 12/2019- Central Tax (Rate)	Reduction in the GST rate on Electric Vehicles, and charger or charging stations for Electric vehicles.
Notification No. 13/2019- Central Tax (Rate)	Exemption to the hiring of Electric buses by local authorities from GST.
Notification No. 12/2019- Union Territory Tax (Rate)	Reduction in the GST rate on Electric Vehicles, and charger or charging stations for Electric vehicles.
Notification No. 13/2019- Union Territory Tax (Rate)	Exemption to the hiring of Electric buses by local authorities from GST.
Notification No. 12/2019- Integrated Tax (Rate)	Reduction in the GST rate on Electric Vehicles, and charger or charging stations for Electric vehicles.
Notification No. 13/2019- Integrated Tax (Rate)	Exemption to the hiring of Electric buses by local authorities from GST.

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Agenda Item 4 :GIC decisions post 36th GST Council Meeting (1/3)

Decisions of 31st GIC meeting (13.08.19)

- Waiver of recording of UIN on invoices for Foreign Diplomatic Missions / UN Organizations
 ✓ Corrigendum to Circular No. 63/37/2018-GST issued on 06.09.2019
- Empower jurisdictional Commissioner to exercise powers for extension of time for receiving back raw materials sent for job work related issue under Section 143, CGST Act, 2017
 ✓ Removal of Difficulties Order yet to be issued as Law Ministry has opined against issuance of the RoD
- Proposal to waive the requirement of filing declaration in **FORM ITC-04** for the Financial Year (2017-18 and 2018-19)
 ✓ Notification No. 38/2019 – CT dated 31.08.19 issued
- Extension of date for filing of **FORMs TRAN-1 and TRAN-2** for cases recommended by the ITGRC
 ✓ Matter to be discussed in the GST Council Meeting

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Agenda Item 4 : GIC decisions post 36th GST Council Meeting (2/3)

Decision by circulation (17.08.19)

- Delay in introduction of the blocking and unblocking of e-way bill facility as per the provision of Rule 138E of CGST Rules, 2017 due to system related issues

✓ Notification No. 36/2019 – CT dated 20.08.19 issued

Decision by circulation (21.08.19)

- Extension of the due date for filing Annual return for the Financial Year 2017-18 in **FORM GSTR-9 / GSTR-9A and GSTR-9C** by three months i.e. till 30.11.2019

✓ RoD Order No. 7/2019-Central Tax dated 16.08.19 issued

- Extension of due date for filing **FORM GSTR-3B** for the month of July, 2019 by 2 days for all taxpayers, by 1 month for taxpayers in specified flood affected districts and in J&K

✓ Notification No. 37/2019 – CT dated 21.08.19 issued

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Agenda Item 4 : GIC decisions post 36th GST Council Meeting (3/3)

Decision by circulation (29.08.19)

- Extension of the due date for filing **FORM GSTR-7** and waiver of late fees for filing of **FORM GSTR-1 and FORM GSTR-6** in by 1 month in specified flood affected districts and J&K

✓ Notification No. 40/2019 – CT dated 31.08.19 issued

✓ Notification No. 41/2019 – CT dated 31.08.19 issued

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Agenda Item 5 : ITGRC Recommendations (1/3)

- Council decided that GIC to act as IT Grievance Redressal Committee (IT-GRC) for resolving problems of the taxpayers who have not been able to file returns such as TRAN-1, GSTR-3B/GSTR-1 or Registration/ migration etc. **due to technical glitches at Common Portal** and it affects a large section of taxpayers
- Circular No. 39/13/2013 dated 03.04.18 was issued prescribing the procedure for taxpayers for lodging their grievance due to technical glitch in the GST system
- In order to address the issues systematically, GSTN issued a SOP on 12.04.18 which was to be followed by the Nodal officers of the States / Centre while referring the technical glitches to GSTN
- Tax officers required to examine the taxpayers' application and the supporting evidence –if prima-facie found to be a case of technical glitch, send the cases to the GSTN Nodal officer through the designated Nodal officer of Center/State

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Agenda Item 5 : ITGRC Recommendations (2/3)

IT Grievance Redressal Committee (IT-GRC) meetings

- Eight meetings of IT-GRC have been held between June 2018 and August 2019
- Total 2885 TRAN-1 cases (including 327 cases where writ petitions have been filed in various High Courts) were presented and discussed in IT-GRC out of which a total of **1057 cases have been approved.**
- Total 259 TRAN-2 cases have also been approved.
- TRAN 1/TRAN 2 filing has been enabled for the approved taxpayers in the system
- E-mails have been sent by GSTN to the taxpayers asking them to file TRAN 1/TRAN 2.

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Agenda Item 5 : ITGRC Recommendations (3/3)

Pending cases with GSTN

- Around 75 cases of TRAN-1 and 149 cases of TRAN-2 received from Nodal officers till 31.03.2019 (through e-mail/letters) have been technically analysed and will be presented before the next IT-GRC for decision
- Apart from the above around 35 court cases are also under process of analysis

Proposal for extension of dates for approved taxpayers

- The last date of filing TRAN-1 and TRAN-2 for the taxpayers approved was 31-03-19 and 30-04-19 respectively
- The dates are now proposed to be extended until 31-12-2019 and 31-01-2020, respectively, to enable filing of TRAN-1/TRAN-2 for the cases approved by IT-GRC (Rule 117(1A) and proviso to Rule 117(4)(b)(iii) of the CGST Rules, 2017)

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Agenda Item 7(i) : Extension of last date of filing of appeal in Tribunal

- Any person aggrieved by an order passed against him by the Appellate Authority or the Revisional Authority may appeal to the Appellate Tribunal against such order within three months from the date of order
- The Tribunal and its benches have not been constituted in many States/UTs. As a result, there are various cases where the time limit of three months for appeal has elapsed after the passing of order by the Appellate Authority or the Revisional Authority
- It is proposed to extend the last date for filing of appeal before the GST Appellate Tribunal and its benches by issuance of a Removal of Difficulty order to provide for the limitation being three months from the date of order or three months from the date on which the President or the State President of the Appellate Tribunal enter office, whichever is later

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Agenda Item 7(ii) : Exemption from filing of Annual Returns (1/5)

- Annual Return and Reconciliation Statement percentage as on 12.09.2019:

S.No.	Category	No. of Tax Payers
01	No. of Tax Payers Eligible to file GSTR-9	92,58,899
02	Out of 01 above, Tax payers whose current status is active and never in Composition Scheme in F.Y 2017-18	86,30,930
03	Out of 02 above, No. of tax payers who have filed all GSTR-3B & GSTR-1	64,17,471 (74.35%)
04	Out of 03 above, No. of tax payers who have filed GSTR-9	21,35,697 (33.28%)
05	No. of tax payers required to file GSTR-9C	12,42,238
06	Out of 05, No. of tax payers who have filed GSTR-9	1,76,477 (14.21%)
07	Out of 06, No. of tax payers who have filed GSTR-9C	58,585 (33.20%)

- The due dates for these returns have been extended 4 times. The last date being 30th November 2019 vide ROD No. 7/2019 dated 26th August 2019.

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Agenda Item 7(ii) : GSTR-9 Distribution on Turnover Slab (2/5)

Slab	SLAB ON TURNOVER	No. of Tax Payers filed all R3B/R1	GSTR-9 Filed	% of Total	% of those enabled to file GSTR-9
1	NIL	1044099	490021	5.29%	46.93%
2	Upto 5.0 Lakhs (excl. NIL)	897289	351559	3.80%	39.18%
3	5.00 Lakhs to 10.00 Lakhs	529142	201460	2.18%	38.07%
4	10.00 Lakhs to 20.00 Lakhs	712554	265557	2.87%	37.27%
5	20.00 Lakhs to 30.00 Lakhs	469566	167116	1.80%	35.59%
6	30.00 Lakhs to 40.00 Lakhs	338846	114754	1.24%	33.87%
7	40.00 Lakhs to 50.00 Lakhs	260051	84491	0.91%	32.49%
8	50.00 Lakhs to 70.00 Lakhs	377170	116449	1.26%	30.87%
9	70.00 Lakhs to 1.00 Cr	360810	104090	1.12%	28.85%
10	1.0 Cr to 1.5 Cr	342789	87443	0.94%	25.51%
11	1.5 Cr to 2.0 Cr	201322	41483	0.45%	20.61%
12	2.0 Cr. To 3.0 Cr	233793	39654	0.43%	16.96%
13	3.0 Cr to 4.00 Cr	133157	21769	0.24%	16.35%
14	4.0 Cr to 5.0 Cr	87642	14252	0.15%	16.26%
15	5.0 Cr to 8.0 Cr	146719	23273	0.25%	15.86%
16	8.0 Cr to 10.0 Cr	52956	8273	0.09%	15.62%
17	10.0 Cr to 20.0 Cr	111063	16975	0.18%	15.28%
18	20.0 Cr to 50.0 Cr	69032	10292	0.11%	14.91%
19	50.0 Cr to 100 Cr	23997	3550	0.04%	14.79%
20	100.0 Cr to 500 Cr	20236	3105	0.03%	15.34%
21	Above 500 Crores	5232	991	0.01%	18.94%
GRAND TOTAL		6417465	2166557 (33.76%)	23.40%	33.76%

Note : only Active Tax Payers and never opted for composition in 2017-18 have been considered

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Agenda Item 7(ii) : Exemption from filing of Annual Returns (3/5)

