

Tax Alert

GST



Highlights of the 54th GST Council Meeting

The GST Council meeting focused on streamlining GST rates, simplifying compliance for small businesses, expediting refund claims, and enhancing anti-evasion measures.

Additionally, the Council has also approved upgrades to GST IT systems to boost efficiency and address technical issues. The meeting aimed to improve the overall effectiveness and fairness of the GST framework. The key decisions taken by the GST Council in the said meeting are as follows:

Changes relating to GST rate on goods and services

- The GST rate for extruded or expanded savoury or salted products (excluding unfried or un-cooked) classified under HSN 1905 9030 will be reduced from 18% to 12%, aligning with the rate for similar ready-to-eat preparations being classified under HSN 2106 90. The GST rate of 5% for un-fried or un-cooked snack pellets remains unchanged. The reduced rate of 12% applies prospectively.

- The GST rate on cancer drugs, namely, Trastuzumab Deruxtecan, Osimertinib and Durvalumab to be reduced from 12% to 5%.

Our Comments

This reduction in GST rates comes on the heels of exemption from import duties levied on these medicines, proposed during the Union Budget 2024. Thus, going forward, local sales of such products after importation would be subject to the lowest GST slab rate – thereby granting overall relief to cancer patients.

- Registered persons buying metal scrap from unregistered suppliers must now pay GST under the Reverse Charge Mechanism (RCM). Suppliers must register once they exceed the threshold limit, but recipients must pay GST under RCM even if suppliers are below the threshold. Additionally, a TDS of 2% will be applicable on the supply of metal scrap by registered persons in case of B2B transactions.

Our Comments

The introduction of RCM upon the metal scrap dealer will make this sector an organized one and arrest leakage of GST for the exchequer. The levy of 2% TDS on B2B transactions, while coming as a small surprise, appears to have been recommended, keeping in mind the sale of metal scrap by dealers to people intending to buy metal scrap. This move would typically increase the compliance burden on the recipients as they would now be required to deduct TDS and adhere to compliances applicable to deductors of tax under GST. The culminating effect of both the changes can be read as “benefit to small dealers and slightly taxing upon the big players.”

- It has been clarified that the Roof Mounted Package Unit (RMPU) Air Conditioning Machines for Railways would be classified under HSN 8415, attracting a GST rate of 28%.
- It has also been clarified that car seats are classifiable under HSN 9401 and attract a GST rate of 18%. However, it has been decided to increase the rate to 28% prospectively to match the GST rate for motorcycle seats, which is already 28%.
- In light of the recent backlash from various stakeholders regarding the levy of GST on life insurance and health insurance, the GST Council had serious discussions regarding the reduction of GST on the said services. However, no conclusion has been reached. In order to resolve this issue and bring more clarity, the GST Council has recommended constituting a Group of Ministers (GoM) who will holistically look into this issue. The GoM is expected to submit its report by the end of October 2024.

Our Comments

The news has been out basis the Fitment Committee’s analysis sparked by the plea coming from Hon’ble Union Minister Shri Nitin Gadkari, a broad consensus has been reached for lowering the GST rate on life and health insurance premiums. However, considering the GST revenue as high as INR 82 billion from life and health insurance premiums during the last fiscal year, it was ultimately decided to form a GoM for in-depth analysis.

- Services in relation to the transport of passengers by helicopters on a seat-sharing basis will now attract GST at 5%. Past period transactions are to be regularized on ‘as is where is’ basis. It has also been clarified that charter of helicopter services will continue to attract GST at 18%.

Our Comments

A welcome move from an industry standpoint that was plagued with notices demanding GST, interest and penalties. It will significantly boost the local tourism industry. The proposal brings much needed clarity and consistency regarding the GST rate applicable to services provided by helicopter operators to passengers at various pilgrimage sites in India. Previously, passenger services for Central Government-sponsored pilgrimages benefited from a lower 5% GST rate, while local pilgrimage sites like Amarnath Yatra were subject to higher rates due to state regulations. This amendment aims to level the playing field, ensuring that local pilgrimage sites can also benefit from the reduced GST rate.

- Research and development services provided by Government Entities or other institutions registered under Section 35 (1) (ii) or (iii) of the Income Tax Act, 1961 using government or private grants have been exempted from the levy of GST. Past period demands be regularized on ‘as is where is’ basis.



