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53rd GST Council Meeting

Detailed Analysis of [50+] Recommendations

- Tax Dispute and Settlement Measures
- Trade Facilitation Measures
- Clarifications on Ongoing Issues
- Compliance Facilitation
- Exemptions Under GST
- Rate Rationalization



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INTRODUCTION

Much awaited 53rd GST Council meeting was held on 22nd June 2024 marking another significant step in the ongoing evolution of India's GST system. The Council discussed various rate rationalizations aimed at simplifying the tax structure and addressing industry concerns. The Council suggested to provide clarity on various ongoing issues such as corporate guarantee, warranty/extended warranty, post sales discounts, reimbursement of securities/shares/ ESOPs by a company to its employees, etc. While there is no respite for the online gaming industry which was much expected, the meeting marked a significant step in addressing current challenges and streamlining the GST framework. The decisions taken in the meeting are expected to enhance compliance, curb tax evasion and ensure a more taxpayer friendly GST regime.

TAX DISPUTE AND SETTLEMENT MEASURES



1. Amnesty Scheme by way of waiver of interest and penalty for demands raised under Section 73

- Recommendation to insert Section 128A to provide a waiver of interest and penalties for demand orders issued under Section 73 of the Central Goods and Services Tax Act, 2017 ('CGST Act'). This waiver applies to cases where taxpayers pay full tax demand by 31-03-2025.
- This is recommended for the financial years 2017-18, 2018-19, and 2019-20.
- The waiver is not to be extended in the cases of erroneous refunds.

TAXMANN's Comments

Since the inception of GST, a lot of show cause notices and demand orders have been issued for the starting years. It may be noted that the accumulated amount of interest for such initial years has grown equivalent to the tax amount or even more due to the extension of time limit for issuing orders under Section 73 for FYs 2017-18 to 2019-20. One major reason for such extension of time was the Covid-19 pandemic.

The GST Council has recommended to insert a new Section 128A in the CGST Act to provide waiver of interest and penalty on demand notices issued under Section 73 of the CGST Act. This would apply only to the orders pertaining to financial years 2017-18, 2018-19, and 2019-20. The waiver would be subject to the condition that the tax demanded should be paid in full on or before 31-03-2025. It may be noted that the waiver would not be granted in case of demand on account of erroneous refunds.

This recommendation provides significant relief to taxpayers where the tax remained unpaid in non-fraud, genuine cases of non-payment or short payment, etc.

However, there are cases where taxpayers have already paid interest and penalties along with the demands. The Council's recommendations do not clarify whether those who have already paid interest and penalties can seek a refund. Also, there may be scenarios, where a taxpayer intends to clear some issues raised in the show cause notice by depositing tax demand on those and contest the tax demand on remaining issues. Whether a taxpayer can avail the benefit of part interest and penalty to the extent of tax demand on issues which he intends to close.

Also, it would be interesting to examine the fine print of the amendment to check whether it cover cases where a notice was previously issued under Section 74 (on the ground of fraud or suppression of facts, etc.) which was later converted to Section 73 notice by the adjudication process.

2. Insertion of Section 11A for granting power not to recover duties not levied or short-levied as a result of common trade practice

- Recommendation to insert new Section 11A in the CGST Act to give powers to the Government to allow regularization of non-levy or short levy of GST, where tax was being short paid or not paid due to common trade practices if recommended by the Council.

TAXMANN's Comments

There are several instances where certain taxpayers do not pay GST on particular supplies due to prevalent trade practices, leading to non-levy or short levy of GST. Examples include corporate guarantees, online gaming, and employee secondment. These may include classification issues of certain goods or services where the industry as a whole is paying tax on lower rates.

It has been observed in the past that the GST authorities have issued bulk notices to recover the tax due to change in interpretation or legal precedents leading to huge round litigations.

In order to reduce the litigation burden on taxpayers where there are genuine doubts over taxability or classification of goods and services, the Council has decided to recommend insertion of new section for granting power not to recover duties not levied or short-levied as a result of common trade practice.

It may be noted that the given provision seems to be only applicable where the tax quotient is not paid or short paid. However, litigation related to input tax credit disputes under Sections 16 or 17 of the CGST Act may not be covered within the scope of the said provision and therefore, such litigation may continue.

3. Insertion of Section 74A providing common time limit for issuance of demand notices under Section 73 and Section 74

- Recommendation to insert a new provision of Section 74A in the CGST Act to prescribe common time limits for issuing demand notices and orders under Section 73 and Section 74 of the CGST Act. Currently, there are different time limits depending on whether there are charges of fraud, suppression, willful misstatement, etc.
- This is recommended to be implemented for the notices and orders starting from FY 2024-25.
- It is also recommended that time limit for availing the benefit of a reduced penalty to be increased from 30 days to 60 days.

TAXMANN's Comments

Currently, the GST law prescribes different time limits for the issuance of demand notices under Section 73 and Section 74 of the CGST Act. For Section 73, the time limit is three years, and for Section 74, it is five years. Both the time limits are calculated from the due date for furnishing the annual return for the financial year to which the demand relates. In the case of an erroneous refund, the time limit is calculated from the date of such refund.

Hence, in case where a notice under Section 74 alleging fraud or suppression of facts is issued beyond 3 years but the charges of fraud or suppression are not sustained, the notice is liable to be dropped as time barred.

The GST Council has recommended to provide a common timeline for issuing demand notices and orders under Sections 73 and 74, irrespective of whether the case involves fraud or non-fraud. This change will simplify the process and will reduce differential treatment between fraud and non-fraud cases. The proper officer would be able to initiate the proceeding and, in the course of the proceedings, can determine whether the fraudulent intention is involved or not.

It may be noted that the recommendation is only to align the time limit of both the provisions.

Further, where the demand order is issued, the time limit for taxpayers to avail the benefit of a reduced penalty by paying the tax demanded along with interest, is recommended to be increased from 30 days to 60 days. This extension provides taxpayers an additional time to settle their dues with a reduced penalty, offering a more realistic timeframe for arranging funds and avoiding higher penalties.

Further, it is noteworthy that a similar provision has been proposed in the Section 32 of the Central Excise Bill, 2024.

In summary, the proposed recommendation by the GST Council aims to bring uniformity in the issuance of demand notices and orders, simplifying the processes and to provide taxpayers with more reasonable timeframe for compliance.

4. Rule 28 of CGST Rules to be amended for valuation of Corporate Guarantee provided between related persons

- Recommendation to amend Rule 28(2) of the CGST Rules with retrospective effect from 26-10-2023 and issuance of a circular to clarify various issues regarding valuation of services of providing Corporate Guarantee between related parties.
- Recommendation to clarify that in case of export of services and where the recipient is eligible for full tax credit the valuation provisions provided under Rule 28(2) of CGST Rules would not be applicable.

TAXMANN's Comments

Effective from 26-10-2023, Rule 28(2) of the CGST Rules provides that the value of services supplied to a related person, through provision of a Corporate Guarantee to any banking company or financial institution on behalf of the related person, shall be deemed to be the higher of 1% of the guaranteed amount or the actual consideration charged for providing the guarantee. Notably, this provision has an overriding effect on the existing provisions relating to valuation methods prescribed under Rule 28(1).

The existing provisions are rigid enough to provide for adoption of deeming value even where the recipient is eligible for 'full input tax credit'. Therefore, the value declared on the invoice cannot be adopted as the open market value for the said supplies. To clarify the application of GST on corporate guarantees, the Government had previously issued a comprehensive circular[1].

Recently, the Punjab and Haryana High Court granted[2] interim relief by staying the operation of the aforementioned circular. The Court has instructed the Appellate Authority to decide on petitioner cases independently of the contested clarification.

The GST Council has recommended that Rule 28(2) of the CGST Rules will not apply when the recipient is eligible for full tax credit and in cases of export of services. This move is expected to remove working capital blockages which is expected to provide much-needed relief to businesses.

However, it is important to note that the validity of GST levy on corporate guarantees remains subject to resolution by judicial authorities. Also, it is expected that CBIC is likely to issue a detailed circular clarifying various valuation issues such as – (a) whether these provisions will be applicable on year or year basis, (b) whether the applicability of the provisions to be checked on issuance of letter of comfort or on ongoing basis, *etc.*

5. Sunset clause for Anti-profiteering provision and filing application for the same

- Recommendation to amend Section 171 of the CGST Act to provide sunset clause for anti-profiteering under GST. The Council has recommended to provide 01-04-2025 as last date for receipt of any new application concerning anti-profiteering measures.

1 Circular No. 204/16/2023-GST, dated 27-10-2023
2 M/S Acme Cleantech Solutions Pvt Ltd v. Union of India [2024] 162 taxmann.com 151 (High Court - Punjab & Haryana)

- It is further recommended to amend Section 109 of the CGST Act to provide that handling of anti-profiteering cases would be done by Principal bench of the GST Appellate Tribunal ('GSTAT').

TAXMANN's Comments

The GST law provides[3] anti-profiteering provisions so as to ensure that the benefits of rate reduction or incremental credits due to the implementation of GST is duly passed on to the customers by way of commensurate reduction in the prices.

Sunset clause for anti-profiteering provision and application under the same

The concept of anti-profiteering is borrowed from overseas countries which has experienced that the GST benefits not being passed to ultimate customers results in inflation. These provisions were introduced for limited period to avoid such situations and once the law gets settled, these provisions were done-away with. In line with the overseas experience, Indian GST also introduced these provisions to avoid the situation of taxation benefits being pocketed by the businesses leading to inflation in the country. It was expected by the industry that since the law is fairly settled, these provisions should be done away with.

In respect of the same, the Delhi High Court earlier held[4] that it is not proper or feasible to contemplate any specific period of time for application of the reduced price, as the same has to take effect so long as the direct relation between the reduction of tax rate or the benefit of Input Tax Credits exists and there is no other factor effecting/countering the same. It held that providing for a particular period of time for the operation of the provisions would not be in conformity with the scheme and intent of the CGST Act itself.

Now, the GST Council in its 53rd meeting has recommended that the provisions should be amended and a sunset clause should be inserted to put an end to entertain any new matters relating to anti-profiteering.

