

## **Changes Announced by GST Council**

50<sup>th</sup> GST Council meeting was held on 11.07.2022 in New Delhi, it has taken important and far-reaching decisions. Following is the gist of the decisions taken by the council:

### **I. Changes in Taxation of Goods**

#### **A. Change in Rate for Goods**

It has been decided to reduce the rate on uncooked/unfried snack pellets, by whatever name called, to 5% and to regularize payment of GST on uncooked /unfried snack pellets during the past period on “as is basis”.

These products include ready to cook snacks like potato chips, fryums, etc. The council has chosen to lay at rest the confusion in their classification, some manufacturers were paying at the rates applicable to cooked snacks of that type and some were not paying at all. Government will come out with removal of difficulty order and specify a date till which those who have not paid or short paid the taxes will not be questioned and those who have paid the taxes higher than the proposed 5%, will not be eligible for any refund.

#### **B. Change in Rate for certain drugs and foods for special medical purposes.**

1. Exempt IGST on Dinutuximab (Quarziba) medicine when imported for personal use.
2. It has been decided to exempt IGST on medicines and Food for Special Medical Purposes (FSMP) used in the treatment of rare diseases enlisted under the National Policy for Rare Diseases, 2021 when imported for personal use subject to existing conditions.
3. Similarly, IGST exemption is also being extended to FSMP when imported by Centers of Excellence for Rare Diseases or any person or institution on recommendation of any of the listed Centers of Excellence.

### **C. Changes for Textile Industry**

1. Supply of raw cotton, including kala cotton, by agriculturists to cooperatives is taxable under reverse charge mechanism and to regularize issues relating for the past period on “as is basis”.

Some cooperatives were paying GST @ 5% on purchases of cotton but many were not because of lack of knowledge, however, these cooperatives were paying due GST on their outward supplies which meant that the Government did not lose any revenue. Many such cooperatives received demand notices for payment of GST on cotton under RCM, but because the time limit to avail this ITC was over, they were put in a fix.

The government will come out with removal of difficulty order and specify a date till which those who have not paid or short paid the taxes will not be questioned and those cooperatives who have paid the taxes under RCM, will not be eligible for any refund.

2. It has been decided to reduce GST on imitation Zari thread or yarn known by any name in trade parlance from 12% to 5% and to regularize payment of GST related to this matter during the past period on “as is basis”.

### **D. Changes for Automobile Industry**

1. Currently cars fulfilling the following 4 conditions are taxable at 50% (GST 28% + 22% Compensation cess). If anyone condition is not met, then those cars are taxed at a rate of 48% or lower.
  - i. Popularly known as SUVs and
  - ii. Length exceeding 4000 mm,
  - iii. Engine capacity exceeding 1500 cc and
  - iv. having Ground Clearance of 170 mm & above

2. GST Council has now decided to remove the first condition of the car being popularly known as an SUV, which means that if any car meets the last 3 conditions even if it is not an SUV, it will be taxable @ 50%.
3. There was a huge controversy on how to evaluate the condition of Ground Clearance of 170 mm & above. Whether Ground clearance is to be taken in Laden condition or Unladen. AAAR Maharashtra in case of Tata Motors (Tata Harrier) held that Ground clearance has to be calculated in Laden stage of the vehicle, which meant that the car must be fully loaded with passengers and luggage and then the Ground clearance must be measured. The council has now decided to add an explanation to clarify that 'Ground clearance' means Ground Clearance in un-laden condition. We sincerely hope that his explanation is prospective in nature.

#### **E. Other Changes**

1. Reduce GST rate on LD slag from 18% to 5% to encourage better utilization of this product and for protection of environment.
2. Regularize the matters relating to trauma, spine and arthroplasty implants for the period prior to 18.07.2022 on "as is basis" in view of genuine interpretational issues.
3. Reduce the GST rate on fish soluble paste from 18% to 5% and to regularize payment of GST on fish soluble paste during the past period on "as is basis".
4. Regularize the matters relating to desiccated coconut for the period 1.7.2017 to 27.7.2017 on "as is basis" in view of genuine interpretational issues.
5. It has been decided that on pan masala, tobacco products etc, where it is not legally required to declare the retail sale price, the earlier ad valorem rate as was applicable on 31st March 2023 may be notified in order for levy of Compensation Cess.
6. To include RBL Bank and ICBC bank in the list of specified banks for which IGST exemption is available on imports of gold, silver or platinum and update the list of banks /entities eligible

for such IGST exemption as per Annexure 4B (HBP) of Foreign Trade Policy 2023.

7. Consequential changes in notifications may be carried out in view of the new Foreign Trade Policy 2023.
8. Regularize the issues relating to GST on plates and cups made of areca leaves prior to 01.10.2019.
9. Regularize the issues relating to GST on biomass briquettes for the period 01.7.2017 to 12.10.2017.