Our Comments

This issue has come to light through press reports stating that government-funded universities have received notices from GST Authorities demanding northwards INR 2 billion as GST liability on research grants received under RCM. The GST council is swift in putting this issue to bed by clarifying that such grants shall be treated as 'exempt' for the purposes of GST. Furthermore, the Council has also proposed to let go of any past demands that may arise due to this issue. However, going forward, since such grants would now be treated as exempt, such institutions would be required to reverse proportionate Input Tax Credit (ITC), if any. This will add a layer to existing GST compliances, wherein now the ITC being availed would have to be classified and reversed in accordance with Rule 42 of CGST Rules, 2017.

- Preferential Location Charges (PLC) are confirmed to receive the same tax treatment as construction services, as they are naturally bundled with construction services and constitute a composite supply.
- Affiliation services provided by education boards like the Central Board of Secondary Education (CBSE) are to be treated as taxable under GST Laws.
- Affiliation services provided by State /Central educational boards/councils and similarly placed bodies to Government schools have been exempted prospectively. Past period liabilities between 1 July 2017 to 17 June 2021 will be regularized on 'as is where is' basis.
- Import of services by an Indian establishment of a foreign airline company from a related person or any of its establishments outside India is exempted when provided without consideration. Past period liabilities to be regularized on 'as is where is' basis.

Our Comments

This announcement brings significant relief to the industry, which had been inundated with multiple notices from the GST department for not discharging GST liability on the import of services under RCM. Like other proposals, this one is also being implemented retrospectively. This not only prevents future litigations but also addresses any potential disputes arising from the currently issued notices.

- To curb tax evasion and prevent revenue leakage, registered recipients renting commercial property from unregistered persons must now discharge GST under RCM.

Our Comments

This proposal may be aimed at tax evasion as well as bringing parity in the treatment of renting a residential property and renting a commercial property to a person registered under GST by an unregistered person. The former was subjected to GST under RCM from July 2022 onwards. However, as had been discussed in the press conference, the moment the supplier crosses the minimum threshold for registration under GST (INR 2 million), he would be required to obtain registration and discharge GST liability under forward charge.

- It has been clarified that where Goods Transport Agency (GTA) provides ancillary/intermediate services such as loading/unloading, packing/unpacking, transshipment, temporary warehousing, etc., in the course of transportation of goods by road and invoicing together, then these will be treated as part of composite supply. However, if these ancillary services are not provided in the course of the transportation of goods and are invoiced separately, they will not be considered as part of a composite supply.



Our Comments

This clarification draws inferences from the treatment of such ancillary services under the erstwhile Service Tax regime. The erstwhile CBEC, through its Circular No. 104/7/2008-S.T., dated 6 August 2008, had clarified this very issue wherein it was clarified that such ancillary supplies are composite in nature. However, the major distinguishing factor here is the fact that all the ancillary services shall be billed in the same invoice. The erstwhile circular went to the extent of saying that the nature of invoicing shall not alter the composite nature of such service, whereas here it is being categorically stated that if such ancillary services are billed separately, then they would attract individual rates of GST applicable on such individual services.

- GST liability for the past period up to 1 October 2021 will be regularised on 'as is where is' basis for film distributors or sub-distributors acquiring and distributing films on a principal-to-principal basis.
- Services incidental/ancillary to the main supply of transmission and distribution of electricity by transmission and distribution utilities, such as application fees, meter rental, testing fees, labour charges for shifting meters, charges for duplicate bills, etc., are exempted prospectively when provided as a composite supply. Past period liabilities will be regularised on an 'as is where is' basis.

Measures for facilitation of trade

Implementing the amnesty scheme proposed for the period July 2017 to March 2020

- An amnesty scheme was proposed in the previous Budget, wherein it was proposed to waive interest and penalty for any demand orders raised on non-fraudulent taxpayers for a period from July 2017 to March 2020, upon payment of tax demanded in the order. The said amnesty was introduced in the GST legislation by the insertion of a new section, viz. Section 128A, which is to be brought in power via a date to be notified and also the period up to which the benefit of the said amnesty can be availed.

- In this meeting, the Council has recommended the following:
 - Notify 1 November 2024 as the effective date for insertion of Section 128A
 - Notify 31 March 2025 as the date on or before which the payment of tax may be made by the registered persons to avail the aforesaid benefit.
 - Insertion of new rule, viz. Rule 164 prescribes the procedure, conditions and necessary forms for availing the aforesaid benefit.
 - Issuance of circular to clarify various issues related to availment of waiver of interest and/or penalty to avail the aforesaid benefit.

