



Newsflash: 50th GST Council Meeting's Outcome

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For Circulation

13 July 2023

1.0 Background

The GST Council, headed by Union Finance Minister conducted its 50th meeting on 11 July 2023 in New Delhi.

The key recommendations made by Council are encapsulated as under-

2.0 Clarifications in relation to Services

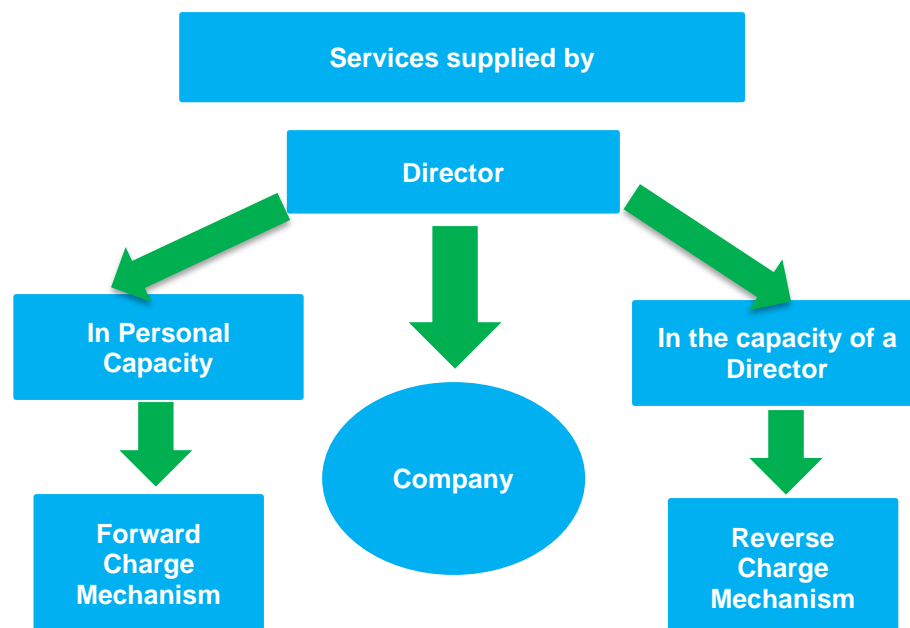
a) GTA Services

It has been recommended to eliminate the requirement of filing of annual declaration by a GTA opting to pay GST under forward charge and that the option exercised once shall be deemed to be in continual force until a declaration to revert to reverse charge is filed.

In our view, the said move serves to relax the GTA suppliers opting to pay GST under forward charge from repeated filing of declarations every year where they do not intend to withdraw from the scheme of payment under forward charge.

b) Services by a Director

It has been recommended to clarify non-applicability of reverse charge mechanism on services supplied by a director of a company to the company in his private or personal capacity e.g. renting of immovable property. There was a significant lack of clarity with regards to the services provided by a director and chargeability under reverse charge. The said clarification seeks to resolve prevalent grey areas with respect to taxability of services provided by a director to a body corporate.



c) Cinema Tickets and Supply of Food/Beverages

It has been recommended to clarify that supply of food and beverages in cinema halls would be treated as supply of restaurant services when –

- Supplied by way of or as a part of a service
- Supplied independently of the cinema exhibition services

In other words, where the sale of cinema tickets include the supply of food and beverages, it would amount to a composite supply and the entire bundle would attract GST at the rate applicable to cinema exhibitions services (being the principal supply).

While the proposed changes would benefit the cinema goers while buying meals inside the premises of the cinema hall separate from the ticket purchase, however, it would also discourage online buying of tickets along with meals at the e-commerce portals as popular 'combo plans' since it would attract a GST Rate of 18% on the entire value of supply (cinema tickets along with food/beverages), causing increased cash payout by the online buyers.

3.0 Taxability and GST Rate on Casinos, Race Courses and Online Gaming

The arena of online gaming witnessed a tremendous boom as compared to the traditional gaming methods in the recent decades. Online gaming market in India is continually flourishing and is worth a whopping 2.6 billion dollars as per a 2022 report and expected to reach 5 billion dollars by 2025.

International gaming companies operating through the world-wide web attract subscribers from across the globe who get registered, deposit money and play (and earn through games played) on such online gaming sites.