Appointing GST Appellate Tribunal as authority to handle anti-profiteering cases

The anti-profiteering provision provides that the Central Government may constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine anti-profiteering matters. The Competition Commission of India ('CCI') was appointed[5] as such authority. Now, the Council has recommended to make suitable amendment in provisions of Section 171 and Section 109 of the CGST Act to provide for handling of anti-profiteering cases by Principal bench of GSTAT.

6. Monetary limits prescribed for Departmental Appeals to reduce overall litigations

- Recommendation to prescribe monetary limits for filing GST appeals by the department before various judicial bodies as follows:

3 Section 171 of the CGST Act
4 Reckitt Benckiser India (P.) Ltd v. Union of India [2024] 158 taxmann.com 675 (Delhi)
5 Notification No. 23/2022 - Central Tax, Dated 23-11-2022

(a) At GST Appellate Tribunal Level - Rs. 20 lakhs

(b) At High Court Level - Rs. 1 Crore

(c) At Supreme Court Level - Rs. 2 crores

- These monetary limits will be subject to certain exclusions.

TAXMANN's Comments

Section 120 of the CGST Act authorizes the CBIC to fix monetary limits to regulate the filing of appeal or application by the CGST officers, based on the recommendation of the GST Council. In this regard, the CBIC can issue orders/instructions/directions for fixing such monetary limits, as it may deem fit. As of now, no limits have been fixed by the Board.

The GST Council has recommended monetary limits for departmental appeals before the GST Appellate Tribunal, High Court, and Supreme Court. The recommendation also mentions that these monetary limits will be subject to certain exclusions. While we need to examine the fine prints of the relevant notifications to understand these exclusions, it was indicated in the press conference that this include cases involving significant legal or constitutional aspects.

With these monetary limits in place, it will reduce the overall litigations and only high stake matters or matters involving substantial question of law or Constitutional aspect will be referred to higher forums.

However, it is important to note the following points[6]:

- If an officer refrains from filing an appeal or application against a particular order or decision due to the specified monetary limits, they are not precluded from filing an appeal in another case involving the same or similar issues or questions of law.
- A party involved in an appeal or application cannot argue that the officer consented to the decision on the disputed issue simply because an appeal was not filed.

7. 3-Month time period for filing Appeals before GSTAT to start from a date to be notified

- Recommendation to amend Section 112 of the CGST Act to allow the 3-months period for filing appeals before the Appellate Tribunal to start from a date to be notified by the Government in respect of appeal/revision orders passed before the date of said notification.

6 In terms of Section 120 of the CGST Act

TAXMANN's Comments

Section 112(1) of the CGST Act provides that any party aggrieved by an order of an Appellate Authority[7] or order of Revisional Authority[8] can file an appeal before the Appellate Tribunal within 3 months from the date of communication of the order.

However, taking note of the fact that the Appellate Tribunal were not established until the year 2024, the CBIC had earlier issued[9] a Removal of Difficulty Order wherein it is prescribed that for the past pending cases, the start of the 3 months period would be considered to be the later of the following dates:

(a) Date of communication of order, or

(b) Date on which the President of the Appellate Tribunal enters office after its constitution

Notably, the President of the GST Appellate Tribunal has been appointed by the Hon'ble Finance Minister on 06-05-2024. The time limit of three months to file an appeal before the GSTAT for orders communicated before the appointment of the President would thus commence from 06-05-2024, i.e. 05-08-2024 (as confirmed in the press conference). However, it may be noted that although the President has been appointed but the effective operationalization of GST Appellate is still pending as the process for appointment of Judicial Members and Technical Members is still under progress.

Thus, in order to give more time to both taxpayers and the Department due to non-operationalization of GSTAT, the GST Council has recommended to amend Section 112 to provide that for filing appeals before the Appellate Tribunal, the 3-months period will start from a date to be notified by the Government in respect of appeal/revision orders passed before the date of said notification.

The proposed change would allow the Government to notify a specific date in the future. The three-month appeal period would then commence from that date for any appeal or revision orders passed before the notification. This amendment offers significant relief to taxpayers with pending appeals. The specific date for when the new three-month window will begin is yet to be announced by the Government.

8. Transitional credit on invoices received by ISD before appointed day to be allowed w.r.e.f. 01-07-2017

- Recommendation to amend Section 140(7) of the CGST Act retrospectively w.e.f. 01-07-2017 to provide for transitional credit in respect of invoices pertaining to services provided before appointed date, and where invoices were received by Input Service Distributor ('ISD') before the appointed date.

7 Under Section 107 of the CGST Act
8 Under Section 108 of the CGST Act
9 Order No. 09/2019-Central Tax, dated 03-12-2019

TAXMANN's Comments

The GST law provides[10] that the ITC on account of any services received prior to the appointed day by an ISD shall be eligible for distribution even if the invoices relating to such services are received on or after the appointed day. But there was no mechanism provided for transitional credit in respect of invoices pertaining to services provided before appointed date, and where invoices were received by ISD after the appointed date.

In view of the above, the Bombay High Court noted[11] that ITC which was legitimately available with the petitioners before the appointed day, cannot be permanently lost or lapsed, merely because the GST machinery does not create an effective procedural mechanism, for such credit to be transferred to the Electronic Credit Ledger to be utilized, thereby, creating a situation of such credit being permanently lost. The matter was adjourned to await for the recommendation from the GST Council. Similar issue also came before the Gujarat High Court[12], and the matter was adjourned.

Now, the Council has recommended the retrospective amendment to Section 140(7) to provide that transitional credit would be available in respect of invoices pertaining to services provided before the appointed day i.e. 01-07-2017, and where invoices were received by ISD before such date.

9. Non-levy of GST on Extra Neutral Alcohol ('ENA') used in manufacture of alcoholic liquor for human consumption

- Recommendation to amend Section 9 of the CGST Act to keep ENA used for manufacturing of alcoholic liquor for human consumption outside the levy of GST.
- It is also mentioned that ENA for industrial use will continue to attract GST at 18%.

TAXMANN's Comments

The GST Council, in its 52nd meeting, recommended not to levy GST on Extra Neutral Alcohol (ENA)/Rectified Spirit that is supplied for the manufacture of alcoholic liquor for human consumption. This was recommended to put an end to the long-standing litigations on the chargeability of VAT or GST on ENA. In the case of Mohit Minerals Private Limited[13], the Supreme Court observed that resolutions of GST Council are not binding.

Now, in 53rd GST Council meeting, it has been recommended to amend the provision of Section 9 of the CGST Act so as to exclude ENA supplied for manufacturing of alcoholic liquor for human consumption from the purview of levy of GST.

10 Section 140(7) of the CGST Act
11 Siemens Healthcare Pvt. Ltd. in Writ Petition No. 986 of 2019
12 Samsung India Electronics (P.) Ltd. [2024] 162 taxmann.com 321 (Gujarat)
13 Union of India vs Mohit Minerals (P.) Ltd [2022] 138 taxmann.com 331 (SC)/[2022] 61 GSTL 257 (SC)/[2022] 92 GST 101 (SC) dated 19-05-2022

TRADE FACILITATION MEASURES



10. Time Limit for availment of ITC under Section 16(4) deemed as 30-11-2021 for FY 2017-18 till FY 2020-21

- Recommendation to amend Section 16(4) of the CGST Act retrospectively w.e.f. 01-07-2017 to provide that the time limit to avail ITC in respect of any invoice or debit note under Section 16(4) of CGST Act, through any return in Form GSTR-3B filed upto 30-11-2021 for the financial years 2017-18, 2018-19, 2019-20 and 2020-21, may be deemed to be 30-11-2021.

TAXMANN's Comments

One notable recommendation from the 53rd GST Council meeting is the proposed retrospective amendment to Section 16(4) of the CGST Act. This amendment allows taxpayers to avail ITC up to 30-11-2021 for the financial years 2017-18, 2018-19, 2019-20, and 2020-21 by deeming the time limit to be 30-11-2021.

Section 16(4) provides the time limit for availing ITC in respect of invoices or debit notes. The ITC can be availed upto the earlier of the following dates:

(a) 30th November following the end of the financial year to which such invoice/debit note pertains, or

(b) Furnishing of the relevant Annual Return

Notably, the above time limit has been a matter of litigation since the inception of the GST law. These issues include the following:

- **Delinking of Debit Notes from invoices:** The delinking of debit notes from invoices for determining the time limit under Section 16(4) has also been litigated. For instance, the Gujarat AAR in the case of I-tech Plast India (P.) Ltd. denied[14] ITC for debit notes issued in FY 2020-21 for transactions from 2018-19. The ruling held that a debit note is connected to an invoice and not an independent document. However, the Finance Bill's memorandum stated the amendment was intended to delink the issuance dates of debit notes and invoices for ITC purposes.

- **Constitutional Validity:** Constitutional validity of the time limits prescribed under the Section has been challenged before the High Courts. The Kerala High Court recently upheld[15] the constitutional validity of Section 16(4), observing that the amendment of time limit until November 30th is a procedural amendment and has to be given retrospective effect.

The GST Council's recommendation to set a new time limit of 30-11-2021 for the financial years up to 2020-21 could be beneficial for taxpayers who availed ITC beyond the previously prescribed deadlines. This amendment would offer considerable relief to taxpayers who, due to various reasons, were unable to avail ITC within the earlier prescribed deadlines.

14 I-tech Plast India (P.) Ltd., In re [2021] 127taxmann.com45 (AAR - GUJARAT)
15 M. Trade Links v. Union of India [2024] 163taxmann.com218 (Kerala)

However, it may disadvantage those who adhered to the earlier timelines and did not claim ITC beyond those dates and expensed off these taxes in their income tax returns, as they would now be unable to claim such ITC retrospectively.

Also, many taxpayers have adopted the practice of availing and subsequently reversing ITC to avoid the applicability of the time limit under Section 16(4), planning to re-avail ITC once litigation is resolved, thereby avoiding interest payments. It remains to be seen how the amendment will address these scenarios and whether such taxpayers will continue to avoid interest liability and claim ITC beyond specified time limits.

11. Clarification on applicability of Section 16(4) on RCM invoices

- Recommendation to clarify that in cases of supplies received from unregistered suppliers, where tax has to be paid by the recipient under reverse charge mechanism ('RCM') and invoice is to be issued by the recipient only, the applicability of the provision of Section 16(4) of the CGST Act is to be checked by the financial year in which the invoice has been issued by the recipient.