## **II. Changes in Taxation of Services**

### **A. Change in Rate for Services**

It has been decided that GST exemption on satellite launch services supplied by ISRO, Antrix Corporation Limited and New Space India Limited (NSIL) may be extended to such services supplied by organizations in private sector also to encourage startups.

### **B. Other Changes in Services**

1. As a trade friendly measure, it has been decided that GTAs will not be required to file declaration for paying GST under forward charge every year. If they have exercised this option for a particular financial year, they shall be deemed to have exercised it for the next and future financial years unless they file a declaration that they want to revert to reverse charge mechanism (RCM).
2. It has also been decided that the last date of exercising the option by GTAs to pay GST under forward charge shall be 31st March of preceding Financial Year instead of 15th March. 1st January of the preceding Financial Year shall be the start date for exercise of option.
3. It has been decided to clarify that services supplied by a director of a company to the company in his private or personal capacity such as supplying services by way of renting of immovable property to the company or body corporate are not taxable under RCM. Only

those services supplied by a director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate under notification No. 13/2017-CTR (Sl. No. 6) dated 28.06.2017.

4. It has been decided to clarify that supply of food and beverages in cinema halls is taxable as restaurant service as long as

(a) they are supplied by way of or as part of a service and

(b) supplied independently of the cinema exhibition service.

Where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

### **III. Decision on Online Gaming, horse racing and Casino Industry**

This issue was under deliberations for a long time, Group of Ministers (GoM) gave its recommendations in the 47<sup>th</sup> Council Meeting, as there was no consensus, GoM was asked to relook at the entire issue afresh. GoM again gave its recommendations in this council meeting and following decisions were taken:

1. GST law will be amended to include online gaming, horse racing and Casinos in schedule III as taxable actionable claims.
2. All three namely Casino, Horse Racing and Online gaming to be taxed at the uniform rate of 28%.
5. Tax will be applicable on the face value of the chips purchased in the case of casinos, on the full value of the bets placed with bookmaker/totalizator in the case of Horse Racing and on the full value of the bets placed in the case of Online Gaming.

Industry's demand of allowing deduction towards the winning amounts that they give back to

the players has been rejected. The council felt that allowing any such concession would make assessments very difficult. With this decision Online Gaming, Casinos and Horse racing industry, will be facing an uphill task and many cases a question of survival.

Further, the Revenue secretary [in press conference held on 11<sup>th</sup> July 2023 which is available at this link (see from 36.30 min onwards)] said as under:

<https://youtu.be/EqojJdsfxIA>

- a. The GST Rate on these 3 sectors has ALWAYS been 28%, its not something new that we have done.
- b. Taxable value has always been the face value that the customer pays for playing these games.
- c. Old cases will go on and the Government will fight those cases.
- d. Basically, the changes described above are only 'Clarificatory' and not to leave anything to doubt.

It needs to be seen how these amendments are drafted and put in the law, but the question that beckons an answer is, if an amendment in law is required to be done to levy a tax, how can that tax be levied retrospectively. Hope the government doesn't get into the business of changing goal posts, a lost match is a lost match, can't win it by changing the rules.

#### **IV. Trade Facilitation Measures**

##### **1. GST Tribunal Formation:**

The Council has recommended the Rules governing appointment and conditions of President and Members of the proposed GST Tribunal for enabling smooth constitution and functioning of Tribunals. Legal amendments made in the GST law with respect to Tribunals will be notified by the Centre with effect from 01.08.2023, so that the same can be brought into operation at the earliest. Once the law is notified the actual process of selection of judges for these tribunals will begin and it may take another 4 to 6 months for the same.

It has also been decided that every state (barring a few smaller states) will have at least 2 State benches or more. Number of benches will be increased in phase manner.

## **2. Annual Returns (GSTR 9 and 9C) for FY 2022-23:**

Relaxations provided in FY 2021-22 in respect of various tables of GSTR-9 & 9C be continued for FY 2022-23.

Further, taxpayers having aggregate annual turnover up to 2 crores would be exempt from filing of FORM GSTR-9/9A for FY 2022-23 also.

## **3. Cross Charge vs ISD**

Circular will be issued or amendment in law will be made to clarify the following:

- a. Input Services Distributor (ISD) mechanism is not mandatory for distribution of ITC of common input services procured from third parties to the distinct persons as per the present provisions of GST law.
- b. Taxability of internally generated services provided by one distinct person to another distinct person (Cross Charge)
- c. Amend the GST law to make ISD mechanism mandatory prospectively for distribution of ITC of such common input services procured from third parties.