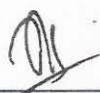
- Considering the challenges reportedly being faced by the taxpayers on account of FORM GSTR-9, GSTR-9A and GSTR-9C, and to ease compliance cost burden on small taxpayers, the Law Committee has recommended the following w.r.t. Annual Returns for FY 2017-18 and FY 2018-19 :
 - Complete waiver from filing FORM GSTR-9A for Composition Taxpayers for the said tax periods (they would anyways file Annual return for 2019-20)
 - Waiver from filing of FORM GSTR-9 for those taxpayers having an aggregate turnover up to Rs. 2 crores for 2017-18 and 2018-19
- In addition, Law Committee constituted a sub-committee of officers which looked into further simplification of the annual return and reconciliation statement for other taxpayers who are required to file FORM GSTR 9 along with GSTR-9C

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Agenda Item 7(ii) : Simplified/Truncated GSTR-9 & GSTR-9C (4/5)

- The Law Committee deliberated on the suggestions provided by the sub-committee but it was decided that any of the recommendations may be implemented looking at the return filing percentage after the proposed exemption for taxpayers below Rs. 2 Crore turnover
- The recommendations of the sub-committee are as following :
- **Masking of data / Optional Fields** : Data which is not required or which is already available in GSTR-1 / GSTR-3B may be masked or made optional for taxpayers. Example- Input level HSN information, break up of credit at input service and inputs etc.
- **Communication reg. optional fields** : Many taxpayers have been reportedly trying to fill columns where there was no liability also. Taxpayers can be informed that optional columns or columns may not be filled where there is no liability

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Agenda Item 7(ii) : Simplified/Truncated GSTR-9 & GSTR-9C (5/5)

- **State wise information in reconciliation statement :** It is difficult to segregate State wise unbilled revenue, credit notes, debit notes, schedule III supplies etc. It has been recommended that only State level audited turnover and its comparison with GST turnover data may be taken whereas the intermittent steps may be masked or made optional.
- **Exemption from filing Reconciliation Statement in States with Nil turnover :** There may be cases where a taxpayer is registered in more than one State, but he may have nil turnover in one State while all his taxable turnover is in another State. In such cases, to save on the cost of getting his books of account audited for the State where turnover is NIL, it has been recommended that filing of reconciliation Statement in FORM GSTR-9C may be exempted for GSTINs with nil turnover.

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Agenda Item 7(iii) : Issues pertaining to interpretation of Section 10 of the IGST Act

- A recipient from State S1 procures over the counter supply from State S2 and gives the GSTIN/address of State S1 in the invoice. There has been representations seeking clarification whether the supply is chargeable of CGST/ SGST or IGST
- Sub-section (1) of Section 10 of the IGST Act provides that the place of supply of goods, where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient
- It is proposed that a circular may be issued to clarify that the place of supply for such supplies shall be the place of registration/ address of the recipient and IGST shall be levied on such supplies

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Agenda Item 7(iv) : Restriction in availing credit in GSTR-3B (1/4)

- In absence of matching of ITC, the taxpayer avails ITC in FORM GSTR-3B on self assessment basis without any restriction or relation with the ITC reflected in his FORM GSTR-2A (based on GSTR-1 of the suppliers)
- Large gap between filing rates of FORM GSTR-1 and FORM GSTR-3B (GSTR-1 filing in Apr 19-Jul 19 is around 50% as against almost 80% GSTR-3B) leading to huge unmatched ITC. This issue will get resolved in the new return model
- Centre/State Governments have unearthed many cases of fraudulent credit being passed in the system
- Till then, the law committee recommended that a reasonable restriction may be imposed on the total credit that the taxpayer may take in his FORM GSTR-3B vis-à-vis the credit available in his FORM GSTR-2A on the same lines as in Section 43A(4)
- It is proposed that the same may be operationalized through amendment of Rule 36 of the CGST Rules, 2017 and a circular explaining the rule

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Agenda Item 7(iv) : Restriction in availing credit in GSTR-3B (2/4)

- In order to operationalize the same, the following rule may be inserted as 36(4) of the CGST Rules :

(4) Input tax credit to be availed by a registered taxpayer in respect of invoices or debit notes the details of which have not been uploaded by the supplier under sub-section (1) of section 37 shall not exceed **20%** of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the supplier under sub-section (1) of section 37

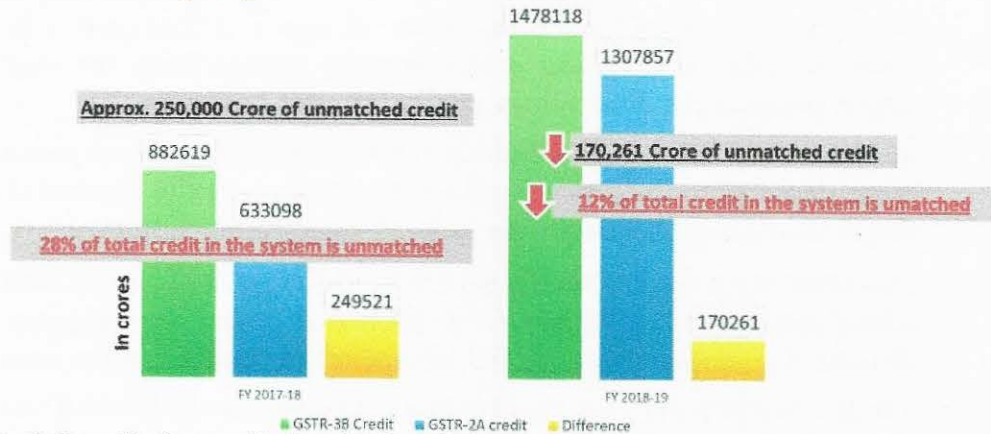
Illustration : A taxpayer who has received supplies with GST of Rs. 1500, but has credit worth Rs. 1000 only in FORM GSTR-2A may avail maximum credit of Rs. 1200 in credit ledger

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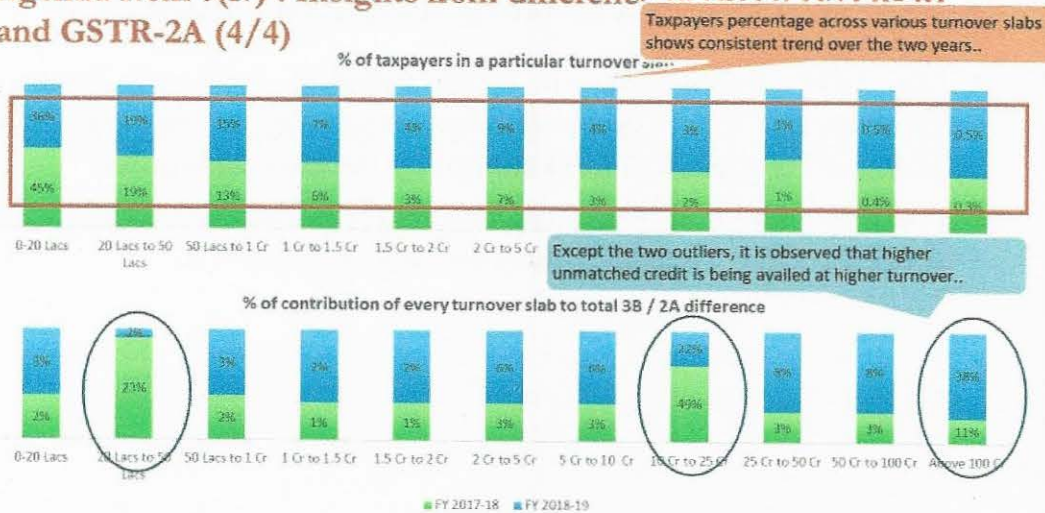
Agenda Item 7(iv) : Insights from difference between GSTR-3B and GSTR-2A (3/4)



All figures in Crores. The dataset used for the analysis have only those taxpayers which have more credit in their FORM GSTR-3B than their FORM GSTR-2A. Negative values have been ignored.

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Agenda Item 7(iv) : Insights from difference between GSTR-3B and GSTR-2A (4/4)



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Agenda Item 7(v) : Clarification on refund related issues

- As per rule 93 of the CGST Rules, where an appeal is filed against the rejection of a refund claim, re-crediting of the amount debited from the electronic credit ledger, if any, is not done till the appeal is finally rejected
- In cases where the appeal is decided in favour of the registered person, doubts are being raised as to the process to be followed to avail the amount of the rejected refund which was rejected by the original adjudicating authority
- Law Committee decided that in such cases the registered person has to file a fresh refund application in FORM GST RFD-01A under the category "Refund on account of assessment/provisional assessment/appeal/any other order"
- A draft circular specifying the procedure is placed for the Council's approval

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Agenda Item 7(vi) : E-way bill for movement of Gold (1/3)

- The GST Council in its 25th Meeting held on 18.01.2018 had recommended that proposal of Kerala regarding introducing e-Way bill for movement of gold shall be examined by the Law Committee.
- The law committee have two divergent views on the issue and are placed before the GST Council deliberation and decision.