TAXMANN's Comments

Section 16(4) of the CGST Act defines the time limit for availing of input tax credit. It stipulates that a registered person cannot claim an input tax credit for any invoice or debit note for the supply of goods or services after the 30th November following the end of the financial year to which such invoice or debit note pertains, or after furnishing the relevant annual return, whichever is earlier.

It was the apprehension of the industry that whether the time limit specified in Section 16(4) applies in cases of RCM as the tax is being paid in cash by the recipient.

Addressing the same, the GST Council recommended to clarify that the time limit to avail credit under Section 16(4) on RCM invoices is to be checked from the financial year in which the recipient issues the invoice.

12. Relaxation of Section 16(4) time limits for returns filed within 30 days of revocation of cancelled GST Registration

- The GST Council recommended retrospective amendment in Section 16(4) of the CGST Act w.e.f. July 1, 2017, to conditionally relax the provisions of Section 16(4) of the CGST Act in cases where returns for the period from the date of cancellation of registration/ effective date of cancellation of registration

till the date of revocation of cancellation of the registration, are filed by the registered person within thirty days of the order of revocation.

TAXMANN's Comments

Section 29 of the CGST Act empowers the proper officer to cancel GST registration of the registered persons on his own motion in certain cases such as when the registered person does not furnish GST returns for six continuous months or contravenes the provisions of the GST law. However, the registered person can apply for revocation of cancellation of GST Registration in terms of Section 30 of the CGST Act. Notably, if the registration was cancelled due to non-furnishing of GST returns, the application for revocation can only be filed after all due returns up to the date of cancellation are filed.[16]

Further, all the returns due for the period from the date of cancellation order till the date of revocation order are required to be filed within 30 days[17] from the date of order of revocation.

However, when the GST registration was revoked after the time limits specified in Section 16(4) of the CGST Act had expired, the department has been denying the input tax credit because it was claimed beyond the prescribed period.

In order to give relief in these genuine cases, the GST Council has recommended granting a 30-day period for these tax periods to avail ITC. As a result, registered taxpayers who could not avail ITC merely because their GST registration was revived after the expiry of the Section 16(4) time limit can now avail ITC for past periods. This amendment is a welcome move for taxpayers who faced challenges due to procedural delays in the revocation of their GST registration.

13. Clarification on place of supply of goods supplied to unregistered person with different delivery and billing address

- Recommendation to issue a clarification relating to place of supply of goods supplied to unregistered persons, where delivery address is different from the billing address.

16 Second proviso to Rule 23(1) of the CGST Rules read with Circular No. 99/18/2019-GST, Dated 23-04-2019
17 Second proviso to Rule 23(1) of the CGST Rules read with Circular No. 99/18/2019-GST, Dated 23-04-2019

TAXMANN's Comments

With effect from 01-10-2023, a new provision has been inserted under the law to prescribe place of supply of goods supplied to an unregistered person. In such cases, the place of supply would be determined in the following manner[18]:

- Where unregistered recipient provides the details of the address for inclusion on the invoice – Place of supply would be location of such address recorded in the invoice
- Where address is not recorded on the invoice – Place of supply would be location of the supplier

The law further provides[19] that recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person.

However, there may be scenarios where an unregistered person has the bill generated in their name but the goods were delivered to a different location, such as in bill-to ship-to transactions by an unregistered person or gifts ordered to be delivered to a friend in another State.

In such cases, it is unclear whether the place of supply should be considered as the State where the goods are delivered or the State where the unregistered person to whom billing is done is located. The GST Council has now recommended issuing a clarification regarding the place of supply for goods supplied to unregistered persons when the delivery address differs from the billing address. The details of the circular are awaited, but it is expected that such issues will be addressed in the clarification.

14. Reduction in the amount of pre-deposit required to be paid for filing of appeals under GST

- Recommendation to reduce the amount of pre-deposit for filing of appeals under GST to ease cash flow and working capital blockage for the taxpayers. The maximum amount for filing appeal with the appellate authority has been reduced from Rs. 25 crores CGST and Rs. 25 crores SGST to Rs. 20 crores CGST and Rs. 20 crores SGST respectively.
- Further, the amount of pre-deposit for filing appeal with the Appellate Tribunal has been reduced from 20% with a maximum amount of Rs. 50 crores CGST and Rs. 50 crores SGST to 10% with a maximum of Rs. 20 crores CGST and Rs. 20 crores SGST respectively.

18 Section 10(1)(ca) of the IGST Act
19 Explanation to Section 10(1)(ca) of the IGST Act

TAXMANN's Comments

Under the GST law, the first appeal is filed against an order passed by the adjudicating authority before the Appellate Authority. If the aggrieved party is not satisfied with the order of Appellate Authority, then a second appeal can be filed before the Bench of the Appellate Tribunal.

However, the taxpayer is required to mandatorily deposit certain amount as pre-deposit before the Appellate Authority and Appellate Tribunal for hearing the appeal. The Council has recommended to revise the maximum pre-deposit amount in order to reduce the financial burden and working capital requirement for taxpayers who want to file appeal. The revised limits recommended by the GST Council are summarised below:

Sr. No.	*Appeal to be filed before*	*Existing provisions*	*Recommendations*
1.	Appellate Authority	10% of disputed amount subject to maximum of **Rs. 25 Crores** CGST and SGST each	10% of disputed amount subject to maximum **of Rs. 20 Crores** CGST and SGST each
2.	Appellate Tribunal	**20%** of disputed amount in addition to amount paid before the Appellate Authority subject to maximum of **Rs. 50 Crores** CGST and SGST each	**10%** of disputed amount in addition to amount paid before the Appellate Authority subject to maximum of **Rs. 20 Crores** CGST and SGST each

15. Demand paid in DRC-03 recommended to be accepted as pre-deposit for filing appeal

- Recommendation to amend Rule 142 of the CGST Rules to prescribe a mechanism for adjustment of an amount paid in respect of a demand through Form GST DRC-03 against the amount to be paid as pre-deposit for filing appeal. Recommendation to issue clarification in this regard.

TAXMANN's Comments

A person aggrieved by an order under GST can file an appeal under the GST law before various appellate authorities. While filing the appeal, the aggrieved party must deposit 100% of the admitted amount and a specified percentage of the disputed amount as a pre-deposit. The GSTN allows the payment of the admitted amount and pre-deposit either by cash or by credit, which must be made at the time of filing Form GST APL-01. The appeal is not admitted if the pre-deposit is not made.

There may be scenarios where taxpayers make tax payments during audits or inspections as per the recommendations of GST authorities and later want to pursue appeals. On the other hand, there may be some technical issues, such as in a case[20] before the Andhra Pradesh High Court, the taxpayer faced technical issues while trying to make a pre-deposit of 10% of the demanded tax via Form GST APL-01 and instead made the payment through Form GST DRC-03. However, the appeals were rejected on the grounds that the pre-deposit was made through the wrong format. The High Court acknowledged that whether the assessee was forced to use Form GST DRC-03 instead of APL-01 due to technical issues is a factual question, and the matter was remanded back to the Respondent Authority to consider the reasons in delay condoning petitions.

Notably, the CBIC has earlier clarified[21] that pre-deposit as a requirement for exercising the right to appeal is neither in the nature of duty nor can be treated as arrears. It was further clarified that the payments through Form GST DRC-03 under GST regime is not a valid mode of payment for making pre-deposits.

The GST Council has recommended that amendment would be made in Rule 142 of the CGST Rules to prescribe a mechanism for adjustment of an amount paid in respect of a demand through Form GST DRC-03 against the amount to be paid as pre-deposit for filing appeal. In this regard, relevant clarifications would also follow.

This is a welcome step by the Government. Along with the reduction in pre-deposit amounts, it demonstrates the Government's intent to reduce burden on the taxpayers who are opting to file appeals.

16. No interest liability on amount deposited upto due date of filing GSTR-3B and debited from Cash Ledger while filing return

- Recommendation to amend Rule 88B of the CGST Rules to provide that an amount, which is available in the Electronic Cash Ledger on the due date of filing of return in FORM GSTR-3B, and is debited while filing the said return, shall not be included while calculating interest under Section 50 of the CGST Act in respect of delayed filing of the said return.

20 Manjunatha Oil Mill v. Assistant Commissioner (ST) (FAC) [2024] 159taxmann.com514 (Andhra Pradesh)
21 Instruction No. CBIC-240137/14/2022-Service Tax Section-CBEC, Dated 28-10-2022

TAXMANN's Comments

Interest liability under Section 50 of the CGST Act has been a contentious issue, specifically in case of interest payable on delayed filing of Form GSTR-3B.

A notable issue highlighted by the Madras High Court ruling[22] was whether interest is payable on the GST amount deposited in the Electronic Cash Ledger by the due date, even if the return is filed late. The Court held that if the GST amount is routinely deposited into the Electronic Cash Ledger by the due date, no interest is payable even if the return is filed belatedly.

Aligning with this ruling, the GST Council has recommended amending Rule 88B to specify that amounts available in the Electronic Cash Ledger on the due date of filing GSTR-3B and debited while filing the return will not be included in interest calculations under Section 50 of the CGST Act for delayed filings.

This is a welcome move by the Council and is expected to resolve issues surrounding interest liability.

Notably, another controversy centers on whether interest should be calculated on the gross amount of tax payable or on the net amount after adjusting the eligible input tax credit available in the credit ledger. This issue resurfaced with a ruling from the Patna High Court, where it was held[23] that interest charges automatically apply to delayed return filings, regardless of whether payments are made through the Electronic Credit or Cash Ledger.

The Press Release of the 53rd GST Council meeting has not yet commented on this issue. We need to wait for the fine print of the amendment to analyse whether the change in the provision will address this matter as well.

17. Prescribing mechanism of claiming refund on account of debit notes for upward revision in prices

- Recommendation to prescribe a mechanism for refund on export where additional IGST is paid on account of debit note issued in case of upward revision of prices.

22 Eicher Motors Ltd. v. Superintendent of GST and Central Excise, Range-II [2024] 158 taxmann.com 593 (Madras)

23 Sincon Infrastructure (P.) Ltd. v. Union of India [2024] 161 taxmann.com 616 (Patna)

TAXMANN's Comments

In case of exports of goods, shipping bill filed by the exporter shall deemed to be application for refund of IGST paid on the goods exported out of India. Now, exporters sometimes find themselves in scenarios where the initially declared export price is revised upwards post-exportation. In such cases, exporters are liable to pay additional IGST on the revised, higher value of the goods.

