

Highlights of 53rd GST Council Meeting

Introduction

The 53rd GST Council meeting after General Elections was held on June 22, 2024 and was chaired by the Hon'ble Finance Minister Smt. Nirmala Sitharaman. Aiming to streamline trade, simplify business operations, and enhance GST compliance, the GST Council has recommended a series of amendments and clarifications.

Amnesty/ Relaxation

1) Conditional waiver of interest and/ or penalty:

The Council has recommended insertion of Section 128A in the Central Goods and Services Tax Act, 2017 ('CGST Act') granting waiver of interest and penalty for demand notices issued under Section 73 of the CGST Act for FY 2017-18, 2018-19 and 2019-20. However, such waiver is subject to payment of **FULL AMOUNT** of tax demanded by **March 31, 2025**.

CNK Comments:

An amnesty scheme to address the tax disputes relating to initial years of implementation of GST was long pending. The taxpayer can assess all open cases and decide if he wishes to take the benefit of this amnesty.

The amnesty scheme will not cover notices issued on matters related to erroneous refund and demand notices issued under Section 74 of the CGST Act.

2) Reduction in rate of TCS collected by Electronic Commerce Operators (ECOs):

The ECOs are required to collect tax on net taxable supplies made through them. The Council has recommended a reduction in the rate of TCS from 1% (0.5% CGST and 0.5% SGST or 1% IGST) to 0.5% (0.25% CGST and 0.25% SGST or 0.5% IGST).

CNK Comments:

This marginal decrease of 0.5% in TCS rate on supplies made through ECOs will help suppliers having huge amount of input tax credit lying in their electronic credit ledger to effectively apply these credits towards their outward liabilities, thereby enhancing their cash flow management.

3) Relief in calculation of interest where balance is available in electronic cash ledger:

Rule 88B is recommended to be amended in order to exclude the balance available in the electronic cash ledger on the due date which is debited at the time of filing GSTR-3B, for calculating interest under Section 50, for delayed filing of returns.

CNK Comments:

Earlier only the balance of electronic credit ledger was excluded for computation of interest. After the amendment, the balance in electronic cash ledger available on the due date will also be excluded from computation of interest in cases of delayed return filing.

This is in line with the judgement of Hon'ble Madras High Court in the case of Eicher Motors Ltd. vs Superintendent of GST and Central Excise [(2024) 158 taxmann.com 593 (Madras)].

4) Granting power not to recover taxes not levied or short-levied:

The Council has recommended the insertion of 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.

CNK Comments:

This is definitely a welcome amendment and will help in addressing industry issues.

Litigation related recommendations

1) Fixation of monetary limits for filing Appeals:

The Council has recommended to set monetary limits on the Department for filing Appeals to reduce Government litigation. The monetary thresholds recommended are as follows:

- a. GST Appellate Tribunal - INR 20 lakhs
- b. High Court - INR 1 crore
- c. Supreme Court - INR 2 crores

2) Reduction in amount of pre-deposit for filing appeals:

In order to ease the cashflows for the taxpayers, the Council has recommended amendment to Sections 107 and 112 of the CGST Act as below:

- a. **Section 107-** Maximum amount of pre-deposit to file an appeal with **appellate authority** has been reduced from INR 50 crores (CGST + SGST or IGST) to INR 40 crores (CGST + SGST or IGST).
- b. **Section 112-** The pre-deposit for filing an appeal with the **Tribunal** has been reduced from 20% to 10% and the cap for maximum pre-deposit has also been reduced from INR 100 Crores (CGST + SGST or IGST) to INR 40 crores (CGST + SGST or IGST).

CNK Comments:

The wordings in the Press Release are ambiguous. It appears that the maximum pre-deposit at Tribunal level has been capped at INR 80 crores – INR 40 crores at Appellate Authority level and an additional INR 40 crores at Tribunal level. Clarity is expected on this issue.

3) Time limit for filing appeals with GST Appellate Tribunal:

Amendment to Section 112 of the CGST Act has been recommended to allow a three-month period for filing of appeals before the Tribunal, starting from the date to be notified by the Government for all the appeals/ revision orders passed before the date of the said notification.