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Agenda Item 7(vi): E-way bill for movement of Gold-View I (2/3)

- General view that these items should remain exempted from the requirement of E-way bills
- Gold, diamonds etc. generally not transported through regular transports; and transported personally or privately through a system of trusted couriers, e.g. angadias, who are not aware of the contents and the value of the consignment
- The value limit e-way bills of Rs.50,000/- will necessitate generation of e-way bills for virtually every consignment
- E-way bills will be required for movement for job-work (in this case many small and petty kaarigars)
- Post-interception action required in case of a consignment not carrying E-way bills would entail complications -impoundment/storage of the detained consignment

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Agenda Item 7(vi): E-way bill for movement of Gold: View 2 (3/3)

- The E-way bill system may be implemented in case of gold, precious stones, etc. (Chapter 71) as it will improve compliance
- No security issues, since the data about such E-way bills is stored in the server and only authorised officials have access to this data-*though the angadias (transporter) would get to know about content and value of package*
- Accordingly, serial numbers 4, 5 and 8 of Annexure to rule 138(14) may be omitted

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Agenda Item 7(vii): Proposed amendment to Rule 61(5) of CGST Rules, 2017 (1/3)

- Hon'ble High Court of Gujarat in its order dated 24.06.2019, in the case of AAP & India Vs Union of India, has quashed Para 3 of the press release dated 18th October 2018
- The press release clarified that the last date for availing input tax credit in relation to the invoices issued by the corresponding supplier(s) during the period from July 2017 to March 2018 is the last date for the filing of return in FORM GSTR-3B for the month of September, 2018
- The Court has opined that FORM GSTR-3B is not a return under sub-section (1) of section 39 of the CGST Act and FORM GSTR-3 is the return under the said section. Therefore, the last date for availment of credit shall be in accordance with FORM GSTR-3 and not FORM GSTR-3B

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Agenda Item 7(vii): Proposed amendment to Rule 61(5) of CGST Rules, 2017 (2/3)

- A similar writ has been admitted in the Hon'ble High Court of Telangana wherein the petitioner is contesting levy of interest under Section 50 of the CGST Act on the grounds that GSTR-3B is not a return under Section 39(1) of the CGST Act.
- Due to operational and IT issues, FORM GSTR-2 and FORM GSTR-3 were kept in abeyance since July 2017.
- The law committee proposed that Rule 61(5) may be retrospectively amended specifying more clearly that FORM GSTR-3B is the return under Section 39.
- Retrospective amendment w.e.f. 01.07.2017 is proposed - text in the next slide.

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Agenda Item 7(vii): Proposed amendment to Rule 61(5) of CGST Rules, 2017 (3/3)



61. Form and manner of submission of monthly return.- :-

(5) Where the time limit for furnishing of details in **FORM GSTR-1** under section 37 ~~and or~~ in **FORM GSTR-2** under section 38 has been extended, ~~the return specified in sub-section (1) of section 39 and circumstances so warrant, the Commissioner may, by notification, specify the manner and conditions subject to which the return~~ shall, in such manner and subject to such conditions as the Commissioner may, by notification, specify, be furnished in **FORM GSTR-3B** electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:-

Provided that where a return in **FORM GSTR-3B** is required to be furnished by a person referred to in sub-rule (1) then such person shall not be required to furnish the return in **FORM GSTR-3**.

(6) To be omitted

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Agenda Item 7(viii) Extension of FORM GSTR-1 and GSTR-3B



- The new return model is to be introduced in a phased manner with overlaps with FORM GSTR-1 and FORM GSTR-3B. Currently, FORM GSTR-1/GSTR-3B is notified till September 2019
- New Return is proposed for all taxpayers from January 2020.
- In view of the same, the following is proposed :
 - FORM GSTR-3B be extended for the months of October, November and December 2019 to be filed by 20th of succeeding month
 - Taxpayers with aggregate turnover greater than Rs. 1.5 Crore to furnish monthly FORM GSTR-1 for the months of October, November and December 2019 to be filed by 11th of succeeding month
 - Taxpayers with aggregate turnover less than Rs. 1.5 Crore may furnish quarterly return for the months of October, November and December 2019 to be filed by 31st January 2019

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Agenda Item 7(ix): Amendments in GST Rules (1/3)

Rule to be amended	Rationale
• Rule 21A	In case of revocation of suspension of registration, provisions of clause (a) of sub-section (3) of section 31 of the CGST Act in respect of the supplies made during the period of suspension and the procedure specified in that behalf shall apply. It is proposed to amend and insert sub-rule (5) in rule 21A to specify the same.
• Rule 83A	There is an ambiguity in the CGST Rules in respect of provisions of rule 83A(1) vis-à-vis rule 83A(6)(i). Presently the examination is to be conducted only for practitioners on whom clause (b) of sub-rule (1) of rule 83 of the CGST Rules apply (practitioners in existing law). Rule is amended to remove such ambiguity.
• Rule 97	Sub-rule (4) of rule 97 prescribes that the Government shall constitute a Standing Committee which shall make recommendation for proper utilisation of money credited to the Fund for welfare of consumers. Sub-rule (8) of rule 97 of CGST Rules provides that the committee shall make recommendations, for making available up to 50% of the funds credited to the Fund each year, for publicity/ consumer awareness on GST. Rule is proposed to be amended to provide mandatory allocation and transfer of 50% of the funds from the Consumer Welfare fund to the Central Government. Similar provision will be made for State Government also.

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Agenda Item 7(ix): Rule Amendments in GST Rules (2/3)

Rule to be amended	Rationale
Rule 117	Rule 117(1A) allows extension of last date for filing of GST TRAN-1 up to 31st March, 2019 for registered persons who could not file the said returns on account of technical difficulties (IT GRC cases). Further, proviso to rule 117(4)(b)(iii) provides for extension of date for filing GST TRAN-2 in respect of such persons upto 30th April 2019. For enabling filing of TRAN-1/TRAN-2 in such cases which have been approved by GST Council (through ITGRC) but where filing is still pending these dates are proposed to be extended till 31st December 2019 and 31st January 2020 respectively.
Rule 142	Amendment of rule 142 of CGST Rules is proposed for intimating liability to the taxpayer in view of sub-section (5) of Section 73 and sub-section (5) of Section 74, before the issuance of Show Cause Notice and response thereto by the taxpayer
FORM GST DRC-01A	Consequent to amendment of Rule 142, insertion of new FORM DRC-01A
FORM GST RFD-01	The credit note has been de-linked with the invoice, therefore, it is proposed that suitable amendments in statement 4, 5, 5B (supplier), 5B (recipient) and 6 are made and a new statement 4A is inserted of FORM GST RFD-01

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Agenda Item 22(iii): Rule Amendments in GST Rules (3/3)

Rule to be amended	Rationale
Rule 91	Several amendments, related to the single disbursement process, were carried out in rule 92 (order sanctioning refund) of the CGST Rules vide Notification No. 31/2019 – Central Tax dated 28.06.2019. However, similar amendments also need to be carried out in rule 91 (grant of provisional refund) of the CGST Rules.

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Agenda Item 19: Amendments in GST Acts due to J&K Reorg. Act (1/4)

- Jammu and Kashmir Reorganization Act, 2019 seeks to reorganize the existing State of Jammu and Kashmir for formation of Union territory of Ladakh without legislature and Union territory of Jammu and Kashmir with Legislature
- The Act has received the President's assent and is expected to be notified from 31st October 2019. Consequent changes in the CGST Act, 2017 (as amended), UTGST Act, other States SGST Act and J&K SGST Act are placed for approval of the Council
- These amendments have been recommended by the Law Committee and inputs of the J&K SGST Departments have also been incorporated

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**Agenda Item 19: Amendments in GST Acts due to J&K Reorg. Act
(2/4)**

• **Changes in CGST Act :**

- Amendment in Section 2(114) to incorporate Ladakh in the definition of Union territory
- Amendment in Section 109(6) to enable the Central Government to establish a State Bench of the Appellate tribunal in J&K

• **Changes in UTGST Act :**

- Amendment in Section 1(2) and 2(8) to incorporate Ladakh in the definition of Union territory

• **Changes in SGST Act :**

- Amendment in Section 2(114) to incorporate Ladakh in the definition of Union territory

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**Agenda Item 19: Amendments in GST Acts due to J&K Reorg. Act
(3/4)**

• **Section 95 of the Jammu and Kashmir Reorganization Act, 2019:**

- Jammu and Kashmir SGST Act has been made applicable to both the Union territory of Jammu & Kashmir and Union Territory of Ladakh
- Under the GST structure the Union territory of Jammu & Kashmir shall have an independent SGST Act, the Union territory of Ladakh will be governed by the Central UTGST Act
- This may be amended through the power to remove difficulties under Section 103 of the Jammu and Kashmir Reorganization Act

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Agenda Item 19: Amendments in GST Acts due to J&K Reorg. Act (4/4)

• Power to adapt laws under Section 96

- Section 96 of the Bill empowers the Central Government to make modifications on any law as detailed in the Fifth Schedule by an order to facilitate the application of such law in the newly formed Union territories
- The CGST Act or the UTGST Act has not been listed under the Fifth Schedule, it appears that amendment of these Acts through an order is not feasible

• Changes in J&K SGST Act :

- Various minor amendments for synchronization of the J&K SGST Acts with other SGST Acts have been recommended by the J&K SGST Department

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Agenda Item 20: Special Composition Scheme for Brick kilns etc. (1/2)

- GoM on reverse charge had recommended considering denying the benefit of composition to Brick kilns, Menthol, Sand Mining Activities and Stone crushers under GST. This view was further reiterated by the Law Committee
- In the 35th Council Meeting, Haryana had reported that the tax yield from these categories of taxpayers has witnessed a drastic fall in the GST regime and denial of composition would thus lead to further loss of revenue since it was difficult to monitor their activities
- A Committee of Officers (CoO) was constituted by the GST Council Secretariat bearing to examine whether a special composition scheme for Brick kilns, Menthol, Sand Mining Activities and Stone crushers may be devised and to suggest suitable mechanism

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Agenda Item 20: Special Composition Scheme for Brick kilns etc. (2/2)

- The recommendation of the Committee of Officers are as follows :-
- Exclusion from normal composition scheme and introduction of a special composition scheme for taxpayers supplying Brick kilns, Sand Mining Activities and Stone crushers with an increased rate of 6% (*similar to the rate for the composition scheme introduced for services/residual suppliers vide notification No. 2/2019-Central Tax (Rate), dated 07.03.2019*);
- Increasing the rate for normal taxpayers supplying Brick kilns, Sand Mining Activities and Stone crushers from the current rate of 5% to 12%; and
- Notifying the supply of Mentha-oil under the provisions of sub-section (3) of section (9) so that tax shall be paid on reverse charge by the recipient of such supplies.
- The recommendations are placed before the GST Council for decision

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Agenda Item 22(i): Clarification on wrongly filed Nil Refund (1/2)

- Several registered persons have inadvertently filed a NIL refund claim for a certain period on the common portal in FORM GST RFD-01A inspite of the fact that they had a genuine claim for refund for that period under the said category
- Once a NIL refund claim is filed, the common portal does not allow the registered person to re-file the refund claim for that period under the said category
- It is proposed that refund applications may be allowed if :
 - A. The registered person has filed a NIL refund claim in FORM GST RFD-01A for a certain period under a particular category; and
 - B. No refund claims in FORM GST RFD-01A have been filed by the registered person under the same category for any subsequent period.