To address this issue and provide relief to affected taxpayers, the GST Council has recommended the introduction of a specific mechanism for claiming refund of additional IGST paid on account of upward revision in price of the goods subsequent to their exports out of India.

18. GST refund restrictions to be applicable for all zero rated supplies where goods are subject to export duty

- Recommendation to amend Section 16 of the Integrated Goods and Services Tax Act, 2017 ('IGST Act') and Section 54 of the CGST Act to provide that the refund in respect of goods, which are subjected to export duty, is restricted, irrespective of whether the said goods are exported without payment of taxes or with payment of taxes, and such restrictions should also be applicable, if such goods are supplied to a SEZ developer or a SEZ unit for authorized operations.

TAXMANN's Comments

Under the current GST law, refund of unutilized input tax credit is available only in two cases viz. zero-rated supplies made without payment of tax and under the inverted duty structure. The second proviso to Section 54(3) of the CGST Act provides that the refund would be available subject to the condition that the goods exported out of India are not subjected to export duty.

Presently, GST law restricts refund claims of unutilized ITC for exports without payment of IGST when the goods are subject to export duty. Further, suppliers claiming refunds on exports without payment of IGST are required to furnish a declaration in Form GST RFD-01 stating that the exported goods are not subject to export duty. However, there is no specific provision under the law to restrict refund claims for exports with payment of IGST, even if export duty is paid.

The GST Council has recommended that the supplier to provide that the refund on zero rated supply of goods would be restricted if such goods are subjected to export duty. This is irrespective of whether the said goods are exported without payment of taxes or with payment of taxes.

Notably, the said restrictions is also recommended to be applicable where such goods are supplied to a SEZ developer or a SEZ unit for authorized operations.

19. Reduction in rate of TCS to be collected by the ECOs for supplies being made through them

- Recommendation to reduce the Tax Collected at Source (TCS) rate from present 1% to 0.5% for Electronic Commerce Operators (ECOs) who are required to collect TCS on net taxable supplies under Section 52(1) of the CGST Act.

TAXMANN's Comments

In order to ease the financial burden on the suppliers making supplies through such ECOs and trade facilitation measure, the Council has recommended to reduce the rate of TCS collected by the ECOs for supplies made by suppliers through their platforms.

This reduction in TCS rate would help small taxpayers in managing working capital requirements. At the same time, it will reduce the burden of GST Authorities in processing refund claims on account of accumulated TCS in electronic cash ledger.

CLARIFICATIONS ON ONGOING ISSUES



20. Suppliers to provide evidence for compliance with post sales discount under Section 15

- Recommendation to provide mechanism for producing evidence by the suppliers in respect of post-sale discounts that input tax credit has been reversed by the recipient on the said amount for compliance of the conditions of Section 15(3)(b)(ii) of CGST Act.

TAXMANN's Comments

As per Section 15(3) of the CGST Act, the value of the supply shall not include any of the following discounts:

(a) Discount which are given before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply

(b) Discount after the supply has been effected only if:

(i) Such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices and

(ii) Input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply

Thus, for post-sale discounts, it is crucial for suppliers to adhere to both conditions under Section 15(3)(b) to adjust the taxable value of the supply. Once such conditions are satisfied, the supplier may issue a credit note to give effect to the reduction of the amount of discount from the value of taxable supply.

In respect of the second condition, the GST Council has recommended that the supplier would now be required to provide evidence that the recipient has reversed the ITC attributable to such discount.

It is important to note that if the conditions of Section 15(3)(b)(i) are not met, the supplier cannot reduce the value of supply. In such cases, commercial adjustments can be made through financial or commercial credit notes. This scenario was earlier clarified[24] by the CBIC, especially regarding additional or secondary discounts extended to dealers by suppliers. Although fine print of the clarification is awaited, but in such instances, there should be no need to produce evidence as the supplier cannot reduce the discount amount from the supply value, allowing the recipient to claim full ITC, provided other conditions are satisfied.

24 Circular No. 92/11/2019-GST, dated 07-03-2019

21. Recommendation to provide clarity on valuation of services provided by Foreign Affiliates

- Recommendation to clarify that in cases where the foreign affiliate is providing certain services to the related domestic entity, for which full input tax credit is available to the said related domestic entity, the value of such supply of services declared in the invoice by the said related domestic entity may be deemed as open market value in terms of second proviso to Rule 28(1) of CGST Rules.
- In cases where full input tax credit is available to the recipient, if the invoice is not issued by the related domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil, and may be deemed as open market value in terms of second proviso to Rule 28(1) of CGST Rules.

TAXMANN's Comments

Under GST, importing services from a related person or from their overseas establishments in the course of business constitutes a taxable supply, even if provided without consideration as per Schedule I of the CGST Act. Further, on such services, the Indian entity is required to pay GST under reverse charge[25]. This means that services provided by a foreign group entity to its Indian subsidiary or branch would be liable to GST under reverse charge, regardless of whether any consideration is paid.

Due to this entry, a wide range of services or facilities provided by overseas affiliates may get covered within the scope of supply, regardless of any explicit intention to 'supply' such services. This includes, facilitation of use of common software for branches or entities in India, employee secondments arrangements, brand names or logo owned by foreign entities used by establishments in India and so on. These issues are already under litigation.

Recently, in the case of Northern Operating Systems pertaining to service tax regime, the Supreme Court held[26] that when an overseas group entity seconds employees to its Indian entity, it amounts to import of manpower supply services by the Indian entity, liable to GST under reverse charge. While the Supreme Court ruling in NOS case can be applied under GST, the CBIC has clarified that a case-by-case examination is required considering the specific contractual terms and employment arrangements. Therefore, GST liability may vary depending on the factual circumstances.

It seems like in order to cover such scenarios, the GST Council has recommended that the Indian entity may adopt the valuation in terms of the second proviso of Rule 28(1) of the CGST Rules. The said rule provides that where the recipient is eligible for 'full input tax credit', the supplier can take the value declared in the invoice as taxable value. Thus, in such cases, the value declared in the invoice shall be treated as Open Market Value where the recipient party is entitled to the 'Full Input Tax Credit'.

25 Sl. No. 1 of Notification No. 10/2017-Integrated Tax (Rate), dated 28-06-2017
26 Northern Operating Systems (P.) Ltd. [2022] 138 taxmann.com 359 (SC)

Further clarity would be given that even where the value of such services is declared as Nil, it would be acceptable and deemed as open market value in terms of second proviso to Rule 28(1) of CGST Rules.

Clarity on this issue offers essential relief and reduces ambiguity and potential disputes between taxpayers and tax authorities concerning the interpretation of the GST Rules, particularly in complex international transaction scenarios.

22. To clarify on place of supply for Custodial Services provided by Banks to FPIs

- Recommendation to clarify that place of supply of Custodial services supplied by Indian Banks to Foreign Portfolio Investors is determinable as per Section 13(2) of the IGST Act.

TAXMANN's Comments

Custodial services offered by banks include wide range of services ranging from safekeeping and management of financial assets to settlement and clearing of transactions. As a custodian, bank may provide such services to domestic as well as foreign customers which includes Foreign Institutional Investors, Foreign Direct Investors, *etc.*

Recently, the Maharashtra GST Department issued notices to several banks providing custodial services to foreign clients, demanding tax liabilities and penalties amounting to crores. The department argued that these services do not qualify as zero-rated supplies because the place of supply of these services is based on the location of the service provider, as per Section 13(8) of the IGST Act.

Under the GST law, the export of services is considered as zero-rated supply and is eligible for export benefits[27]. One condition for a transaction to qualify as an export of services is that the place of supply must be outside India[28]. Therefore, for custodial services to be considered exports, the place of supply must be outside India.

Section 13(8) of the IGST Act provides that the place of supply for services provided by a banking company, financial institution, or non-banking financial company to 'account holders' is the location of the service provider. However, if these services are provided to a non-account holder, the place of supply is determined as per Section 13(2) of the IGST Act, which specifies that the place of supply is the location of the service recipient.

The CBIC had previously issued FAQs clarifying[29] that custodial services are generally not provided to account holders, and thus, the place of supply for such services is the location of the service recipient.

In line with this, the GST Council has recommended to clarify that the place of supply for custodial services provided by Indian banks to FPIs should be determined as per Section 13(2) of the IGST Act.

27 Section 16 of the IGST Act
28 Section 2(6)(iii) of the IGST Act
29 Frequently Asked Questions on Banking, Insurance and Stock Brokers Sector, Updated as on 27-12-2018

23. Clarification on taxability of reimbursement of ESOPs provided by a company to employees of another company

- Recommendation to issue clarification on taxability of re-imbursement of securities/shares as ESOP/ESPP/RSU provided by a company to its employees.

TAXMANN's Comments

There may be scenarios where a foreign company issues ESOPs to employees of an Indian entity and such Indian entity reimburses the amount of value of shares along with related expenses incurred by a foreign company in relation to such ESOPs. It is noteworthy that GST authorities have, in some cases, issued notices to Indian entities treating such transactions as an import of services.

The ambiguity surrounding the tax treatment of reimbursements in such scenarios, including those between domestic entities, has created uncertainty among stakeholders, which is now set to be resolved as the GST Council has recommended to issue a clarification. Stakeholders eagerly await this clarification to provide clear guidance on the GST implications of reimbursements related to ESOPs.

Notably, on the given issue, one may contend that the reimbursement is made only in the context of ESOPs, the transfer of which is considered as a transaction in securities not liable to GST. Consequently, there should be no liability for GST on such reimbursements. However, the clarification from the CBIC is awaited to determine whether the GST applicability extends to reimbursement of expenses related to ESOPs, which has also been a point of contention.

24. Clarification on taxability of loans granted between related person or between group companies

- Recommendation to issue clarification on taxability of loans granted between related persons or between group companies.

TAXMANN's Comments

According to the GST laws, tax is imposed on the supply of goods or services or both. Goods are defined[30] as every kind of movable property except money and securities, while services include[31] anything other than goods, money, and securities. Therefore, transactions involving money are explicitly excluded from the ambit of goods and services, including the borrowing of money. Hence, no GST is applicable on such transactions, regardless of whether the loan is extended by a financial institution, individuals, related parties, or group companies.