The proposed amendment in GST law would mean that all taxpayers who have operations in more than one state in same PAN, will have to mandatorily take a separate ISD registration and distribute third party credits through that mechanism only, cross charge route would be closed forever. We hope that they make a saving provision also whereby if a company is able to consume the entire ITC received from third party in one GSTIN, they are not forced to distribute it on the grounds that the underlying third-party service is utilised by all state branches.

For example, Statutory Auditor services are by definition used by all offices of a company,

will the company be forced to take auditors invoice in ISD GST registration and mandatorily distribute it to all registered branches?

#### **4. Clarification on Warranty related issues**

- a. Circular to be issued to provide clarity on various issues pertaining to the GST liability as well as the liability to reverse input tax credit in cases involving warranty replacement of parts and repair services during warranty period without any consideration from the customers.
- b. Above clarification when issued would say that:
  - No GST is chargeable by the manufacturer on such replacement of parts and/ or repair service and also
  - No reversal of ITC is required to be made by the manufacturer.

#### **V. Clarifications on Refunds**

1. A circular would be issued to say that as Form GSTR 2B was made applicable from 1<sup>st</sup> January 2022 onwards, refunds of accumulated ITC will be restricted to the amount of ITC reflected in this form for refunds falling after 1.01.2022.
2. A circular would be issued to clarify that value of export which will be included in “adjusted total turnover” for the purpose of calculation of Refund amount will be as per the explanation inserted earlier i.e. value of export forming part of “adjusted total turnover” will be lesser of following two:
  - i. FOB value declared in Shipping Bill or Bill of Expopr
  - ii. Value declared in Tax Invoice

Above clarification would put to rest a long pending misinterpretation of an earlier circular and give immense relief.



3. A circular will be issued to clarify regarding admissibility of refund in cases where export of goods, or the realization of payment for export of services, as the case may be, is made after the time limit provided under rule 96A of CGST Rules, 2017.

#### **VI. Clarifications to Remove Ambiguities.**

1. Registered person, whose turnover exceeds the prescribed threshold (5 crores from 1.08.2023) for generation of e-invoicing, **are required to issue e-invoices for the supplies made to Government Departments or establishments / Government agencies / local authorities / PSUs, etc., registered solely for the purpose of TDS.**
2. Clarification regarding the manner of calculation of interest on amount liable to be paid in respect of wrongly availed and utilized IGST credit, clarifying that in cases of wrong availment of IGST credit, the balance of ITC in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has to be taken in consideration while calculating such interest liability as per rule 88B of CGST Rules, 2017.
3. Mere holding of securities of a subsidiary company by a holding company cannot be treated as a supply of services and therefore cannot be taxed under GST.

#### **VII. Benefit of Circular 183 extended till December 2021**

As per the recommendations of the Council in its 48th meeting, Circular No. 183/15/2022-GST dated 27.12.2022 was issued to provide for the procedure for verification of ITC mismatch cases involving difference in ITC between GSTR-3B vs GSTR-2A during FY 2017-18 and 2018-19.

To provide further relief to the taxpayers, the Council recommended further issuance of a circular to provide for similar procedure for verification of ITC for the period 01.04.2019 to 31.12.2021.

In our GST alert 10/2022-23 dated 2.01.2023, we had said that there was complete vacuum in law till December 2021 as far as ITC mismatch issue was concerned. This decision of the council recognizes this fact, we hope the mechanism given in the proposed circular is benevolent and does not create new hassles.

## **VIII. Special Measures to remove difficulties faced by taxpayers.**

### **1. Manual Filing of Appeals**

- Special procedure to be provided to enable manual filing of appeal against the orders passed by proper officers in respect of TRAN-1/ TRAN-2 claims of the registered persons, filed in pursuance of the directions of Hon'ble Supreme Court in case of the Union of India v/s Filco Trade Centre Pvt. Ltd.
- Rule 108(1) and rule 109(1) of CGST Rules, 2017 to be amended to provide for manual filing of appeal under certain specified circumstances.

It would be pertinent to note here, that majority of the adjudication orders being issued by the Central GST department are manual in nature, none of the SCNs or orders being issued online as mandated, hence the taxpayers are forced to file appeals manually and they are being accepted by the department.

### **2. Amnesty Scheme under GST extended till 31.08.2023.**

Amnesty schemes notified vide notifications dated 31.03.2023 regarding non-filers of FORM GSTR-4, FORM GSTR-9 & FORM GSTR-10 returns, revocation of cancellation of registration and deemed withdrawal of assessment orders issued under Section 62 of CGST Act, 2017, will be extended till 31.08.2023.

- 3.** In view of the prevailing law and order situation in the State of Manipur, the Council recommended to extend the due dates for filing of FORM GSTR-1, FORM GSTR-3B and FORM GSTR-7 for the months of April, May and June, 2023 for the registered persons of State of Manipur till 31.07.2023.