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Agenda Item 22(i): Clarification on wrongly filed Nil Refund (2/2)

- Condition B would apply to categories only where the ITC refund is being sought such as exports under LUT, exports to SEZ without payment of tax and inverted duty structure refunds
- Registered persons satisfying the above conditions to be allowed to file the refund claim under "Any Other" category instead of the category under which the NIL refund claim has already been filed. However, the refund claim should pertain to the same period for which the NIL application was filed.
- The Circular is placed before the Council for approval.

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Agenda Item 22(ii): Circular on treatment of IT/ITeS Services(1/2)

- Several representations have been received from NASSCOM and ASSOCHAM citing confusion on classification of IT / ITeS services as intermediary services in Circular No. 107/26/2019-GST dated 18.07.2019 leading to denial of export benefits on such services.
- 'Intermediary' has been defined in the sub-section (13) of section 2 of the Integrated Goods and Service Tax Act, 2017 (hereinafter referred to as "IGST" Act) as under –
"Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account."
- The definition of intermediary inter alia provides specific exclusion of a person who supplies such goods or services or both or securities on his own account
- The key representation received from the trade has been that the Circular does not provide clear criteria /features for a particular services to be classified a services as intermediary service

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Agenda Item 22(ii): Circular on treatment of IT/ITeS Services(2/2)

- It has been represented that these features were available in the erstwhile service tax regime. It is felt that the same features may help ascertain whether a service is an intermediary service or not.
- **Number of parties:** Intermediary service involves minimum three parties and the service provider providing intermediary service is typically involved with two supplies at any one time
- **Nature and value:** An intermediary cannot alter the nature or value of the services or goods, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price
- **Separation of value:** The value of an intermediary's service is invariably identifiable from the main supply of service or goods that he is arranging. Generally, the amount charged by an agent from his principal is referred to as "commission".
- **Identity and title:** The service provided by the intermediary on behalf of the principal is clearly identifiable.
- A new Circular based on the key features above is proposed. The same has been recommended by the Law Committee

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Agenda Item 22(iv): Clarification on Post Sale Discount (1/2)

- Circular No. 105/24/2019-GST dated 28.06.2019 clarified certain aspects of post sale discount. Trade and industry have reported two issues with the circular.
- Challenges with Para 3 of the Circular :
 - The circular mandates any sales augmentation activity such as advertisements / sales campaign in the hands of the dealer as a separate supply provided by the dealer to the manufacturer where such activity is done on the behest of an extra consideration provided by the manufacturer to the dealer
 - Dealers have represented that undertaking special sales drive and advertisement campaign are very vague leading to further ambiguity in the matter
 - There may be a number of activities which the dealer performs on his own account or undertake to achieve higher sales and therefore derive secondary benefits such as free gifts or future discounts. Such schemes are a regular practice in the trade
 - In the current draft / language of the circular, even those activities which are not linked with post sale discount gets taxed

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Agenda Item 22(iv): Clarification on Post Sale Discount (2/2)

- Challenges with Para 4 of the Circular :
 - The Circular mandates that if due to depressed sales a discount is announced by the manufacturer then even though the invoice value will decrease but the taxable value will remain the same for both the transactions i.e. manufacturer to the dealer and the dealer to the customer
 - Therefore, even if a discount is announced by a manufacturer the actual discount is not passed to the end customer since the taxable value and therefore the GST leviable would be higher than the transaction value
 - For a car which is taxed at 30%, and the discount offered is Rs. 50,000 then a benefit of Rs. 15,000 will be unavailable to the end customer
 - This has lead to a lot of confusion in the trade and industry especially in auto-sales
- The law committee has examined this issue and has recommended that the whole issue requires holistic examination
- In the interim, recommendation is to rescind Circular No. 105/24/2019-GST dated 28.06.2019 *ab initio*

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Agenda item 10(i): Risk Based Management of Taxpayers under GST

(1/4)

A committee was set up for risk based management of taxpayers under GST by the GST Council. The committee has given the following recommendations :

- To initiate the Aadhar based verification process of all new taxpayers.
- Develop modalities and timelines for similar verification of all the existing taxpayers.
- In absence of Aadhar validation, compulsory physical verification of the premises
- GST Council Secretariat with help of GSTN to get an offence database developed and all enforcement wings to share suspect GSTINs, DINs from GST and pre-GST periods in the said database.

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Agenda item 10(i): Risk Based Management of Taxpayers under GST

(2/4)

- For the risky new taxpayers (for example Proprietor with new PAN having no Income Tax or Business turnover, no financial credentials)
 - Restrict ITC on supplies made by them to Rs. 3 lakh per month i.e. auto population of credit based on their GSTR-1 to be restricted to Rs. 3 lakhs per month for first 6 months
 - Further ITC to be linked to their depositing a certain percentage of the ITC sought to be passed on in cash ledger
 - Considering that the average cash to credit ratio is 20:80, the credit allowed to be pushed above the limit of Rs 3 lakhs can be 5 times the amount deposited in the cash ledger

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Agenda item 10(i): Risk Based Management of Taxpayers under GST (3/4)

- Further, on the same lines as for new taxpayers, to curb tendency to avoid the said rule by using dormant GSTINs, any abnormal increase in outward supplies by risky suppliers also to be controlled in similar manner
- Parameters for risky suppliers to be identified by Law Committee- say increase in outward supplies exceeding 25% beyond the highest of the value of supplies in last 12 months (as available in case of taxpayers having been registered for less than 12 months) in case of risky suppliers to be restricted
- Further ITC passing to be linked to their depositing 20% of the ITC sought to be passed on in cash ledger
- A State level Committee constituted by the Chief Commissioner Central Tax and the Commissioner State Tax to provide relaxation from such restrictions

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Agenda item 10(i): ITC Data for new registrants (4/4)

Tax liability in first six months from registration	Number of taxpayers who made supplies worth such tax amount as per FORM GSTR-3B	Percentage	Number of taxpayers who made supplies worth such tax amount as per FORM GSTR-1	Percentage
0 to 36 lakhs	1649674	94%	1419783	94%
36 lakhs to 60 lakhs	8092	0.5%	7438	0.5%
60 lakhs to 120 lakhs	94190	5.4%	79244	5.2%
120 lakhs to 180 lakhs	2766	0.2%	2763	0.2%
180 lakhs to 240 lakhs	1493	0.1%	1510	0.1%
240 lakhs to 300 lakhs	1040	0.1%	1016	0.1%
Above 300 Lakhs	3144	0.2%	3246	0.2%
Grand Total	1760401	100%	1515000	100%

Restricting new registrations to pass upto Rs. 3 Lac ITC per month will affect only about 6-6.5% of the taxpayers.

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GST Revenue Position

37TH GST COUNCIL MEETING (20/09/2019)

GST revenue during April - August, 2019

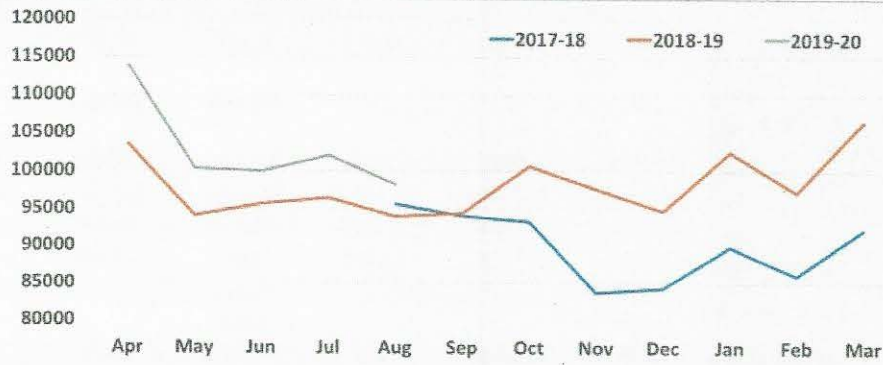
(Figures in ₹ Crore)

	Apr-19	May-19	June'19	July'19	Aug'19
CGST	21,163	17,811	18,366	17,912	17,733
SGST	28,801	24,462	25,343	25,008	24,239
IGST	54,733	49,891	47,772	50,612	48,958
Domestic	31,444	25,015	25,792	26,366	24,140
Imports	23,289	24,875	21,980	24,246	24,818
Comp Cess	9,168	8,125	8,457	8,551	7,273
Domestic	8,115	7,172	7,582	7,754	6,432
Imports	1,053	953	876	797	841
Total	1,13,866	1,00,289	99,939	102,083	98,202