However, there are other aspects related to such transactions that require clarification, such as interest-free loans provided by holding companies to their subsidiaries. The specifics of the circular from the GST Council are awaited to determine the exact nature of the clarification to be provided.

25. Clarification regarding the availability of ITC on ducts and manholes used in the network of Optical Fiber Cables

- Recommendation to clarify that the input tax credit is not restricted for ducts and manholes used in the network of Optical Fiber Cables ('OFCs') under clause (c) or clause (d) of Section 17(5) of the CGST Act.

TAXMANN's Comments

Section 17(5)(c) of the CGST Act provides that ITC is restricted in respect of 'works contract services' when they are supplied for the 'construction' of 'immovable property' (other than 'plant and machinery') except where such input service of works contract is received for further supply of works contract service.

Further, Section 17(5)(d) restricts ITC in respect of goods or services received by a taxable person for the construction of an immovable property (other than 'plant and machinery') on his own account. It's important to note that ITC shall not be available even if such goods or services or both are used in the course or furtherance of business.

Now, the GST Council has recommended to clarify that ITC would not be restricted for ducts and manholes used in the network of OFCs, under the above provisions of Section 17(5) of the CGST Act.

Hence, ITC will be available on ducts and manholes used in the network of OFC as work contract services or construction services. This will bring a major relief to telecommunication services.

30 Section 2(52) of the CGST Act
31 Section 2(102) of the CGST Act

26. Clarification on time of supply for spectrum allotment to Telecom Companies where licence fee is paid in instalments

- The Council has recommended to issue suitable clarification regarding time of supply in respect of allotment of Spectrum to Telecom companies in cases where payment of licence fee and spectrum usage charges is to be made in instalments.

TAXMANN's Comments

Telecom companies in India typically acquire spectrum from the government through an auction process. Under the current auction system for spectrum allocation, the Government offers telecom companies the flexibility to make a full upfront payment or an initial partial payment followed by equal instalments under a deferred payment option. There has been ambiguity around the timing of GST payments in cases where the spectrum fee is paid in instalments.

As per the GST law, the time of supply is generally[32] the date of invoice or the date of payment, whichever is earlier. However, for deferred payment cases like spectrum allocation, the GST law does not provide clear guidance on the time of supply.

Previously, under the service tax regime, a similar issue was addressed through amendments in the Point of Taxation Rules. These amendments specified that the liability to pay service tax arises on the date when the part payment or instalments becomes due as indicated in relevant documents.

Given this, it is anticipated that the Government will allow similar treatment under the GST law.

27. Clarification on time of supply on Annuity Payments under HAM Projects

- Recommendation to issue clarification on time of supply on Annuity Payments under HAM Projects.

32 Section 13 of the CGST Act

TAXMANN's Comments

Under Hybrid Annuity Model ('HAM') model, the NHAI pays 40% of the project cost to the concessionaire during the construction phase in the form of annuity payments. The remaining 60% is arranged by the developer and recovered as variable annuity amounts after the completion of the project. This means that consideration is paid partially upfront and partially through deferred annual payments, known as annuities.

The first installment of annuity payments is due within 15 days of the 180th day after the completion date. Subsequent installments are due within 15 days of the completion of each successive six-month period.

The taxability of annuity payments has been in debate for a long time. Initially, the law exempted[33] services involving access to roads or bridges paid via annuity. However, the GST Council, in its 43rd meeting, attempted to clarify this issue through Circular No. 150/06/2021-GST, dated 17-06-2021. The CBIC clarified that annuity (deferred payments) for road construction would be subject to tax.

Later, the Hon'ble Karnataka High Court struck down[34] the above circular, ruling that the exemption applies to the entire annuity amount, covering both construction and maintenance services of the road.

Subsequent to that the GST exemption was withdrawn effective from 01-010-2023.

Currently, the government's position is clear that annuity payments are subject to GST. However, the time of the supply of such services remains unclear. The GST Council has recommended to clarify the time of supply under HAM Projects.

28. Clarification on requirement of ITC reversal on Life Insurance premium not included value as per Rule 32(4)

- Recommendation to issue clarification on requirement of reversal of input tax credit in respect of amount of premium in Life Insurance services, which is not included in the taxable value as per Rule 32(4) of CGST Rules.

33 Sl. No. 23A of Notification No. 12/2017-Central Tax (Rate) dated 28-6-2017 and Sl no. 24A of Notification No. 09/2017-Integrated Tax (Rate) dated 28-06-2017 inserted w.e.f. 13-10-2017

34 DPJ Bidar - Chincholi (Annuity) Road Project (P.) Ltd. v. Union of India [2022] 140 taxmann.com 465 (Karnataka)

TAXMANN's Comments

Rule 32(4) of the CGST Rules prescribes the value of the supply of services related to the life insurance business in various scenarios. The insurer may choose the value specified under this rule, which will be considered the value of supply regardless of the actual premium charged to the policyholder.

However, it has been observed[35] that the GST Department has issued notices for the wrongful availing and utilization of ITC. The Department has contended that the corresponding ITC has not been reversed as required by Section 17(2). This is because the Department has treated the remaining part of the premium amount as an exempt supply [other than the prescribed premium under Rule 32(4)], rather than treating it as non-taxable value.

It will be interesting to see how the GST Council addresses this issue, considering that the deemed value is prescribed by law itself. If the remaining amount is considered an exempt supply, it would not only impact the insurance industry but also raise questions about all valuation provisions where value is determined based on deeming provisions, potentially triggering ITC reversal requirements.

29. Clarification on ITC for repair expenses by insurance company for reimbursement of motor vehicle insurance claims

- Recommendation to issue clarification regarding availability of input tax credit on repair expenses incurred by the insurance companies in case of reimbursement mode of settlement of motor vehicle insurance claims.

TAXMANN's Comments

Section 17(5)(ab) of the CGST Act specifically restricts availment of ITC in respect of services of repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) such as motor vehicles used for transport of persons with a seating capacity of 13 or less. However, ITC can be availed if these services are received by the taxable person engaged in making the supply of general insurance services in respect of such motor vehicles, vessels and aircraft insured by him.

In the specific scenario where insurance companies seek ITC on repair expenses incurred through reimbursement in motor vehicle insurance claims settlement, the law does not provide explicit provision. However, the same principle should be logically followed for the availability of ITC in such cases.

The GST Council has recommended to issue clarification in relation to such ambiguity. However, we will need to wait for the detailed clarification to understand its intent fully.

35 Life Insurance Corporation of India v. Union of India [2023] 150 taxmann.com 425 (Patna)

30. Recommendation to clarify that penalty provisions applies only to ECO collecting TCS

- Recommendation to amend Section 122(1B) of the CGST Act retrospectively w.e.f. 01-10-2023, so as to clarify that the said penal provision is applicable only for those e-commerce operators, who are required to collect tax under Section 52 of the CGST Act, and not for other E-commerce operator ('ECO') .

TAXMANN's Comments

An ECO is required to collect TCS under GST while making payment to the registered supplier on the supplies made through its platform. However, with effect from 01-10-2023, certain category of unregistered supplier and composition dealer supplying goods are allowed to make intra-state supply of goods through ECO. For such supplies, the GST law provides special procedure for ECOs who are responsible for collecting TCS under GST to ensure that supply of goods made through it by the composition dealers[36] or unregistered individuals[37] (who are exempt from mandatory registration) are complying with the specified requirements.

In this regard, with effect from 01-10-2023, Section 122(1B) of the CGST Act provides that where the ECO does not comply with the specified requirements, he would be considered to have committed an offence and would be liable to pay penalty. Penalty in such cases would be higher of the following:

(a) Rs. 20,000 (i.e., Rs. 10,000 under CGST and Rs. 10,000 under SGST) or

(b) An amount equivalent to the amount of tax involved

Notably, the following activities relating to the specified procedures are considered as offence on the part of ECO:

(a) ECO allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration to make such supply

(b) ECO allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply

(c) ECO fails to furnish the correct details in Form GSTR-8 statement of any outward supply of goods effected through it by a person exempted from obtaining registration under GST

It may be noted that the drafting of the penalty provision is such that it suggests that 'any electronic commerce operator' would be liable to pay the prescribed penalty. However, as discussed, the given special procedure is required to be complied by the ECO who is required to collect TCS under GST.

In this regard, the GST Council has recommended to amend Section 122(1B) of CGST Act retrospectively w.e.f. 01-10-2023, to specify that the penal provisions apply solely to those e-commerce operators required to collect tax under Section 52 of the CGST Act, and not to other e-commerce operators.

36 Notification No. 36/2023-Central Tax, dated 04-08-2023
37 Notification No. 37/2023-Central Tax, dated 04-08-2023

31. Incentives shared by acquiring banks with other stakeholders on BHIM-UPI transactions not taxable under GST

- Recommendation to issue clarification that no GST shall be leviable on further sharing of the incentive by acquiring bank with other stakeholders where the sharing of such incentive is clearly defined under the scheme for promotion of Rupay Debit Cards and low value BHIM-UPI transactions and is decided in the proportion and manner by NPCI in consultation with the participating banks.

TAXMANN's Comments

To promote digital payments, the Central Government has introduced an incentive scheme where the Ministry of Electronics and Information Technology (MeitY) provides acquiring banks incentives based on a percentage of RuPay Debit Card transactions and low-value BHIM-UPI transactions (up to Rs. 2000). These incentives are subsequently shared by acquiring banks with other stakeholders as per the terms of the incentive schemes, where sharing proportions and methods are determined by NPCI in consultation with participating banks.

Regarding the transaction incentives paid by the Government to the acquiring banks, the CBIC has already clarified[38], based on the 48th GST Council meeting recommendation that such incentives do not constitute consideration for services provided by acquiring banks to the Government. Rather, these incentives are subsidies directly linked to service pricing and do not form part of the taxable value of transactions under Sections 2(31) and 15 of the CGST Act.

With respect to the transaction of further sharing of these incentives by acquiring banks with other stakeholders, the GST Council has now recommended that clarification would be issued to provide that such transactions are also not subject to GST.

32. Other Recommended Clarifications

- Recommendation to issue clarification on the issues pertaining to special procedure for the manufacturers of the specified commodities, like pan masala, tobacco, *etc.*
- Recommendation to issue clarification in respect of Warranty/ Extended Warranty provided by Manufacturers to the end customers.
- Recommendation to issue clarification on taxability of wreck and salvage values in motor insurance claims.