There has been a prolonged debate and lack of clarity on the taxability and GST rates on online gaming. It has been a subject matter of grave litigation for several online gaming companies in India witnessing departmental notices imposing liability demands running into thousands crores.

The Scheme of Classification of Services issued by Central Board of Indirect Taxes and Customs (CBIC) prescribed the rates in relation to online gaming by classification into below two broad subsets:

HSN / SAC Code	Description	Rate of GST
998439	This service code includes games that are intended to be played on the Internet such as role-playing games (RPGs), strategy games, action games, card games, children's games; etc.	18%
999692	This service code includes online games involving betting / gambling, casino and gambling house services, etc.	28%

However, due to issues in interpretation and classification of online games into 'games of skill' and 'games of chance', there was a clarity necessitated with regards to applicable GST rate on available online games.

After due deliberations, the GST Council in its 50th meeting has recommended the following:

- a) Proposed amendments in Schedule III of the GST Act i.e. transactions which are not to be considered as a 'supply', thereby excluding online gaming and horse racing from the said Schedule to render them taxable under GST.
- b) Uniform GST Rate of 28% proposed for casinos, horse racing and online gaming i.e. no differentiation on basis of 'games of skill' and 'games of chance'.
- c) Proposed chargeability of GST as per below the valuation:
 - On the face value of the chips purchased in the case of casinos
 - On the full value of the bets placed with bookmaker/totalisator in the case of Horse Racing
 - On the full value of the bets placed in case of the Online Gaming

While the proposed changes put to rest all the ambiguities with respect to chargeability, valuation and rates, however, it would cause a major distress to the online gaming market and sites and adversely impact the revenue and growth of the gaming industry to a considerable extent, thereby leading to put a brake on the growth potential of the ever-flourishing industry.

4.0 Goods and Services Tax Appellate Tribunal

To contest an unfavourable order passed by the proper officer, the GST provisions allow for filing of an appeal with the immediate next level authorities (Deputy/Jt Commissioner/Commissioner – Appeals). While being aggrieved with the judgement of the First Appeal, the concerned taxpayer is supposed to plea before the GST Appellate Tribunal. However, in view of non-formation of the Appellate Tribunal, taxpayers are left with no option than knocking the doors of superior courts resulting into piling up of cases and delayed disposal thereof.

To ensure seamless constitution and functioning of the GST Appellate Tribunal, the Council in its 50th meeting has recommended for appointment of the members, the conditions governing the President of the Tribunal, so on and so forth.

Further, it has been proposed to bring into effect the changes brought about in GST provisions w.r.t. the Appellate Tribunal vide the Finance Act, 2023 with effect from 01 August 2023.

Setting up of State Benches of the GST Appellate Tribunal would be taken up in a phased manner.

The recommended steps are appreciated and seek to bring certainty and clarity on operationalization of the Appellate Tribunal in sooner times.

5.0 Proposed issuance of a Circular to clarify procedures for verification of ITC for the period 01 April 2019 to 31 December 2021

During the initial years of implementation of GST, the taxpayers at large witnessed a lot of issues in reporting their outward supplies which led to non-reflecting of the same in corresponding party's auto-populated GSTR 2A reports.

Such gaps are being identified by the departmental authorities during audits/assessments and being ascertained to be liable for reversals.

To address genuine concerns of the taxpayers with respect to availment of ITC in their GSTR 3B returns vis-à-vis GSTR 2A as identified by the departmental officers during assessments, CBIC earlier issued a **Circular No. 183/15/2022 – GST dated 27 December 2022** applicable to the FY 2017-18 and FY 2018-19.

The below was clarified vide the **Circular No. 183/15/2022 – GST dated 27 December 2022**:

Where difference between ITC claimed in 3B and that available in 2A in respect of a supplier exceeds INR 5 lakhs

- Produce a certificate from CA/CMA certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN which is capable of verification on the ICAI/ICMAI websites.

Where difference between ITC claimed in 3B and that available in 2A in respect of a supplier is up to INR 5 lakhs

- Produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

To further provide relief, GST Council in its 50th meeting has recommended for further issuance of a Circular seeking to provide similar procedures to deal with ITC mismatch issues for the period 01 April 2019 to 31 December 2021.