Our Comments

The recommendations provide clarity with regard to the start date and the period for the amnesty and allow taxpayers approximately 50 more days to decide whether they wish to avail the benefits or otherwise. A few other questions related to partial payments, dealing with orders pertaining to multiple years, treatment of taxes paid under process, treatment of pre-deposits for matters already in appeal, etc. still remain to be answered, which may soon appear in the clarificatory circular. One downside is that the overall period of amnesty, which was announced in June 2024, is truncated to a mere five months.

Mechanism for implementing provisions prescribing extension of the last date of ITC availment as 30 November 2021 for the tax period FY 2017-18 to FY 2020-21

- Provisions have been inserted vide the Finance Act 2024, which prescribes that for the FY 2017-18 to FY 2020-21, ITC can be availed for invoices reflecting in GSTR-2A / 2B up to 30 November 2021. The said provision is proposed to be implemented from a date yet to be notified and is applicable retrospectively with effect from 1 July 2017. The Council has recommended the following in this regard:
 - Notify the said provision at the earliest.



- Notify a special procedure to be followed by taxpayers for rectification of demand orders and first-level (commissioner) appeal orders already issued and confirm demand for wrong availment of ITC, which may get overturned on account of the retrospective implementation of the new benefitting provisions.
- Issue clarification on the procedural aspects and various issues related to the implementation of the said provisions.

Amendments in GST rules pertaining to refunds under Rule 96 (10) and clarifications thereto

- Rule 96(10) of CGST Rules, 2017 restricts three classes of exporters, viz. advance authorization license holders, export-oriented units, and merchant exporters, from claiming a refund on payment of IGST after exporting finished goods or services if such exporters themselves or their suppliers have availed the benefit of any of the notifications specified under Rule 96(10).
- The Council recommended clarifying that if input imports were initially made without payment of IGST and compensation cess by availing notified concessions under Rule 96(10), but IGST and compensation cess on such imports are subsequently paid, along with applicable interest, then a refund of IGST paid on exports to the said exporter shall not be considered to be in contravention of Rule 96 (10). Furthermore, the Council has recommended prospectively omitting Rule 96(10), Rule 89(4A) and Rule 89(4B) from CGST Rules, 2017, considering the difficulty being faced by the exporters due to various restrictions in respect of refund on exports.

Our Comments

The recommendation comes as a welcome move to help genuine taxpayers come out of the labyrinth of Rule 96 (10), which has not only been amended multiple times but also created panic in the minds of AA holders, EOUs and merchant exporters, who were wary of availing concessional benefits on imports. Multiple writs have been filed for declaring Rule 96 (10) ultra vires to the GST legislation. The amendment should help at least a few taxpayers who have received recovery notices for refunds granted to them, provided the taxpayers have already paid/agreed to pay the balance IGST and Cess, which was claimed as a concession.

Clarification/Circular to be issued for

- Exempting approved flying training courses conducted by DGCA-approved Flying Training Organizations (FTOs) from the levy of GST.

Our Comments

Contrary rulings were being passed in different cases by the Authority for Advance Ruling (AAR). The said clarification appears to be in line with the ruling pronounced by the AAR, Maharashtra in the case of M/s. National Flying Training Institute Private Limited. The said clarification will help resolve the ambiguity revolving around the taxability of various kinds of training courses provided by FTOs going forward.

- Affiliation services provided by universities to their constituent colleges are not covered within the ambit of exemption provided to educational institutions in the Notification No. 12/2017- Central Tax (Rate) dated 28 June 2017 and are liable to taxed at 18%.
- Place of Supply in case of:
 - Advertising services provided by Indian advertising companies to foreign entities;
 - Data hosting services provided by Indian service providers to foreign cloud computing service providers.
- Availability of ITC on demo vehicles by dealers of vehicle manufacturers.



Other measures

- **B2C E-invoicing** - The Council has recommended the rollout of a pilot for B2C e-invoicing on a voluntary basis in selected Sectors and States with the objective of improved business efficiency, being environmentally friendly, cost efficiency to the business, etc.

Comprehensive Comments

The overall recommendations approved by the GST council were aimed at ease of doing business. The recommendations seem to have been thoughtfully designed to significantly reduce past litigation issues while also fostering a more business-friendly environment. These initiatives are intended to streamline processes, making it easier for businesses to operate and thrive, ultimately contributing to a more efficient and productive economic landscape. The industry undeniably grapples with an absence of clarity for the GST rates in gaming and insurance sectors, which continue to remain a work in progress; nevertheless, the Council claims to have been working on the refinement of these fiscal parameters.



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