38 Circular No. 190/02/2023-GST, Dated 13-01-2023

COMPLIANCE FACILITATION



33. Insertion of new Form GSTR-1A to facilitate the taxpayers to amend the details in Form GSTR-1

- Recommendation to provide a new optional facility by way of FORM GSTR-1A to amend details in FORM GSTR-1 for a tax period and/or to declare additional details, if any, before filing of return in Form GSTR-3B for the said tax period.
- Introduction of this new form will facilitate taxpayer to add/amend any particulars of supply of the current tax period missed out in reporting in Form GSTR-1 of the said tax period (including those declared in IFF, for the first and second months of a quarter, if any, for quarterly taxpayers), to ensure that the correct liability is auto-populated in FORM GSTR-3B.

TAXMANN's Comments

Currently, taxpayers are allowed to amend any details incorrectly furnished in Form GSTR-1 or add missing details in the GSTR-1 of the succeeding tax period leading to mismatch between GSTR-1 and GSTR-3B of that particular tax period. This practice was resulting in increased litigations due to system generated notices on account of difference between Form GSTR-1 and Form GSTR-3B.

Now, with this new functionality, taxpayers would be allowed to amend or furnish missing details (including those reported in first and second month of quarter for quarterly taxpayers) after filing of Form GSTR-1 but before filing of Form GSTR-3B of the same tax period. This form would allow taxpayers to correct any bonafide errors in filing GSTR-1, but it would be interesting to see how this new facility would impact Form GSTR-2B, as Input Tax Credits are allowed to be claimed as per Form GSTR-2B which is generated on the basis of Form GSTR-1 filed by the supplier.

34. Invoice wise reporting limit of B2C inter-State supplies recommended to be reduced from Rs. 2.5 Lakhs to Rs. 1 Lakh

- Recommendation that threshold for invoice-wise reporting of B2C inter-State supplies in Table 5 of Form GSTR-1 to be reduced from Rs. 2.5 Lakhs to Rs. 1 Lakh.

TAXMANN's Comments

The details of inter-state taxable supplies to unregistered persons are required to be reported invoice-wise[39] if the total invoice value exceeds Rs. 2.5 lakhs. The details required to be reported in respect of such invoices include invoice number, invoice date, invoice value, place of supply (POS), taxable value, applicable percentage of tax rate, *etc.*

The GST council, in its 53rd meeting, has recommended to reduce the threshold for reporting B2C inter-state supplies invoice-wise in Table 5 of Form GSTR-1 from Rs. 2.5 lakh to Rs. 1 lakh.

This would increase the compliance requirement while filing Form GSTR-1.

35. Exemption from filing of annual return in Form GSTR-9/9A for the FY 2023-24

- Recommendation to provide exemption from filing of annual return in FORM GSTR-9/9A for the FY2023-24 for taxpayers having aggregate annual turnover upto two crore rupees.

TAXMANN's Comments

GST annual return is a compilation of all the details furnished by a taxable person in his monthly or quarterly GST returns for a financial year. The GST law requires every registered person, other than the few specified persons, to furnish an annual return in Form GSTR-9 during a financial year. Likewise, a composition dealer is required to file its annual return in Form GSTR-9A.

The GST law empowers the Commissioner, on the recommendation of the council, to notify any class of registered persons who would be exempted from filing the annual return. In this regard, till the Financial Year 2022-23, the registered person whose aggregate turnover is upto Rs. 2 Crores were exempted from filing of annual return. Now, the Council has recommended to extend the exemption from filing of annual return for Financial Year 2023-24 as well.

36. Extending due date for filing Form GSTR-4 returns to June 30th from FY 2024-25 onwards

- Recommendation to amend Rule 62 of the CGST Rules, 2017 and Form GSTR-4 to extend the due date for filing of return in Form GSTR-4 for composition from 30th April to 30th June following the end of the financial year.

39 Rule 59(4) of the CGST Rules

- The given amendment will apply for returns for the FY 2024-25 onwards.

TAXMANN's Comments:

The GST law provides[40] that a registered person who is paying tax under the Composition Scheme[41] would be required to furnish the Form GSTR-4 for every financial year. The existing provision[42] under the GST law provides that the composition taxpayer required to be furnished in Form GSTR-4 on or before the 30th of April following the end of the relevant financial year.

Now, the GST Council has recommended to extend the date the due date for filing of return in Form GSTR-4 from 30 April to 30 June following the end of the financial year. Notably the extension benefit will only be applicable to returns submitted beginning with the FY 2024–2025.

37. Implementing bio-metric based Aadhaar authentication on Pan-India basis

- Recommendation to implement the biometric-based Aadhaar authentication of registration applicants on Pan-India basis in a phased manner.

TAXMANN's Comments

In its 48th meeting, the GST Council first recommended a pilot test for biometric-based Aadhaar authentication in the state of Gujarat. This process was later extended to Andhra Pradesh and the Union Territory of Puducherry.

Now, the GST Council recommends extending biometric-based Aadhaar authentication for GST registration nationwide in a phased manner to strengthen the GST registration process. This will significantly enhance security measures by reducing the number of fake GST registrations and fraudulent input tax credit claims made through these fake registrations.

38. Introducing requirement of 'Nil' filing of Form GSTR-7 and furnishing of invoice-wise details

- Recommendation that the return in Form GSTR-7 is required to be filed even where no TDS has been deducted in the month.

40 Section 39(2) of the CGST Act read with Rule 62(1) of the CGST Rules
41 Section 10 of the CGST Act
42 Rule 62(1)(ii) of the CGST Rules

- It has also been recommended that no late fee may be payable for delayed filing of Nil Form GSTR-7 return.
- It is also recommended that invoice-wise details may be required to be furnished in the said FORM GSTR-7 return.

TAXMANN's Comments

The GST law[43] requires Form GSTR-7 to be filed for the month in which deductions have been made.

The GST Council has now recommended that the return in Form GSTR-7 is to be filed by registered persons who is required to deduct tax at source[44] every month, regardless of whether any tax has been deducted during that month or not. It is also recommended that no late fee is to be paid for the delayed filing of Nil Form GSTR-7 return.

The details that are currently required to be provided in Form GSTR-7 includes details such as the GSTIN of the deductee, the amount paid to the deductee on which tax is deducted, and the amount of tax deducted at source (IGST, CGST, and SGST). However, there is no requirement to furnish invoice-wise details.

Now it is recommended that invoice-wise details are to be provided in Form GSTR-7 return.

43 Section 39(3) of the CGST Act.
44 Section 51 of the CGST Act

EXEMPTIONS UNDER GST



39. Exemption to accommodation services upto Rs. 20,000/- per month per person

- Recommendation to exempt accommodation services having a value of supply upto Rs. 20,000/-per month per person. The exemption would be available where accommodation service is supplied for a minimum continuous period of 90 days.
- Recommended to extend similar benefits for past cases.

TAXMANN's Comments

There has been litigation around classification of hostel accommodation, specifically whether it should be classified as residential property and other forms of accommodation such as hotels, guest houses, inns, clubs, etc. Additionally, there has been litigation regarding the applicability of exemption granted to residential property rented for residential purpose.

Various courts established various principles for determining classification of hostel accommodation such as restriction on family visits, or stay of family members, friends, or guests[45], intent to be made as an abode or habitat to live as a normal living person with all amenities of cooking, etc., and not merely used as a place to reside[46], used as commercial premises[47] or not, intent to have an individual kitchen facility for each inhabitant and allow cooking which is an essential characteristic for a permanent stay[48], sharing of rooms among unrelated inhabitants[49] or not.

Also, a special leave petition[50] is pending before Hon'ble Supreme Court in respect of taxability of renting of hostels. In view of the prevailing confusion, the council has recommended a separate entry for accommodation services in GST services rate notification[51] under the heading 9963.

Further, it has recommended to grant exemption on such services with a value of supply up to Rs. 20,000 per month per person. It mentioned that this would benefit the rural area students etc. who avail the facility of hostels outside of the educational establishment. However, the exemption would be applicable only where the period of stay is minimum and continuous 90 days. This condition is inserted to ensure that the exemption is availed only by the recipients that are intended be benefited from it.

It may be noted that it has been specifically mentioned by the Council that the same exemption will be extended for the past cases. Hence, it would end the ongoing litigation. It's a welcome move for accommodation industry.

45 Ghodawat Eduserve LLP, In re, [2021] 132 taxmann.com 46/88 GST 745 (AAR – Mah.)
46 Aluri Krishna Prasad, In re, [2023] 146 taxmann.com 565/97 GST 216/2 Centax 333 (AAAR - AP)
47 2 Win Residency Ladies Hostel, In re, [2023] 157 taxmann.com 399/13 Centax 108 (AAR- Tami Nadu)
48 Srisai Luxurious Stay LLP, in re, Advance Ruling No. KAR ADRG 25/2023 dated 13-07-2023 [2023] 152 taxmann.com 610/99 GST 102/76 GSTL 79/8 Centax 264 (AAAR - AP)
49 Srisai Luxurious Stay LLP, in re, Advance Ruling No. KAR ADRG 25/2023 dated 13-07-2023 [2023] 152 taxmann.com 610/99 GST 102/76 GSTL 79/8 Centax 264 (AAAR - AP)
50 Taghar Vasudeva Ambrish (SLP(C) No. 026341 - / 2023)
51 Notification No. 12/2017- Central Tax Rate, Dated 28-06-2017

40. Exemption from Compensation cess on imports by SEZ units/developers for authorized operation

- Recommendation to exempt the compensation cess on the imports by SEZ units/developers for authorized operation w.e.f. 01-07-2017.

TAXMANN's Comments

The IGST on the import of goods[52] as well as services[53] by SEZ units/developers for authorized operations is already exempt under existing exemption notifications.

To provide further relief to SEZ units/developers, the GST Council has recommended exempting the compensation cess on imports by SEZ units/developers for authorized operations, effective from 01-07-2017.

41. Exempt compensation cess on supply of aerated beverages and energy drinks to authorized customers by Unit Run Canteens

- Recommendation to exempt compensation cess on the supply of aerated beverages and energy drinks to authorized customers by Unit Run Canteens.