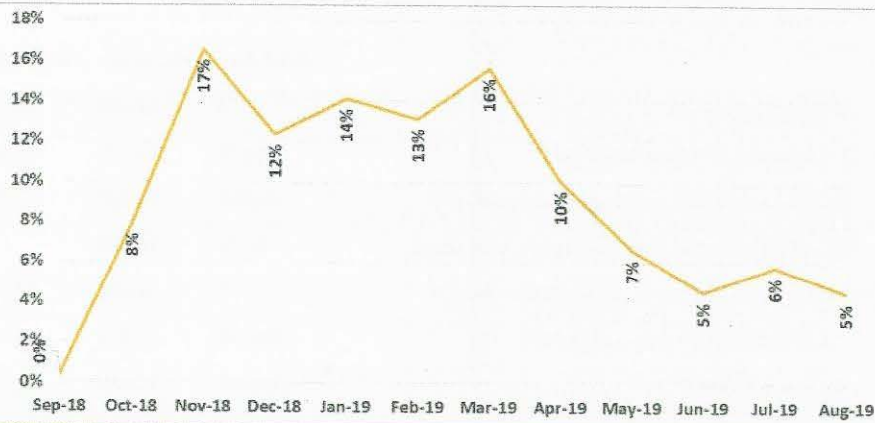


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Trends in total gross GST Revenues (₹ crore)



Month-on-month growth in total gross GST Revenues



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Net IGST Balance

Fig. In Crore

Month	April'19	May'19	June'19	July'19	August'19	Total
Collections	54,733	49,891	47,772	50,612	48,958	251966
Recovery from IGST Ad-hoc apportionment	0	0	0	8000(+)	6000(+)	14000
Refunds	5,353(-)	6,500(-)	10,723(-)	8,700(-)	6,025(-)	37301(-)
Settlement	36,345(-)	32,536(-)	31,782(-)	57,426(-)	45788(-)	203877(-)
CGST	20,370	18,098	18,169	33,027	26,165	115829
SGST	15,975	14,438	13,613	24,399	19,623	88048
CGST ad hoc	6,000			7,500		13500
SGST ad hoc	6,000			7,500		13500
Net	1,035	10,855	5,267	-22,514	3,145	(-)2212

GST Compensation Cess Balance

	2017-18	2018-19	2019-20
1. Opening balance	0	21,466	47,272
2. Compensation Cess Collected	62,612	95,081	41,574
3.a. Compensation required for the year	48,650	81,177	45,745
b. of (a) compensation released in later years	7,504	18,934	0
c. Compensation of previous years released	0	7,032	19,406
d. Compensation released (a-b+c)	41,146	69,275	65,151
4. Closing Balance	21,466	47,272	23,695



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

State/UT	2018-19	2019-20
Arunachal Pradesh	-49.0	-71.8
Mizoram	-53.7	-59.3
Manipur	-29.7	-36.4
Nagaland	-17.9	-33.5
Sikkim	-16.6	-25.1
Meghalaya	14.2	10.4
Andhra Pradesh	-0.8	10.7
Uttar Pradesh	5.0	10.8
Telangana	2.5	11.5
Assam	5.8	12.2
Tamil Nadu	5.2	13.0
West Bengal	7.4	16.4
Maharashtra	4.1	16.7
Tripura	17.4	19.0
Rajasthan	11.8	20.3
Jharkhand	17.2	20.4

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

State/UT	2018-19	2019-20
Madhya Pradesh	16.3	21.0
Bihar	20.0	21.8
Gujarat	13.5	22.8
Haryana	13.8	24.8
Kerala	17.2	25.4
Odisha	24.0	26.5
Karnataka	20.0	27.7
Delhi	18.9	29.7
Chhattisgarh	25.9	33.3
Uttarakhand	35.4	34.3
Jammu and Kashmir	28.0	35.7
Goa	25.5	36.7
Himachal Pradesh	36.1	39.9
Punjab	36.5	43.5
Puducherry	41.9	56.7
Average	12.7	20.9



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Revenue Gap during the period April-August



Return filing (GSTR-3B) till due date and till date

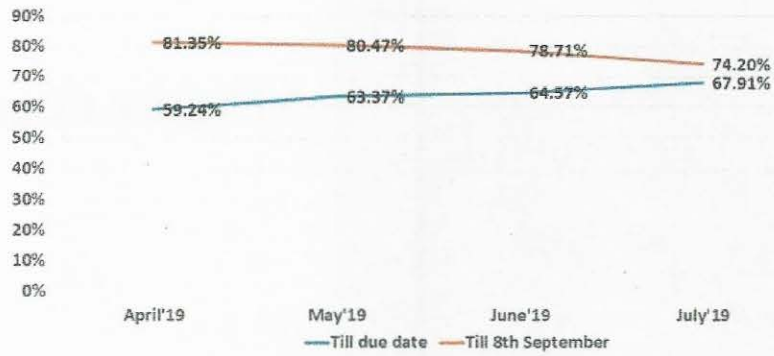
Return Period	Due Date	Required to file	Till due date		Till 8 th September	
			Returns filed	%	Returns filed	%
April'19	20 th May'19	10233313	6061978	59.24%	8324486	81.35%
May'19	20 th June'19	10286063	6518408	63.37%	8277220	80.47%
June'19	20 th July'19	10358399	6688664	64.57%	8153056	78.71%
July'19	22 nd Aug'19	10426762	7080475	67.91%	7736519	74.20%

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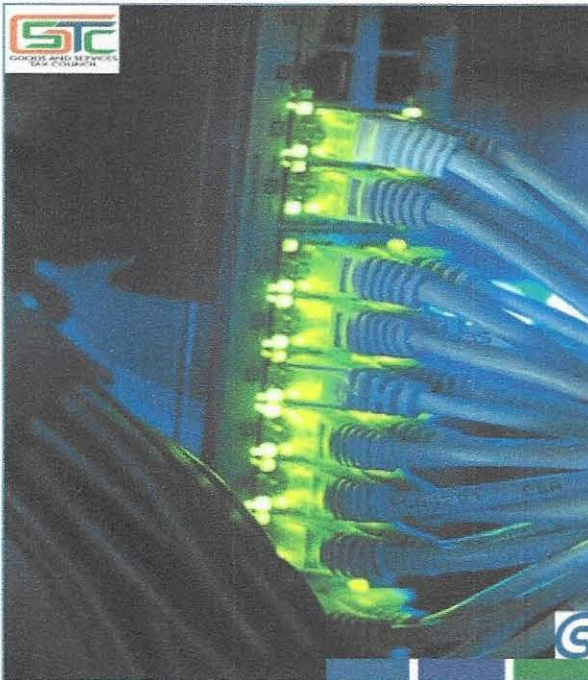
Return filing (GSTR-3B) till due date and till date



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Annexure 5



37th GST Council Meeting



20th Sept 2019

Agenda No. 9: Status on RFID EWBS Integration

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Recommendations of Committee of Officers

- Report of Committee of Officers finalized on 02nd August 2019
 - **Salient recommendations:**
 - All States with existing RFID systems / tracking systems to integrate with NHAI led NETC system using FASTag only.
 - FASTag based E-way bill tracking mechanism to be adopted.
 - E-way bill system be integrated with NETC (National Electronic Toll Collection) system.
 - Toll plazas be provisioned with common standard design and architecture to ensure compatibility across the country.
 - **Analytics be done and data collected through the EWBS and NETC e.g.**
 - Movement of vehicles without E-way bills.
 - Recycling of e-way bills.
 - E-way bill generation without actual movement of goods.
 - Tracking high risk tax payers/transporters/vehicles/goods.
 - Enhancing accuracy of time-distance relationship of goods movement

Current Status of RFID – EWBS Integration

- MoRTH has mandated 100 % electronic toll payment using FASTag by 01/12/19.
- Points of Sale (POS) to be ramped up to enable the deadline. Current POS are 10,500. NHAI planning to ensure 35,000 POS by September end.
- Current RFIDs sold: 57.18 lakhs.
- Current # of vehicles affixed with RFIDs: 52.20 lakhs.
- # of Banks associated with RFIDs: 23 Issuer banks and 10 acquirer banks.
- # of toll plazas with NETC system on national highways: 526
- Meeting held with NPCI and NIC on 05th Sept for technical integration discussion. # of APIs prepared by NIC: 5 (heartbeat check, FASTag data push, toll plaza data push, transaction data push, data recon API).
- APIs are ready and available on sandbox. Testing to be completed by 15 Oct '19.
- NPCI to extend its network to NIC EWBS by end October 2019.