4) Pre-deposit using DRC-03:

Amendment to Rule 142 of the Central Goods and Services Tax Rules, 2017, ("CGST Rules") has been recommended to provide a mechanism for adjusting payment made in DRC-03 against the mandatory pre-deposit requirements while filing an appeal. A Circular will be issued to lay down the mechanism.

CNK Comments:

The current appeal filing mechanism does not consider payments made through DRC-03 as payment towards pre-deposit. An amendment stating that payments made in Form DRC-03 to be considered for the pre-deposit will help resolve issues in cases where the taxpayers have already paid the pre-deposit by using Form DRC-03.

Input Tax Credit (ITC)

1) Applicability of provisions of Section 16(4) of the CGST Act in respect of ITC:

a. For FY 2017-18 to FY 2020-21:

For all the ITC claimed in GSTR-3B of FY 2017-18 to FY 2020-21, the due date/ time limit under section 16(4) may be deemed to be **November 30, 2021**.

b. Where returns have been filed after revocation of cancellation:

The Council has recommended retrospective amendment to Section 16(4) of the CGST Act to relax the conditions of Section 16(4) of the CGST Act for taxpayers who have filed their returns for the period "from the date of cancellation till the date of revocation", **within 30 days** of the order of revocation.

CNK Comments:

Section 16(4) of the CGST Act prescribes the due date for availing credit on Invoices/ Debit Notes. This relaxation will help taxpayers who filed their returns beyond the due date (specifically after COVID) but up to November 30, 2021 thereby reducing litigation.

2) Applicability of provisions of Section 16(4) in respect of ITC on reverse charge mechanism (RCM) supplies:

The Council has recommended to clarify that in case of RCM on supplies received from unregistered suppliers, where the recipient must pay tax and issue self-invoice, the time limit under Section 16(4) of the CGST Act shall apply from the year in which such invoice is issued.

CNK Comments:

This clarification will address a long-standing dispute and will enable taxpayers to claim credit on transactions where they voluntarily discharged GST under RCM and availed credit. However, if taxes are paid under Section 74 of the CGST Act pursuant to the demand raised by the Department, this provision will not apply.

Valuation Mechanism

1) Valuation of import of services by a related party where recipient is eligible for full ITC:

The Council has recommended clarifying that in the case of import of services from related parties, where full ITC is available to the importer, the value charged by the foreign entity must be deemed as the open market value. Further, if the said foreign entity does not charge the importer, the value can be considered as NIL.

CNK Comments:

This proposal is in line with the Clarification issued vide Circular 199/11/2023-GST dated July 17, 2023 with respect to transactions between Head Office and Branch Office.

2) Clarification on valuation of Corporate Guarantee between related parties:

The Council has recommended amending Rule 28(2) of the CGST Rules retrospectively from October 26, 2023 to clarify issues pertaining to valuation of corporate guarantees between related parties. Further, it has been recommended to clarify that Rule 28(2) of the CGST Rules shall not be applicable for exports and also where the recipient is eligible for full ITC.

Exports and SEZs

1) Refund of additional IGST paid on account of upward price revision of goods, subsequent to export:

The Council has recommended prescribing a mechanism for claiming a refund of additional IGST paid on goods, due to upward revision of price post their export.

2) Exemption from Compensation Cess on Imports by SEZ:

The GST Council has recommended retrospective exemption (effective July 1, 2017) from Compensation Cess on imports by SEZ.

CNK Comments:

The Hon'ble Andhra Pradesh High Court in the case of Maithan Alloys Limited (2024) 158 taxmann.com 227] has held that Compensation Cess is applicable in case of import of goods by SEZ. This recommendation from retrospective effect is in line with the overall objective of ensuring that SEZs remains a duty-free enclave.

3) Exports liable to Export Duty

Amendments to Section 16 of the Integrated Goods and Services Tax Act, 2017 ('IGST Act') and Section 54 of the CGST Act are recommended to curtail the refund of IGST or ITC when goods are exported, with or without payment of IGST. This includes supplies made to SEZ developers or units that are subjected to export duty under Customs.