TAXMANN's Comments

A Unit Run Canteen ('URC') is a type of retail outlet established and operated by units of the Indian Armed Forces. These canteens provide various goods and services at subsidized rates to military personnel, including active duty members, veterans, and their families.

URCs operate under the broader framework of the Canteen Stores Department ('CSD'), which oversees the distribution of goods to military canteens across India.

The supply of goods by CSD to URCs, by CSD to authorized customers, and by URCs to authorized customers is already exempt under existing exemption notification[54]

To provide further relief, the GST Council has recommended exempting the compensation cess on the supply of aerated beverages and energy drinks to authorized customers by URCs under the Ministry of Defence.

52 Notification No. 64/2017-Customs, dated July 5, 2017.
53 Notification No. 18/2017 -Integrated Tax (Rate), dated July 5, 2017
54 Notification No. 7/2017-Central Tax (Rate), dated 28-06-2017

42. Clarification that statutory collections by RERA are exempt from GST

- Recommendation to issue clarification that statutory collections made by Real Estate Regulatory Authority ('RERA') are exempt from GST as they fall within the scope of Entry 4 of Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017.

TAXMANN's Comments:

The Real Estate (Regulation and Development) Act, 2016 is an Act of the Parliament of India which seeks to protect home-buyers as well as help boost investments in the real estate industry. Under this Act, appropriate State Governments have established respective Real Estate Regulatory Authorities for regulation and promotion of the real estate sector in their States or Union Territories. These RERAs are funded by the respective State Governments. In order to perform its various functions, RERA charges different forms of fees from promoters, real estate agents, and allottees. These include registration fee for promoters and real estate agents, fees for filing complaints or redressals by buyers, documentation fees and so on.

Notably, in the year 2022, the GST exemption on various services, including pure and composite services, provided by different Governmental Authorities, including SEBI, FSSAI, etc. were withdrawn making them liable to tax. Thus, doubts were raised whether services provided by RERA would also be chargeable to GST, as the levy of GST on their services would mean taxing State Governments.

It may be noted that SL. No. 4 of the exemption notification also exempts[55] the services provided by Governmental Authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution of India. Functions performed by RERA are covered within the purview of functions entrusted under Article 243W of the Constitution. In this regard, the GST Council has now recommended to issue a clarification that statutory collections made by RERA would continue to be exempt from the levy of GST by virtue of said exemption.

43. Exemption on specified services supplied by and to the Indian Railways

- Recommendation to exempt the services provided by Indian Railways to general public, namely, sale of platform tickets, facility of retiring rooms/ waiting rooms, cloak room services and battery-operated car services and to also exempt the Intra-Railway transactions. The issues for the past period will be regularized from 20-10-2023 to the date of issue of exemption notification in this regard.

55 Sl. No. 4 of Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017

- Recommendation to exempt GST on the services provided by Special Purpose Vehicles (SPV) to Indian Railway by way of allowing Indian Railway to use infrastructure built and owned by SPV during the concession period and maintenance services supplied by Indian Railways to SPV. The issues for the past period will be regularized on 'as is where is' basis for the period from 01-07-2017 till the date of issue of exemption notification in this regard.

TAXMANN's Comments

- The 52nd GST Council Meeting recommended that the supply of all goods and services by the Indian Railways would be 'taxable' under the forward charge mechanism in order to enable the Indian Railways to avail ITC which will reduce their overall cost.
- Consequently, with effect from 20-10-2023, the Government notified that services provided by the Indian Railways will no longer be exempted as part of general government services which are exempted from GST. A corresponding amendment was also made under the reverse charge notification to exclude such services from the scope of reverse charge entry, making them taxable under Forward Charge Mechanism. Further, supplies of all goods by Indian Railways are also made liable to tax under Forward Charge Mechanism only[56].
- Now in the 53rd GST Council meeting, it is recommended to exempt the following services provided by Indian Railways to the general public:
  - Sale of platform tickets
  - Facility of retiring rooms/waiting rooms
  - Cloak room services and battery-operated car services
- Another recommendation is to also exempt the Intra-Railway transactions. Intra-railway transactions refer to transactions that occur within the Indian Railways system, between different departments or divisions.
- The issues for the past period in respect of the above transactions will be regularized from 20-10-2023 to the date of issue of exemption notification in this regard.
- The Council has also recommended to exempt the following supplies:
  - Services provided by Special Purpose Vehicles (SPV) to Indian Railway by way of allowing Indian Railway to use infrastructure built and owned by SPV during the concession period
  - Maintenance services supplied by Indian Railways to SPV
- SPVs are often formed as joint ventures between the Railways and other stakeholders like state governments or private companies. The services provided by these SPVs to Indian Railways can include project management, construction, operations, maintenance, and other specialized functions required for the railway projects. In this regard, Ministry of Railways has earlier issued guidelines where Indian Railways is required to issue a Tax invoice for operating & maintenance charges recoverable from SPVs making them liable to GST @18% under forward charge mechanism.
- The issues for the past period will be regularized on 'as is where is' basis for the period from 01-07-2017 till the date of issue of exemption notification in this regard.

56 Notification No. 13/2023-Central Tax (Rate), Notification No. 14/2023-Central Tax (Rate) and Notification No. 19/2023-Central Tax (Rate), dated 19-10-2023

44. IGST exemption on imports of specified items for defense forces extended for 5 years

- Recommendation to further extend the exemption of IGST on specified items for defence forces for an additional five years, i.e. up to 30-06-2029.

TAXMANN's Comments

An exemption[57] was provided from customs duty and integrated tax on import of specified defence equipment and parts for defence forces. However, this notification is effective only until 01-07-2024.

To provide continued relief from IGST for goods used by defence forces, the Council has recommended extending Notification No. 19/2019-Customs, for an additional five years, up to 30-06-2029.

45. Adhoc IGST exemption on imports of technical documentation for AK-203 rifle kits imported for Indian Defence forces

- Recommendation to exempt IGST on the imports of technical documentation for AK-203 rifle kits imported for Indian Defence forces.

TAXMANN's Comments

Under a contract signed between India and Russia in July 2021, over 610,000 AK-203 assault rifles are to be manufactured in India with technology transfer from Russia. The Indian Army has received the first batch of 27,000 Russian-manufactured AK-203 assault rifles, produced at Korwa in Uttar Pradesh by the joint venture Indo-Russian Rifles Private Limited ('IRRPL').

For manufacturing these rifles, technical documentation and rifle kits (parts of rifles) will be imported from Russia, while the manufacturing will be carried out in India.

To provide relief on the import of technical documentation, the GST Council has recommended exempting IGST on the import of technical documentation for AK-203 rifle kits destined for the Indian Defence Forces.

57 Notification No. 19/2019-Cus., Dated 06-07-2019

46. Transaction of co-insurance premium apportionment, ceding commission and reinsurance commission may be declared as no supply under Schedule III

- Recommendation that Co-insurance premium apportioned by lead insurer to the co-insurer for the supply of insurance service by lead and co-insurer to the insured in coinsurance agreements, may be declared as no supply under Schedule III of the CGST Act.
- Recommendation that Transaction of ceding or re-insurance commission between insurer and re-insurer may be declared as no supply under Schedule III of the CGST Act.

TAXMANN's Comments

In co-insurance agreements, multiple insurers share the risk associated with a single insurance policy. One insurer, the lead insurer, typically handles the administration of the policy and apportions premiums to the co-insurers based on their share of the risk. The lead insurer collects the entire premium from the insured and distributes the appropriate share to the co-insurers. Under GST, the transfer of the premium share by the lead insurer to the co-insurers is subject to dispute about whether these transactions should be taxed, given that they are essentially internal redistributions of premiums rather than separate services.

Reinsurance, also known as ceding insurance, is a type of insurance that an insurance company purchases from another insurance company to reduce its risk exposure. This process involves the ceding company (the primary insurer) transferring part of its insurance liabilities to the reinsurer. In such arrangements, the reinsurer pays a commission to the insurer for the business ceded, known as the ceding commission. There has been uncertainty and litigation over whether these commissions should be subject to GST.

In both the above cases, the GST Council has recommended to declare the transactions as no supply in Schedule III.

47. Regularization of GST liability on reinsurance services of specified insurance schemes covered under Sl. No. 35, 36 and 40 of exemption notification

- Recommendation that GST liability on reinsurance services of specified insurance schemes covered by Sl. No. 35 and 36 of exemption notification may be regularized on 'as is where is' basis for the period from 01-07-2017 to 24-01-2018.
- Recommendation that GST liability on reinsurance services of the insurance schemes for which total premium is paid by the Government that are covered under Sl. No. 40 of exemption notification may be regularized on 'as is where is' basis for the period from 01-07-2017 to 26-07-2018.
- Recommendation to issue clarification that retrocession is 're-insurance of re-insurance' and therefore, eligible for the exemption under Sl. No. 36A of exemption notification.

TAXMANN's Comments

Sl. No. 35 of the exemption notification provides exemption to services of general insurance business for list of specified schemes such as Hut Insurance Scheme, Pradhan Mantri Fasal Bima Yojana, etc. Similarly, Sl. No. 35 of the exemption notification provides exemption to services of life insurance business provided under specified schemes such as Janashree Bima Yojana, Aam Aadmi Bima Yojana, etc.

Later, with effect from 25-01-2018, Sl. No. 36A was inserted to provide exemption services by way of reinsurance of the insurance schemes specified in Sl. No. 35 and 36. In order to give benefit of the exemption for the period till 24-01-2018, the GST Council has recommended to regularize the given exemption on as is basis for the period from 01-07-2017 to 24-01-2018.

Similarly, Sl. No. 40 provides exemption to services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory.

With effect from 27-07-2018, Sl. No. 36A also included services by way of reinsurance of the insurance schemes specified in Sl. No. 40. In order to give benefit of the exemption for the period till 26-07-2018, the GST Council has recommended to regularize the given exemption on as is basis for the period from 01-07-2017 to 26-07-2018.

Further, the Government has recommended to issue clarification on applicability of exemption on retrocession of insurance in the above specified schemes. Notably, retrocession is the practice of reinsuring the reinsurance obtained by a reinsurer, essentially spreading the risk further. The clarity will be provided that retrocession is merely reinsurance of reinsurance and therefore, the exemption under Sl. No. 36A will also apply on retrocession of insurance.