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Movement of Vehicles without e-way bills

based on Fastags at Toll Plaza

E-Way Bill RFID

Home | Report on Movement of Vehicle with no e-Way Bill | Logout

State: KARNATAKA | Location: (Bangalore Urban AI) | Date: 10/02/2019 | Go | Exit

S.No.	Vehicle No.	Date & Time
1.	AP03TE5965	10-02-2019 01:52:23 AM
2.	AP03TE5966	10-02-2019 03:27:53 AM
3.	AP16T01989	10-02-2019 12:37:03 PM
4.	CKCERU7832	10-02-2019 10:58:21 AM
5.	FOCF028125	10-02-2019 05:06:34 AM
6.	GU07V23458	10-02-2019 05:35:07 AM
7.	KA01A82850	10-02-2019 07:54:02 PM
8.	KA01AC1368	10-02-2019 12:32:22 AM
9.	KA01AC4156	10-02-2019 09:53:17 AM
10.	KA01AC4599	10-02-2019 12:46:27 AM
11.	KA01AC7286	10-02-2019 10:00:08 PM
12.	KA01AD2769	10-02-2019 05:49:19 AM
13.	KA01AE2342	10-02-2019 05:53:01 PM
14.	KA01AE2343	10-02-2019 04:55:06 PM

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Recycling of e-way bills with same Vehicle

based on Fastags at Toll Plaza

E-Way Bill RFID

Home | Report on Recycling of e-Way Bill / Same e-Way Bill for multiple movements | Logout

State: ANDHRA PRADESH | Location: Anantapuram Kasey | Date: Mar-2019 | Go | Exit

S.No.	Date & Time	EWB Number	Vehicle Entered Date	EWB Validity
AP02TA3366				
1.	12-03-2019 01:10:31 AM	621085387990	30-03-2019 04:14:00 AM	25-03-2019
2.	15-03-2019 07:28:01 PM			
3.	22-03-2019 08:57:12 PM			
4.	24-03-2019 10:43:57 PM			
AP02TB4354				
5.	12-03-2019 02:38:50 AM	311094522456	09-03-2019 11:53:00 PM	01-04-2019
6.	15-03-2019 06:54:37 PM			
AP02TC3447				
7.	17-03-2019 04:35:06 PM	651089912002	15-03-2019 03:06:00 PM	01-04-2019
8.	20-03-2019 07:25:19 PM			
AP02TC4298				
9.	13-03-2019 08:32:28 PM	131111522308	12-03-2019 02:22:00 AM	15-03-2019
10.	20-03-2019 10:01:28 PM	151114600131	22-03-2019 10:25:00 PM	26-03-2019
11.	22-03-2019 03:00:00 PM			

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Recycling of e-way bills with different Vehicles

based on Fastags at Toll Plaza

HOME

Report on E-Way Bill Recycling of e-way bills with different vehicles

State: MADHIA PRADESH Location: Guna Guna Date: Feb-2019 Go Exit Signout

E-Way Bill RFID

S.No.	Vehicle Number	Date & Time	EWB Number	Vehicle Entered Date	EWB Validity
1.	UP21BN0072	11-02-2019 09:49:29 AM	201077652071	04-02-2019 07:25:00 PM	19-02-2019
2.	UP78CT4385	19-02-2019 01:03:02 PM		06-02-2019 12:34:00 PM	
3.	MP09HG6965	22-02-2019 10:24:18 AM	601078370750	15-02-2019 06:42:00 PM	04-03-2019
4.	MP09HH0175	05-03-2019 04:29:10 PM		14-02-2019 06:58:00 PM	
5.	MP09HG2859	19-02-2019 12:47:07 PM	601078325589	15-02-2019 01:40:00 PM	03-03-2019
6.	UP78CT4385	19-02-2019 01:03:02 PM		18-02-2019 03:04:00 PM	
7.	UP78CN0751	09-03-2019 10:49:06 AM	6410803932748	23-02-2019 08:32:00 PM	11-03-2019
8.	UP78CN8884	10-03-2019 04:46:01 PM		27-02-2019 04:44:00 PM	
9.	UP78BT6375	20-02-2019 06:00:46 PM	681077349669	13-02-2019 09:17:00 PM	28-02-2019
10.	UP78BT6943	26-02-2019 12:05:34 PM		15-02-2019 02:47:00 PM	

e-way bills without movement of goods

based on Fastags at Toll Plaza

HOME

Report on generation of E-Way Bill for movement of goods

Supplier State: BIHAR Date: 24/02/2019 Go Exit Signout

E-Way Bill RFID

S.No.	EWB Number	Vehicle No.	EWB Date	Vehicle Entered Date	EWB Validity
1.	881040320219	AP121234	24-02-2019 02:23:00 PM	24-02-2019 02:23:00 PM	08-03-2019
2.	851040329080	AP16TB4929	24-02-2019 04:31:00 PM	24-02-2019 04:31:00 PM	19-03-2019
3.	821040312007	AP16TC6889	24-02-2019 12:27:00 PM	24-02-2019 12:27:00 PM	21-03-2019
4.	821040320576	AP16TX2529	24-02-2019 02:31:00 PM	24-02-2019 02:31:00 PM	31-03-2019
5.	871040344443	AP37TB9686	24-02-2019 07:23:00 PM	24-02-2019 07:23:00 PM	13-03-2019
6.	841040302538	AS01AC3113	24-02-2019 10:10:00 AM	24-02-2019 10:10:00 AM	25-02-2019
7.	811040302584	AS01AC4659	24-02-2019 10:11:00 AM	27-02-2019 02:20:00 AM	07-03-2019
8.	801040315480	AS01DO1294	24-02-2019 01:12:00 PM	24-02-2019 01:12:00 PM	25-02-2019
9.	871040308084	AS01EC5773	24-02-2019 12:38:00 PM	27-02-2019 09:07:00 PM	06-03-2019
10.	851040320852	AS01EC8285	24-02-2019 03:59:00 PM	25-02-2019 10:50:00 PM	02-03-2019

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Agenda No. 11 New GST Return

Transition Plan Approved by GST Council

1. GSTR-1 to be discontinued effective Oct'19
2. Run GSTR-3B and GST ANX-1 in parallel for 2 months
3. Integrate GSTR-3B and GST ANX-1 to take care of refunds (through the Customs system-ICEGATE),
4. Freezing of GST ANX-1 on GSTR-3B filing and move the deferred invoices to next period

Status of Implementation

Functionalities	Beta Ready	Status
Offline Prototype	May-19	Completed
GST ANX-1 Offline – Sahaj, Sugam, Normal	Jun-19 Jul-19	In Beta
GST ANX-1 JSON upload GST ANX-2 JSON download GST ANX-2 JSON upload	Jul-19	In Beta
GST ANX-2 offline	Jul-19	In Beta
Purchase Register Matching tool	Jul-19	In Beta
GST ANX-1 online - Summary Generation and View	Jul-19	In Beta

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Challenges in the Transition option

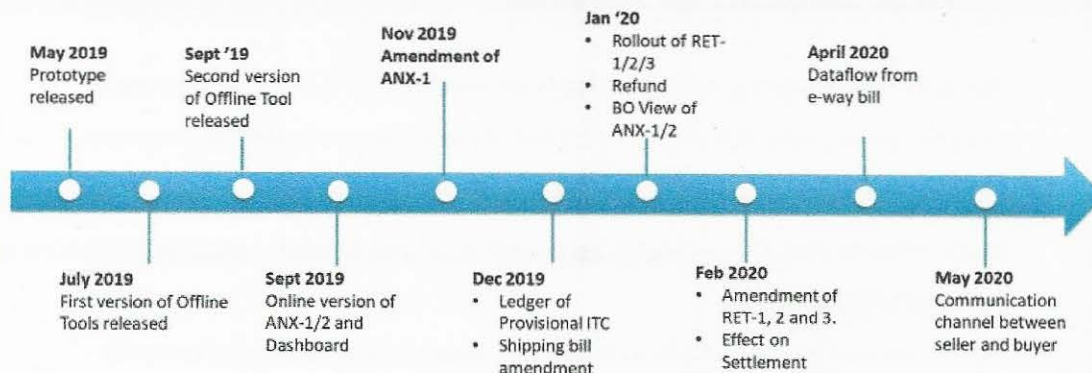
1. Transition plan has challenges from refund perspective: If there is no GSTR-1, there would be no GSTR-2A. ITC refund would be impacted if GSTR-2A is phased out.
2. In new regime, refund can be processed based on GST ANX-2 (data auto-drafted from GST ANX-1) as ANX-1 is frozen on filing GST RET-1. Since no GST RET-1 is filed during this period, GST ANX-1 will not be frozen till Jan 2020. Thus there will be scope of change in GST ANX-1 after refund is processed in case GSTR-3B is not integrated with GST ANX-1
3. Amendment of invoices through GST ANX-1A is required at the time of Go-live for Export refund. This use case is extremely complex and cannot be implemented by 1st Oct 2019
4. Reconciliation of Return Filing data across old and new regimes
5. Developing Back-office and MIS with filing done across two different sets of Return Forms
6. Readiness of the Eco-System involving GSP, ASP and CBIC / Model 1 States that leverage API for data communication.