## **IX. Measures for streamlining compliances in GST:**

### **1. E-Way Bill for movement of Gold and Precious stones**

The council has recommended making amendments in rules to mandate the requirement of

generation of e-way bills for Inter State and intra-State movement of gold and precious stones. Once the proposed rules are notified, the requirement for e-way bill will be mandatory for this sector. We hope that the monetary limits are kept high so that small taxpayers are not affected, secondly movement within one district must be kept outside the purview of e-way bills, at least for this sector.

## **2. Special measures for Tobacco and Pan masala sector**

Council has made the following recommendations:

- Special procedure to be followed by the manufacturers of tobacco, pan masala & other similar items inter alia for registration of machines and for filing of special monthly returns.
- Amendment to be made to provide for Special penalty for non-registration of machines by such manufacturers.
- Law to be notified with effect from 01.10.2023 and notification to be issued under section 16(4) of IGST Act. 2017 to provide for restriction of IGST refund route in respect of exports of tobacco, pan masala & other similar items as well as Mentha oil.

More details on this proposed composition scheme are awaited.

## **3. Changes in Registration process:**

Following changes will be made in rules to strengthen the registration process and to effectively deal with the menace of fake and fraudulent registrations in GST:

- a. Details of bank account, in name and PAN of the registered person, to be furnished within 30 days of grant of registration or before filing of GSTR-1/ IFF, whichever is earlier.
- b. System-based suspension of the registration in respect of such registered persons who do not furnish the details of valid bank account within the time period prescribed.

- c. Provide for automatic restoration of such system-based suspension upon furnishing of valid Bank account details.
- d. Where a registered person has not furnished details of a valid bank account, said person will not be allowed to furnish GSTR-1.
- e. Physical presence of the applicant during verification of business premises will not be required.
- f. Physical verification in high-risk cases even where Aadhaar has been authenticated.

#### **4. Procedure for Recovery of Tax and Interest in terms of Rule 88C (3):**

On the recommendations of the GST Council in its 48th meeting held on 17.12.2022, rule 88C was inserted in the CGST Rules, 2017 with effect from 26.12.2022 for system based intimation to the registered person in cases where the output tax liability in terms of FORM GSTR-1 of a registered person for any particular month exceeds the output tax liability disclosed by the said person in the return in FORM GSTR-3B for the said month by a specified threshold. The Council has now recommended insertion of Rule 142B in the CGST Rules, 2017 and insertion of a FORM GST DRC-01D to provide for manner of recovery of the tax and interest in respect of the amount intimated under rule 88C which has not been paid and for which no satisfactory explanation has been furnished by the registered person.

#### **5. Mechanism to deal with differences in ITC between GSTR-3B and GSTR 2B:**

System-based intimation will be sent to the taxpayers in respect of the excess avilment of ITC in GSTR-3B vis a vis that made available in GSTR-2B above a certain threshold, along with the procedure of auto-compliance on the part of the taxpayers, to explain the reasons for the said difference or take remedial action in respect of such difference.

For this purpose, Rule 88D and FORM DRC-01C to be inserted in CGST Rules, 2017, along with an amendment in rule 59(6) of CGST Rules, 2017. This will help in reducing ITC mismatches and misuse of ITC facility in GST.

6. To improve discipline in filing of annual returns, GSTR-3A to be amended to provide for issuance of notice to the registered taxpayers for their failure to furnish Annual Return in GSTR-9 or 9A by due date.
7. Rule 64 and GSTR-5A of CGST Rules, 2017 to be amended to require OIDAR service providers to provide the details of supplies made to registered persons in India in his return in GSTR-5A. This will help in tracking due payment of tax on reverse charge basis by such registered persons in India in respect of supplies received from OIDAR service providers.
8. Rules to amended to provide that the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers to be included in the value of exempt supplies for the purpose of reversal of input tax credit.
9. GST Rules to be amended to provide for consent-based sharing of information of registered persons available on the common portal with other systems. The Council has also recommended issuance of a notification under section 158A of CGST Act, 2017 for notifying “Account Aggregators” as the systems with which information is to be shared by the common portal.
10. The Council has recommended insertion of a clause (ca) in sub-section (1) of section 10 of the IGST Act, 2017 to clarify the place of supply in respect of supply of goods to unregistered persons.

## **X. Conclusion**

Most of the decisions taken are benevolent in nature and will help the taxpayers. However, some of the decisions like taxation of Online Gaming and allied industry in my view are regressive.

Further, when GST was introduced in July 2017, it was promised that Compensation cess will be collected for 5 years only, agree that we had impact of Covid for almost 1+ year, but that has subsided completely. The sovereign promise needs to be fulfilled and especially the mobility sector needs to be treated as an essential sector for growth of India.

Hope the benevolence exuberated by the council in its recommendations is not lost on the drafting table, various circulars proposed by the council are issued keeping the larger interest of the public.

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