48. Other recommendations

- Recommendation to extend IGST exemption on imports of research equipment/buoys imported under the research Moored Array for African-Asian-Australian Monsoon Analysis and Prediction (RAMA) programme subject to specified conditions.

RATE RATIONALIZATION



49. Recommended to prescribe uniform GST rate of 12% on 'cartons, boxes, and cases of both corrugated and non-corrugated paper or paperboard

- Recommendation to reduce the rate 'cartons, boxes, and cases of both corrugated and non-corrugated paper or paperboard from 18% to 12%.

TAXMANN's Comments

The GST rate for cartons, boxes, and cases of corrugated paper or paperboard falling under heading 4819 10 is currently taxed at 18%. Similarly, the rate for folding cartons, boxes, and cases of non-corrugated paper and paperboard falling under heading 4819 20 is also taxed at 18%.

Fruits including apples are exempt from the levy of GST. However, the levy of 18% on the packaging materials like carton boxes significantly increases their cost. Consequently, the apple growers across the belt of Himachal Pradesh have been requesting for reduction in GST rate of packing material from 18 to 12%.

To provide relief to apple growers, the GST Council, based on a proposal from Industries Minister Harshwardhan Chauhan representing the State, has recommended to reduce the GST rate on cartons, boxes, and cases made of both, corrugated and non-corrugated paper or paperboard from 18% to 12%.

50. Recommended to provide uniform GST rate of 12% on Milk Cans (irrespective of their use)

- Recommendation to prescribe that all milk cans (of steel, iron, and aluminium) irrespective of their use will attract GST at the rate of 12%.

TAXMANN's Comments

The GST rate on milk cans varies based on the material used in its manufacturing namely stainless steel, plastic and aluminium. Disputes often arise whether GST rate should differ based on the material used in its manufacturing making them fall under different HSNs.

Fresh milk and pasteurized milk are exempt from GST. However, the tax on milk cans used for these products increases their overall costs.

In view of the above, the GST Council has recommended a uniform GST rate of 12% for all types of milk cans, regardless of the material they are made from. The Council mentioned that the standard boxes called as milk cans would be covered under the prescribed rate.

51. Recommended to provide uniform GST rate of 12% on all types of Sprinklers

- Recommendation to provide a uniform rate of 12% for all types of Sprinklers including fire water sprinklers.

TAXMANN's Comments

Sprinklers are devices used for irrigation of water and can be used for agriculture as well as for extinguishing fire. The GST rates and classification of sprinklers depend on their usage.

Agricultural sprinklers are typically categorized under irrigation equipment and chargeable to GST at rate applicable to agricultural machinery or equipment which generally attract a GST rate of 12%.

However, fire sprinklers, designed to automatically discharge water or other extinguishing agents when a fire is detected, are generally classified under fire protection equipment or parts thereof attracting a higher GST rate of 18%. These include products listed under HSN Codes 741220 and 74122019, encompassing copper and brass fittings and components.

To provide relief, the GST Council has recommended that all types of sprinklers, including fire sprinklers, be taxed at a uniform rate of 12%.

The Council has also recommended to regularise the past period litigation on as is where basis in cases of genuine interpretational issues.

52. Uniform tax rate of 12% on solar cookers whether single or dual energy source

- Recommendation to prescribe a uniform tax rate of 12% on solar cookers whether single or dual energy source.

TAXMANN's Comments

The GST rate on cookers is classified under different headings based on the material of the cooker. Cookers made of steel and iron fall under heading 7321 with an 18% GST rate, those made of aluminum fall under heading 7615 10 with a 12% GST rate, and electric cookers fall under heading 8516 60 00 with a 12% GST rate. Additionally, solar-powered devices are covered under other rates prescribed in Chapter 85 with a 12% GST rate.

There has been confusion regarding the classification of solar cookers, specifically whether they should be classified based on their material (steel, iron, aluminum) or as solar-based devices. There was also uncertainty about the classification of dual-source energy solar cookers.

To provide clarity on the classification of solar cookers, the GST Council has recommended that all solar cookers, whether single or dual energy source, will attract a 12% GST rate.

53. Uniform GST rate of 5% on imports of parts, components, testing equipment, tools, and tool-kits of aircraft to provide a fillip to MRO activities

- Recommendation to prescribe a uniform GST rate of 5% on imports of 'Parts, components, testing equipment, tools and tool-kits of aircraft, irrespective of their HS classification subject to specified conditions.

TAXMANN's Comments

By an amendment[58] made to a previous notification[59], the government reduced the GST rate on maintenance, repair, and overhaul ('MRO') services for aircraft, aircraft engines, and other aircraft components or parts from 18% to 5%.

However, GST on aircraft engine components and parts remains at 18% for most items and 5% for some. Due to the high GST rate on components and parts for engine maintenance suppliers of MRO services to airline companies have been representing before the Civil Aviation Ministry for reduction in the GST rate on engine components to 5% to facilitate MRO services.

To boost MRO activities, the GST Council has recommended prescribing a uniform rate of 5% IGST on imports of parts, components, testing equipment, tools, and toolkits for aircraft, regardless of their HS classification, subject to specified conditions.

54. Amend existing entry covering poultry-keeping machinery attracting 12% GST to specifically incorporate 'parts of Poultry keeping Machinery'

- Recommendation to amend the existing entry for poultry-keeping machinery, which attracts 12% GST, to specifically incorporate 'parts of poultry-keeping machinery'.
- Recommendation to regularize past practices on an 'as is where is' basis in light of genuine interpretational issues.

58 Notification No. 02/2020–Central Tax (Rate), dated 25.03.2020
59 Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017

TAXMANN's Comments

The GST rate on poultry-keeping machinery is prescribed under heading 8436 10 00 at 12%, and the parts of poultry-keeping machinery are covered under heading 8436 91 00 at 12%. The relevant part of the table is reproduced below:

Tariff item	*Description of goods*	*CGST*	*SGST/ UTGST*	*IGST*
8436 10 00	Poultry-keeping machinery, poultry incubator, and brooders	6%	6%	12%
	Parts:			
8436 91 00	Of poultry-keeping machinery or poultry incubators and brooders	6%	6%	12%
8436 99 00	Other	6%	6%	12%

The CESTAT, Chandigarh Bench[60] held that welded wire mesh used as poultry farm accessories to cover poultry cages is a designed part of poultry-keeping machinery and should therefore be covered under heading 8436 91 00, not heading 7314 which covers Cloth (including endless bands), grill, netting and fencing, of iron or steel wire; expanded metal of iron or steel.

Similarly, the CESTAT, Bangalore Bench[61] held that articles specifically designed to make poultry cages, commonly referred to as poultry-keeping machinery parts, should be classified under heading 8436 and not under heading 7314.

Now, the GST Council recommended amending the existing entry for poultry-keeping machinery, which attracts 12% GST, to specifically incorporate 'parts of poultry-keeping machinery' and to regularize past practices on an 'as is where is' basis in light of genuine interpretational issues.

60 Shiva Poultry Equipments v. Commissioner of Central Excise & Service Tax, Chandigarh-II [2018] 91 taxmann.com 315 (Chandigarh - CESTAT)

61 Commissioner of Central Excise, Hyderabad-III v. Weld Fuse (P.) Ltd. [2007] 2007 taxmann.com 1649 (Bangalore - CESTAT)

CONCLUDING COMMENTS

The 53rd GST Council meeting has recommended some of the most welcoming suggestions in the direction of disputed resolution and trade facilitation. Introduction of new provisions such as Section 11A and Section 128A in the CGST Act will provide relief to taxpayers in all industries. The objective seems to reduce the pressure and burden on the taxpayers specifically on those issues which arose due to nuance of the GST law causing unclarity of the provisions. This also significantly highlight the approach of the Government formed after Union Elections.

In fact, the Finance Minister highlighted that not all of the agenda could be taken up in the 53rd GST Council meeting, hence, many other pending issues would be covered in the upcoming GST Council meeting which is set to be held in August 2024 within a short time after union budget. These include GST levy on petroleum products, rate rationalization report by GOM, and so on.

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Naveen Wadhwa

Research and Advisory [Corporate and Personal Tax]

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- ✓ 14+ years of experience in Income tax and International Tax
- ✓ Expertise across real estate, technology, publication, education, hospitality, and manufacturing sectors
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- ✓ PhD in Corporate Economics and Legislation
- ✓ Author and resource person in 800+ seminars



V.S. Datey

Expert on Panel | Research and Advisory [Indirect Tax]

- ✓ Holds 30+ years of experience
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- ✓ A regular speaker at various industry forums, associations and industry workshops
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S.S. Gupta

Expert on Panel | Research and Advisory [Indirect Tax]

- ✓ Chartered Accountant and Cost & Works Accountant
- ✓ 34+ Years of Experience in Indirect Taxation
- ✓ Bestowed with numerous prestigious scholarships and prizes
- ✓ Author of the book GST – How to Meet Your Obligations', which is widely referred to by Trade and Industry



Manoj Fogla

Expert on Panel | Research and Advisory [Charitable Trusts and NGOs]

- ✓ Over three decades of practising experience on tax, legal and regulatory aspects of NPOs and Charitable Institutions
- ✓ Law practitioner, a fellow member of the Institute of Chartered Accountants of India and also holds a Master's degree in Philosophy
- ✓ PhD from Utkal University, Doctoral Research on Social Accountability Standards for NPOs
- ✓ Author of several best-selling books for professionals, including the recent one titled 'Trust and NGO's Ready Reckoner' by Taxmann
- ✓ Drafted publications for The Institute of Chartered Accountants of India, New Delhi, such as FAQs on GST for NPOs & FAQs on FCRA for NPOs.
- ✓ Has been a faculty and resource person at various national and international forums



Nirav Shah

Expert on Panel | Research and Advisory [UAE Corporate Tax]

- ✓ 25+ years of experience and practicing in the UAE
- ✓ Chartered Accountant (All India 36th Rank)
- ✓ Has previously worked with the KPMG



Sudha G. Bhushan

Expert on Panel | Research and Advisory [FEMA]

- ✓ 20+ Years of experience
- ✓ Advisor to many Banks and MNCs
- ✓ Experience in FDI and FEMA Advisory
- ✓ Authored more than seven best-selling books
- ✓ Provides training on FEMA to professionals
- ✓ Experience in many sectors, including banking, fertilisers, and chemical
- ✓ Has previously worked with Deloitte

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