Exemptions

1) Exemption to hostel services:

The Council has recommended an exemption for hostel services if the monthly charges per person are less than INR 20,000/-, in cases where the services are provided continuously for a period of 90 days.

CNK Comments:

GST on hostel services provided to students, working professionals, etc. has been one of the most disputed subject under GST. Judgements in favour of taxpayers were rendered by the Hon'ble Karnataka High Court and Hon'ble Madras High Court, but notices continued to be issued to the taxpayers.

This exemption provides clarity and relief to the hostel owners as well as the users of hostels. The press release also suggests that similar benefits will be extended to past cases. This will address past litigations on this subject matter.

The exemption will be applicable only when the stay is for more than 90 days. If the occupant vacates the hostel before the expiry of this period, GST will be applicable.

2) Clarification on payments made to Real Estate Regulatory Authority (RERA):

GST Council has recommended clarifying that payments made to RERA are exempt from GST.

CNK Comments:

Services received from Governmental Authorities are liable to GST under the reverse charge mechanism. A clarification is recommended to clarify that RERA qualifies as a Governmental Authority, thereby exempting payments made to them from GST.

Considering that effective April 1, 2019, Residential Real Estate Developers are not entitled to claim input tax credit, this clarification will reduce the tax burden on such developers.

Relief to Banking, Financial Services and Insurance (BFSI) Sector

- a. 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 and past cases may be regularized on 'as is where is' basis.
- b. Transaction of ceding commission/re-insurance commission between insurer and re-insurer may be declared as no supply under Schedule III of CGST Act and past cases may be regularized on 'as is where is' basis.
- c. GST liability on reinsurance services of specified insurance schemes covered by Sr. Nos. 35 & 36 of Notification No. 12/2017-CT (Rate) dated 28.06.2017 may be regularized on 'as is where is' basis for the period from July 1, 2017 to January 24, 2018.

- d. GST liability on reinsurance services of the insurance schemes for which total premium is paid by the Government that are covered under Sr. No. 40 of Notification No. 12/2017-CTR dated 28.06.2017 may be regularized on 'as is where is' basis for the period from July 1, 2017 to July 26, 2018.
- e. Clarification to be issued that retrocession is 're-insurance of re-insurance' and therefore, eligible for the exemption under Sl. No. 36A of the Notification No. 12/2017-CTR dated 28.06.2017.
- f. Clarification to be issued that further sharing of the incentive by acquiring bank with other stakeholders, where the sharing of such incentive is clearly defined under Incentive 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 is not taxable.
- g. Clarification to be issued 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.
- h. 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.
- i. Clarification on taxability of wreck and salvage values in motor insurance claims.
- j. 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.

CNK Comments:

The recent decisions in the 53rd GST Council Meeting bring significant relief to the BFSI sector, aligning with past rulings and clarifications under the service tax regime. The issues of co-insurance premiums and re-insurance commissions, previously addressed in the National Insurance Company Ltd. Vs CST [2016 (08) LCX 0201] and Circular No. 120(A)/2/2010-ST, dated 16.04.2010, have now been recommended to be clarified as non-taxable under Schedule III of the CGST Act. This move aims to regularize past litigations. Additionally, exemptions on reinsurance services and place of supply for custodial services provided by Indian Banks to Foreign Portfolio Investors have been clarified, reducing ambiguity and litigation in these areas.

Returns

- a. Introduction of GSTR-1A, wherein the facility of corrections (including adding new invoices) to GSTR-1 is permissible before filing of GSTR-3B. It would be interesting to see how GSTR-2B captures details for the purpose of claiming ITC.
- b. Exemption from filing GSTR-9 for all those whose turnover is less than INR 2 crores for FY 2023-24.
- c. GSTR-7 to be furnished on a monthly basis irrespective of whether TDS is deducted or not. Late fee will not be applicable for delayed filing of NIL GSTR-7. Invoice-wise details are to be declared in GSTR-7 for better understanding.
- d. Threshold limit for reporting inter-state B2C invoices under 'B2CL' category to be reduced from INR 2.5 lakhs to INR 1 lakh.
- e. The due date for filing Form GSTR-4 for taxpayers under composition scheme has been recommended to be changed from 30th April to 30th June following the end of the financial year. This amendment shall be applicable from FY 2024-25 onwards.