The proposed issuance of Circular in this regard would provide a considerable relief to bonafide taxpayers who are rightly entitled to claim of input tax credit, however, are suffering due to lapse at the end of suppliers be it non-filing or erroneous filing of their outward details. Further, it would aid to speed up closure of impending assessments for the given years and lead to lesser litigations before the superior authorities.

6.0 Clarification proposed on Input Service Distributor (ISD) mechanism

The GST law has retained the concept of input service distributor from the erstwhile service tax regime. The ISD mechanism provides the facility to a registered person being a head office to obtain a separate registration as an Input Service Distributor, thereby fetching invoices in relation to common supplies attributable to its various branches/locations and consequently distributing it to the respective entitled states in the prescribed ratio of turnover.

Obtaining of an ISD registration by businesses having multi-state presence for distribution of input tax credit has been held to be a mandate and not a facility or option by several advance ruling pronouncements. However, the GST law nowhere expressly states that ISD registration and compliances are mandatory for purposes of distribution of ITC in relation to common sourcing from third parties. Thus, it had become important to clarify the requirements as to obtaining an ISD registration by registered persons having multiple registrations and operating through various states.

Seeking to bring in the desired clarity on the topic, GST Council in its 50th meeting has recommended to clarify by issuance of a circular that as per the effective provisions of GST law, ISD mechanism is not

mandatory for distribution of input tax credit amongst distinct branches in relation to procurement of common input services from unrelated suppliers.

The GST Council has, however, proposed amendment in the GST law to make ISD mechanism mandatory in a prospective manner.

7.0 E-way bill for movement of gold/ precious stones:

Presently, there is a requirement to issue e-way bills to authorise inter-state movement of goods of value exceeding Rs. 50,000. Further, for within the state movement of goods, each state has a limit prescribed under the State GST Rules. However, there are certain commodities kept out of e-way bill applicability, gold and precious stones belonging to said exclusion list.

GST Council has recommended to insert Rule 138F in Central GST Rules, also State GST Rules for states desirous of implementing e-way bill requirement for intra-state movement of gold and precious stones within their states.

Bringing goods belonging to Chapter 71 of the Customs Tariff into the purview of e-way bill mechanism would lead to increased compliances and documentation for the Gems and Jewellery sector.

8.0 Annual Return in Form GSTR 9/9A and Annual Reconciliation Statement in Form GSTR 9C

It is recommended to extend the exemption from filing of Annual return (GSTR 9; GSTR 9A in case of composition taxpayers) to taxpayers having aggregate annual turnover up to INR 2 crores for the FY 2022-23. It is noteworthy that the GST provisions mandate all registered taxpayers to file Annual Return, however, with an intent to reduce the compliances burden on smaller taxpayers, the said exemption has been provided year-on-year from FY 2017-18 onwards.

Further, several tables in the prescribed forms for GSTR 9 and GSTR 9C which were made optional in nature for FY 2021-22 shall remain non-obligatory for FY 2022-23 as well.

9.0 Issuance of notices to non-filers/late-filers of Annual Return in Form GSTR 9/9A

Section 46 of CGST Act 2017 provides for issuance of notices to registered persons who fail to comply with the return filing timelines in respect of filing of periodic returns, annual returns and final return under GST. Such notice is issued in Form GSTR 3A to return defaulters providing them a final timeline of 15 days to complete the pending filings which shall be tantamount to deemed withdrawal of the notice.

GST Council has proposed amendments to Form GSTR 3A when issued for non-compliance in filing of Annual Return in Form GSTR 9/9A by the due-date seeking to foster the discipline in filing of the annual returns amongst the taxpayers.

10.0 Mechanism to deal with ITC differences between auto-population in GSTR 2B vis-à-vis availment through GSTR 3B

As one may be aware, by virtue of amendments to Rule 36(4) of CGST Rules, 2017 made effective from 01 January 2022, input tax credit shall not be availed by a registered person until and unless the counter party's transaction reporting appears in the auto-generated Form GSTR 2B of the recipient.