Recommendations

- New return should be rolled out for all types of taxpayers together
- Date of deployment: wef 1st of Jan 2020

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New Return Timelines



Trail of Offline Tool to prepare ANX-1 and acceptance/rejection on downloaded ANX-2, Matching of ANX-2 and Purchase Register, Upload of ANX-2 and Creation of summary on dashboard being tried by taxpayers/consultants

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Update on Trial Run of Offline Tool for Annex 1, Annex 2 & Matching tool)

- ❖ Around 11,000 uploads of ANX-1 has taken place.
- ❖ To increase awareness, a total of 13 workshops were conducted by GSTN in association with Industry/Trade Associations: FICCI, PHD Chamber of Commerce, ASSOCHAM, CII in the month of August/Sept 2019.
 - ❖ 919 taxpayers / tax Consultants
 - ❖ 1236 tax officers participated (Highest number in Ranchi-around 250)
- ❖ The Cities covered were:

Ahmedabad, Bengaluru, Hyderabad, Chandigarh, Gurugram, Guwahati, Kochi, Lucknow, Mumbai, New Delhi, Pune, Ranchi
- ❖ 15 more cities to be covered.
- ❖ Master trainers trained at Tax Office HQ need to impart similar training and demo at District level.
- ❖ Each Tax Officer should get at least 20 taxpayers/consultants to try the Offline Tool as well as the Online version

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Approval sought

- Going by past experience, huge filing is expected on 10th of following month, specially after end of Quarter when Monthly and Quarterly filers will upload ANX-1.
- GST Council has approved staggered filing of RET (large taxpayers by 20th and others by 25th of next month). **Similarly, last date of upload of ANX-1 may be staggered as 10th and 13th for them.**
- To ensure smooth filing on last three days, accept/reject action of invoices appearing in ANX-2 may be allowed upto 17th and **not on 18/19 and 20th of the next month.**

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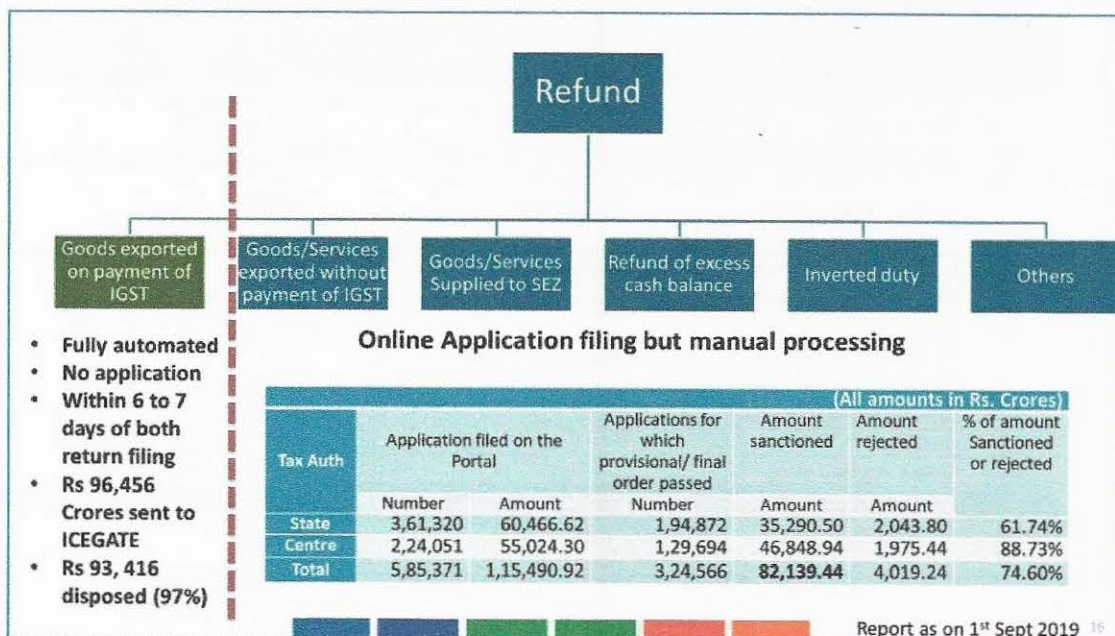
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Agenda No 12

Integrated Refund System with Disbursal by Single Authority


15






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Single Authority Disbursement

Highlights

 **Single Authority Disbursement:** All refund Will be paid through PFMS, subsequent settlement

 **High Level Accuracy:** Taxpayers' banks details are validated prior to disbursement

 **Quick and reliable errors and grievance handling**

 **Timeliness:** Disbursement of refund will be faster, since entire process will be ONLINE



Timelines

Sl. No.	Functionalities	Timelines
1	Taxpayers Master Validation: Testing and Integration	16 th Sept. 19
2	Disbursement: Payment Order file transmission to PFMS and disbursement confirmation file from PFMS to GST System testing	16 th Sept. 19
3	Model-1 and CBIC API integration with Common Portal: <ol style="list-style-type: none"> CBIC, Karnataka and Sikkim completing their testing Tamil Nadu, Andhra, Meghalaya will complete within next 10 days Goa and Kerala are testing the software 	24 th Sept 2019

REFUND APPLICATIONS AS ON 15th Sep 2019

Reason Code	Reason Description	No. of Application	Amount (In Crores)	%age of Application	%age of Amount
AF-01	Excess balance in Electronic Cash ledger	2,03,271	4,994	34.07%	4.19%
AF-02	Exports of services- With payment of Tax	19,106	3,773	3.20%	3.17%
AF-03	Exports of goods / services- Without payment of Tax, i.e., ITC accumulated	2,09,930	77,179	35.18%	64.77%
AF-04	On account of assessment/provisional assessment/ appeal/ any other order	852	58	0.14%	0.05%
AF-05	ITC accumulated due to inverted tax structure (clause (ii) of proviso to section 54(3))	1,03,411	23,062	17.33%	19.36%
AF-06	On account of supplies made to SEZ unit/ SEZ Developer (with payment of tax)	21,516	1,779	3.61%	1.49%
AF-07	On account of supplies made to SEZ unit/ SEZ developer (without payment of tax)	8,042	3,044	1.35%	2.55%
AF-08	Recipient of deemed export	2,006	486	0.34%	0.41%
AF-10	Tax paid on an intra-State supply which is subsequently held to be inter-State supply and vice versa (change of POS)	110	156	0.02%	0.13%
AF-11	Excess payment of tax, if any	5,615	532	0.94%	0.45%
AF-12	Any Other	21,405	3,573	3.59%	3.00%
AF-13	Supplier of deemed exports	1,451	516	0.24%	0.43%
Total		5,96,715	1,19,151	100.00%	100.00%

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Refund Applications: Export without payment and Inverted duty FY 18-19

SLAB ON TURN OVER based on turnover of FY 2018-19	EXPORT WITHOUT PAYMENT				INVERTED DUTY STRUCTURE			
	No. of Refund Applications	%age of Sharing (No. of Tax Payers)	Amount Claimed	%age of Sharing (Amount Claimed)	No. of Refund Applications	%age of Sharing (No. of Tax Payers)	Amount Claimed	%age of Sharing (Amount Claimed)
NIL	53	0.08%	1.95	0.01%	40	0.10%	0.57	0.00%
Upto 5 Lakhs	128	0.18%	3.66	0.01%	99	0.24%	1.32	0.01%
5 to 10 Lakhs	142	0.20%	3.00	0.01%	96	0.23%	1.87	0.02%
10 to 20 Lakhs	365	0.53%	4.67	0.01%	229	0.56%	1.83	0.02%
20 to 30 Lakhs	438	0.63%	7.40	0.02%	260	0.63%	2.47	0.02%
30 to 40 Lakhs	451	0.65%	9.02	0.03%	313	0.76%	4.25	0.04%
40 to 50 Lakhs	477	0.69%	8.18	0.02%	362	0.88%	4.09	0.04%
50 to 70 Lakhs	903	1.30%	23.70	0.07%	721	1.75%	11.48	0.10%
70 Lakh to 1 Crore	1358	1.95%	37.15	0.11%	1239	3.01%	22.80	0.20%
1 Crore to 1.5 Crores	1992	2.87%	58.50	0.17%	1964	4.76%	40.56	0.35%
1.5 Crores to 2 Crores	2020	2.91%	64.53	0.18%	1725	4.18%	46.53	0.40%
2 Crores to 3 Crores	3591	5.17%	133.82	0.38%	3257	7.90%	106.44	0.92%
3 Crores to 4 Crores	3309	4.76%	133.19	0.38%	2673	6.48%	110.34	0.96%
4 Crores to 5 Crores	2774	3.99%	132.20	0.38%	2244	5.44%	102.31	0.89%
5 Crores to 8 Crores	6869	9.88%	425.10	1.21%	4882	11.84%	281.38	2.44%
8 Crores to 10 Crores	3470	4.99%	253.41	0.72%	2160	5.24%	157.46	1.36%
10 to 20 Crores	11067	15.92%	1146.16	3.27%	5597	13.58%	540.45	4.68%
20 to 50 Crores	12374	17.80%	2311.07	6.59%	6902	16.74%	1044.41	9.04%
50 to 100 Crores	6479	9.32%	2167.61	6.18%	3200	7.76%	820.09	7.10%
100 to 500 Crores	8218	11.82%	6184.74	17.64%	2506	6.08%	2149.76	18.61%
Above 500 Crores	3041	4.37%	21957.55	62.62%	759	1.84%	6099.47	52.81%
GRAND TOTAL	69519	100.00%	35066.62	100.00%	41228	100.00%	11549.89	100.00%

Age Analysis of cases reported in System by Tax Officer

State & Centre			STATE		CENTRE		
AGE	No. of App	%age	No. of App	%age	No. of App	%age	
<= 10 days	44136	49.33%	21599	38.13%	22521	68.66%	
11-20 days	1481	1.66%	1327	2.34%	153	0.47%	
21-30 days	1730	1.93%	1461	2.58%	269	0.82%	
31-40 days	1738	1.94%	1400	2.47%	338	1.03%	
41-50 days	2032	2.27%	1598	2.82%	432	1.32%	
51-60 days	2081	2.33%	1614	2.85%	466	1.42%	
61-70 days	2135	2.39%	1543	2.72%	592	1.80%	
71-80 days	1931	2.16%	1437	2.54%	493	1.50%	
81-90 days	1947	2.18%	1410	2.49%	537	1.64%	
91-100 days	1836	2.05%	1347	2.38%	488	1.49%	
101-111 days	1796	2.01%	1321	2.33%	475	1.45%	
111-120 days	2059	2.30%	1544	2.73%	515	1.57%	
Above 120 days	24573	27.46%	19045	33.62%	5522	16.83%	
TOTAL	89475	100.00%	56646	100.00%	32801	100.00%	

- 40.55% cases were disposed after mandatory period of 60 days
- For Centre it was 26.28% and for States it was 48.81%
- Time bound reporting of RFD-01B by all tax authorities to have better control on time of disposal


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Agenda No 13

Status of E-Invoice Implementation

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Current System of Invoice Data Reporting

- Separate reporting of invoice data for GST Return and e-way Bill, which is different from original invoice
- Both have different formats and hence the taxpayer has to prepare them separately every time.
- Taxpayers generate e-way bills themselves but for preparation of Return, they go to tax consultants.