Miscellaneous recommendations:

- a. Retrospective amendment recommended to Section 140(7) of the CGST Act to allow transition of credit where invoices were received by Input Service Distributor and services were received by units prior to July 1, 2017.
- b. Retrospective amendment to Section 122(1B) of the CGST Act w.e.f. October 1, 2023 to clarify that the penal provisions will apply only to ECOs who are liable to collect TCS and not to all ECOs.
- c. Rolling out of bio-metric based Aadhaar authentication on an All-India basis for all the GST registration applications to weed out fraudulent practices.
- d. Amendment to Sections 73 and 74 of the CGST Act and recommendation for insertion of Section 74A in the CGST Act to provide for a common time limit for issuance of demand notices and orders to simplify the adjudication process and streamline the multiple timelines involved.
- e. Benefit of reduced penalty when tax is paid with interest to be extended from 30 days to 60 days.
- f. Introduction of sunset clause in Section 171 of the CGST Act for receiving applications for anti-profiteering matters up to April 1, 2025.

Recommendations relating to GST rates on Goods/ Services

- a. A uniform rate of 5% IGST will apply to imports of 'Parts, components, testing equipment, tools and tool-kits of aircrafts, irrespective of their HS classification to provide a fillip to maintenance, repair and overhaul (MRO) activities subject to specified conditions.
- b. All milk cans (of steel, iron and aluminium) irrespective of their use will attract 12% GST.
- c. GST rate on 'carton, boxes and cases of both corrugated and non-corrugated paper or paper-board' (HS 4819 10; 4819 20) to be reduced from 18% to 12%.
- d. All solar cookers whether single or dual energy source, will attract 12% GST.
- e. Poultry keeping machinery and its parts will attract 12% GST to resolve interpretational issues on an 'as is where is' basis.
- f. All types of sprinklers, including fire water sprinklers, will attract 12% GST to regularize past practices based on genuine interpretational issues.
- g. IGST exemption on imports for defence forces extended for five years until June 30, 2029.
- h. IGST exemption on imports of research equipment/buoys under the African-Asian-Australian Monsoon Analysis and Prediction (RAMA) program extended subject to specified conditions.
- i. Compensation Cess exempted on imports into SEZs for authorized operations from July 1, 2017.
- j. Compensation Cess exempted on supply of aerated beverages and energy drinks to Unit Run Canteens under Ministry of Defence.
- k. Adhoc IGST exemption on imports of technical documentation for AK-203 rifle kits for Indian Defence forces.
- l. GST exemption on services provided by Indian Railways, including platform tickets, retiring rooms/ waiting rooms, cloak room services, battery-operated car services, and intra-Railway transactions, with regularization from October 20, 2023.

- m. GST exemption on services provided by Special Purpose Vehicles (**SPV**) to Indian Railways for use of infrastructure during concession periods and maintenance services provided by Indian Railways to SPVs, with regularization from July 1, 2017.

Please note that this Newsflash has been prepared based on the Press Release issued after the conclusion of the GST Council Meeting. The changes mentioned herein will come into effect only after amendment in GST Law or issuance of Notification/ Circular.

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www.cnkindia.com

3rd Floor, Mistry Bhavan, Dinshaw Vachha Road,
Churchgate, Mumbai, 400 020, India.
Tel: +91 22 6623 0600

501/502, Narain Chambers, M.G. Road, Vile Parle
(East), Mumbai 400 057, India.
Tel: +91 22 6250 7600

Chennai: +91 44 4384 9695

Vadodara: +91 265 234 3483

Ahmedabad: +91 79 2630 6530.

GIFT City: +91 79 2630 6530

Bengaluru: +91 91 4110 7765

Delhi: +91 11 2735 7350

Pune: +91 20 2998 0865

Dubai: +971 4355 9533

Abu Dhabi: +971 4355 9544