GST Council has now recommended insertion of Form GST DRC-01 C to enable the taxpayers explain the reasons for deviation (over and above a certain threshold) between availment of ITC through return filed in Form GSTR 3B as against eligible ITC appearing in auto-populated GSTR 2B report. Further, such gaps would be system-communicated to concerned persons and necessary procedures for performing corrective actions to be prescribed by way of amendment in CGST Rules, 2017.

By way of the proposed amendment, CBIC seems to be taking tough steps towards implementation of full-proof matching concept with regards to availment of input tax credit, thereby leaving no room for any excess or undue claim of ITC.

11.0 Manner of recovery of differential liability and interest thereon in case of GSTR 1 vs GSTR 3B mismatch:

System based intimation of liability found to be in excess (by a specified limit) in GSTR 1 as compared to liability discharged vide GSTR 3B of a particular tax period had been implemented pursuant to recommendations of 49th GST Council meeting by way of insertion of Rule 88C in CGST Rules, 2017. The said gaps would be communicated to the taxpayers through Part A of Form GST DRC-01 B to which the taxpayer would have to reply with necessary explanations and discharge of identified unpaid liability in Part B of Form GST DRC-01 B.

In its 50th meeting, GST Council has further recommended to introduce Form GST DRC-01 D to facilitate recovery of tax liability and corresponding interest where the registered person has not provided satisfactory reasonings or failed to discharge the differential tax.

12.0 Amendment in Form GSTR 5A to require furnishing details of outward B2B supplies in India by OIDAR service providers

Online Information Database Access and Retrieval Services (OIDAR) providers located outside India are required to mandatorily get registered under the Indian GST provisions and pay liability on OIDAR services provided by them to online unregistered recipients in India i.e. B2C supplies. Further, in respect of OIDAR services rendered by supplier outside India to a registered i.e. B2B entity in India, the liability to pay GST under reverse charge shall lie with such B2B recipient registered under GST.

With an intent to track and verify the payments under reverse charge being made by such B2B recipients on procurement of OIDAR services from foreign suppliers, GST Council has proposed amendments in GST Rules and Form GSTR 5A to require OIDAR service providers to report details of invoices raised on B2B recipients in India.

13.0 Capacity Based Taxation and Special Composition Scheme

GST Council has made several recommendations in accordance with the recommendations on Capacity Based Taxation and Special Composition Scheme which were approved in the preceding GST Council meeting. The recommendations include issuance of notifications to provide for special procedures to be followed by the manufacturers of such products for registration of machines and also penalty provisions in case of non-compliances. Further, restrictions on claim of refund under integrated tax in respect of exports of tobacco, pan masala, etc as well as mentha oil by way of a notification is proposed.

14.0 Changes in requirement of particulars to be mentioned on the tax invoice in certain cases

Proposed changes in GST Rules to do away with the requirement of name and full address of the recipient on the tax invoice in below cases, subject to the recipient being unregistered:

- Supply of taxable services by or through an e-commerce operator
- Supply of OIDAR services to an unregistered recipient

Furnishing of the name of the state of the recipient in the aforesaid cases would suffice for complying with the invoicing requirements.

15.0 Amendment in CGST Rules, 2017 to fortify the registration process and prevent fraudulent registrations in GST

Below proposed changes to be given effect vide amendment in registration rules:

- Furnishing of bank account details in name and PAN of the registered person within 30 days of grant of registration or before filing Form GSTR 1/ IFF, whichever occurs first.
- To provide for system-based suspension of GST registrations who fail to furnish the details of bank account within prescribed timelines
- To provide for automatic revocation of such system-based suspension on addition of bank account details
- Restrict filing of GSTR 1/IFF where a registered person has not furnished bank account details.
- Dropping the requirement of applicant's presence while conduct of physical verification of the business premises. Further, physical verification to be permitted in high risk cases, even if aadhaar authentication was successful.