Challenges faced by Tax Administration

- Problem of fake invoices (Taxpayer can generate large number of invoices, push them in the GST system and vanish)
- GSTR-1 and GSTR-3B not linked and hence passing on fake ITC is easier
- Pre-populating Return is not possible

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Advantages of e-Invoice System

Advantages to Trade

- Automation of tax relevant process
- Backward integration with e-way bill, return, refund etc.
- Reduces compliance Cost by taxpayers
- No hard copies of invoices
- Assured Input Tax Credits
- Early settlement of accounts
- Simplified Compliance verification
- Becomes part of business process

Advantages to Govt

- Auto matching of ITC claims
- Reduce fraud such as
 - Carousel fraud
 - Phantom companies
 - Suppression of turnover
 - Clandestine supplies
- Simplified Compliance verification
- Better Tax management
- Better HR usage
- Providing tax reliefs and spurring the economic activities

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International Scenarios

- Taxpayers are increasingly be required to use near real time clearance models.
- Latin American, Asian & some European countries first implemented clearance model
- They propose to cover all kinds of fiscal documents, such as invoices, payments, receipts, credit notes, debit notes, monthly salary statements
- Implementation and the learning from overseas:

Country	Pilot	Made Compulsory	Coverage	Data Format
South Korea	1997	2008	B to B	UBL
Chile	2002	2014	B to B	Electronic Tax Document DTE
Singapore	2003	2008	B to B	PEPPOL
Mexico	2004	2011	T.O.> Rs1.5 crore	CFDI (Comprobante Fiscal Digital or Internet)
Norway	2005	2011	B to G	PEPPOL
Sweden	2005	2008	B to G	PEPPOL
Denmark	NA	2005	B to G	NemHandel, PEPPOL

Spain, Turkey, Czechoslovakia, Peru, Belgium, Sweden, Colombia, Australia, New Zealand, Italy, USA, Canada etc. are working on e-invoice with UBL as the base.

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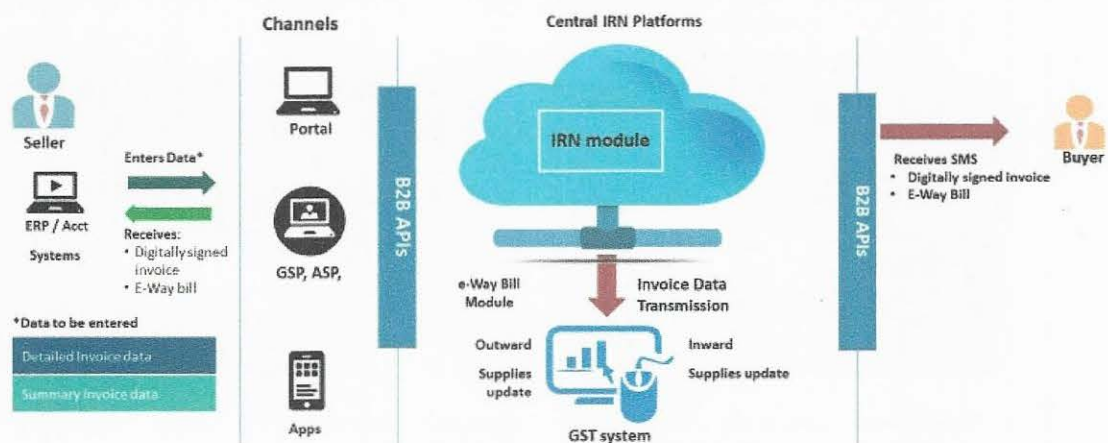
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Study of Korean System - Actionable Points for successful implementation

- Providing the preparation period to use, understand and adopt the new system
- Gradual extension on the range of the mandatory e-tax invoice system
- Providing tax credit for taxpayers who accept the mandatory e-invoice system.
- Imposing different types of Penalty, in case of not meeting the obligations of the mandatory e-invoice system.
- Providing various modes of issuing e-invoice to meet diverse taxpayers' needs
- Transmitting and delivering the e-invoice to purchaser and tax authority immediately, so that revising is impossible
- Exemption of submission of some tax reports.
- Awareness/Efforts to increase usage of the e-invoice system
- Enabling alternative IT environment for stake holders

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e-Invoice System - Process Flow



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Approval of Basic Features of the Solution

- **24X7 operations without any downtime:**
 - The proposal is to make an invoice legal only if it has a unique reference number and signed by Central portal. That demands no downtime of the system. Hence, multiple agencies to report invoice and sign the same and generate QR Code.
- **Scalability:**
 - Multiple options for uploading the invoice (mobile; accounting software, Excel tool etc.)
 - Multiple agencies to run the system in parallel. Starting first with NIC's system.
 - Highly scalable to take care of the increase in number of invoices for next 7 to 9 years with possibility to support B2C transactions, if Government decides to extend it to B2C invoices.
- **Consistency:**
 - The unique number should be consistent across the entire eco-system for the life-cycle of the invoice.
- **Authenticity of content of invoice/Instant verification:**
 - Invoice should be easily verified for authenticity by online verification/scanning QR code (in case of offline validation).
- **Standard of e-invoice schema proposed by technical committee after national consultation**
- **Rollout based on size of invoice.**

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Suggestion on rollout: Trial Period

No. of invoices reported in GSTR-1

Invoice Value in Range	18-Jul	18-Aug	18-Sep (Sep)	% of total
Less than Re. 1/-	144522	91303	73944	0.04%
Rs. 1 to 5000	70659111	67050677	84562050	40.77%
Rs. 5K to 10K	18721798	18618066	25376274	12.23%
Rs. 10K to 20 K	18412303	18691949	25240434	12.17%
Rs. 20K to 50 K	23763639	24782813	33330404	16.07%
Rs. 50 K to 70 K	6420343	6740614	8225155	3.97%
Rs. 70 K to 1 Lakh	6124660	6328925	7751131	3.74%
Rs. 1 Lakh to 2 Lakh	8111953	8428748	9561009	4.61%
Rs. 2 Lakh to Rs. 5 Lakh	6685842	7058084	7567706	3.65%
Rs. 5 Lakh to 10 Lakh	2934701	3153725	3214941	1.55%
Rs. 10 Lakh to 50 Lakh	2120413	2344974	2324978	1.12%
Rs. 50 Lakh to Rs. 1 Crore	115510	126537	120112	0.06%
Above Rs. 1 Crore	77440	86014	85435	0.04%
TOTAL	16,42,92,235	16,35,02,429	20,74,33,573	100.00%

Proposal for consideration of the Council

- Start with Invoice value above Rs 50,000/- which is the threshold for e-way bill.
- People are already familiar with it.
- Only service sector will have to learn this afresh.
- Other way could be to limit this to Taxpayers having turnover above Rs 50 Crores for invoices above Rs 50,000/ for the trial.

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Agenda No. 14

Linking GST Registration with Aadhaar

Why Aadhaar e-KYC based Registration is required

- To curb/check fly-by-night operators who are taking advantage of easy registration system. (3 working days and no field inspection)
- Statistics from e-way bill

Category of persons are covered under Aadhaar Authentication in Phase-1

- Authorized signatory for all types, Proprietor, Managing/Authorized partner (in case of partnership) and Karta in case of HUF.
- For the categories of taxpayers, who are not covered in first phase, the e-KYC authentication will be implemented in second phase,

Aadhaar will not be required in case of

- the person who is not resident/citizen of India,

For existing registrant persons of the above category covered in Phase-1, a screen will be provided for e-KYC authentication from Aadhaar


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Authentication Process

Where Aadhaar is provided

- To maintain privacy of promoters, GST System shall send "link" to the concerned persons at their e-mail and mobile to enter Aadhaar and OTP, if the promoter is not willing to share Aadhaar with Auth Signatory.
- On successful authentication, demographic data of the persons shall be fetched from Aadhaar to GST System,
- Registration process thereafter, will remain the same as it is today

In cases where promoters decline to provide Aadhaar details:

- Site survey will be done and identification documents will be verified.
- In such cases, 3 working days upper cap will not be applicable (no deemed registration).

Work on changes in existing system has just started. Estimated to become operational from 1st January 2020.

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Agenda 15

Update on Change of Share Capital/Ownership Structure of GSTN and transfer of shares of GSTN from EC & Non- Government Institutions to Centre, State Governments & UTs

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Transfer of GSTN's shares to Government:

1. Centre, State Governments and UTs need to accept the proposal within 30 days from the receipt of Share Transfer Notice and are required to make the Share Purchase Consideration thereafter accordingly. In three cases Share Transfer Notice expired and had to be re-issued as required action was not taken by the Transferees (States/UTs) within 30 days.
2. Pursuant to the above Share Transfer Notices, only **Central Government, Govt. of Madhya Pradesh, Maharashtra, Nagaland, Manipur, Jharkhand, Puducherry and Delhi** have accepted the proposal within the above timelines.
3. The required action is still awaited from the remaining State Governments through Purchase Notice and pay the respective share purchase consideration and execute necessary documentations including Shareholders' Agreement and send the same to GSTN.
4. The Council may take note of the above and issue necessary advisory/directions to all concerned State Governments in order to complete one of the requirement(s) for conversion of GSTN into 100% Government owned entity.

[Handwritten Signature]

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