16.0 Changes in GST rates

a) Below changes in rates have been proposed:

Sr. No.	Description	From	To
1.	Uncooked/unfried snack pellets	18%	5%
2.	Fish soluble paste	18%	5%
3.	LD Slag	18%	5%
4.	Imitation zari thread	12%	5%

b) IGST exemption in relation to import of below goods has been proposed:

Sr. No.	Description	Conditions
1.	Dinutuximab (Quarziba) medicine	When imported for personal use

2.	Medicines and Food for Special Medical Purposes (FSMP)	(i) When imported for personal use in the treatment of rare diseases enlisted under the National Policy for Rare Diseases, 2021 subject to existing conditions (ii) When imported by Centres for excellence for Rare Diseases or on recommendation of such listed Centres for excellence
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17.0 Clarification on GST Rates

Several other recommendations in relation to GST Rates on goods have been provided such as:

- a) Supply of raw cotton (including kala cotton) by agriculturists to cooperatives would be subject to reverse charge mechanism.
- b) All utility vehicles meeting the parameters as under to attract levy of compensation cess –
 - Length exceeding 4000 mm
 - Engine capacity exceeding 1500 cc
 - Ground clearance of 170 mm and above
- c) Regularisation of matters pertaining to dessicated coconut for the period 01 July 2017 to 27 July 2017 on 'as is basis' owing to genuine interpretational issues
- d) For levy of compensation cess, ad valorem rate as was applicable on 31 March 2023 to be notified in relation to products such as pan masala and other tobacco products not necessitating declaration of retail sale price.

18.0 Recommended issuance of Circulars clarifying several issues tabulated as under:

Sr. No.	Issue	Proposed Clarification
1.	GST liability and Input Tax Credit reversal in cases of replacement of parts and/or repair services provided without charge of any separate consideration during the warranty period.	There shall be no GST chargeable by the manufacturer on said replacement/repair services covered under the warranty period. Further, ITC reversal shall not be attracted in such cases for non-presence of separate consideration.
2.	Clarification on refund related issues:	<ul style="list-style-type: none"> - Refund of unutilised ITC to be restricted to entries reflecting in Form GSTR 2B of the period for which the refund is filed or any previous tax period - The value of export of goods to be determined as per the inserted explanation to Rule 89(4) of CGST Rules 2017 i.e. lesser of – <ol style="list-style-type: none"> (i) Free on Board (FOB) value declared in the Shipping Bill (ii) Value declared on the tax invoice or bill of supply

		- Clarification on admissibility of refund in case of delayed export of goods or delayed realization of remittances in relation to exports of services
3.	Clarification on liability to collect tax at source (TCS) where multiple e-commerce operators are involved	In situations where multiple e-commerce operators (ECOs) form a part of a single transaction of supply of goods or services or both
4.	Clarification on requirement to issue e-invoices while making supplies to persons registered solely for purposes of TDS	A registered person making supplies to Government departments or establishments, government agencies, local authorities, PSUs etc. would be required to issue e-invoices on crossing of stated turnover
5.	Clarification on manner of interest computation on wrongful availment and utilisation of IGST credit	The available balance of input tax credit in electronic credit ledger under all the heads (IGST, CGST, SGST) to be considered for arriving at interest liability under IGST head.
6.	Holding of securities of a subsidiary company	Mere holding of securities by a holding company for its subsidiary would not be classified as a transaction of supply of services, and shall be outside the levy of GST.

19.0 Other significant propositions:

1. Enablement of manual filing of appeal against the orders passed by proper officers with regards to transition credit availed through filing of TRAN -1 / TRAN -2 by registered persons. Further, CGST Rules proposed to be amended to provide for manual filing of appeal under narrated circumstances.
2. Recommendation to extend the due-dates for filing of Form GSTR 1, GSTR 3B and GSTR 7 for the tax periods April, May and June 2023 for the registered persons of State of Manipur till 31 July 2023.
3. Recommendation to extend several amnesty schemes relating to non-filings, revocation of cancellation of registration and deemed withdrawal of assessment order until 31 August 2023
4. Recommendation to insert Rule 163 in CGST Rules 2017 to prescribe manner and conditions of consent-based sharing of information of registered persons available on the GST portal with other systems. Further, it has been proposed to notify 'account aggregators' as the systems with which information is to be shared by the GST portal.
5. Recommendation to insert clause (ca) in Section 10(1) of IGST Act, 2017 to clarify the Place of Supply in respect of supply of goods to unregistered persons.

[Source: Press Release issued by PIB Delhi dated 11 July 2023]

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