

Key takeaways from the 55th GST Council Meeting

– 21 December 2024

23 December 2024

Introduction

The much awaited 55th Goods and Services Tax (GST) council meeting was held on 21 December 2024 at Jaisalmer. Though the Group of Ministers (GoM) on GST rate rationalisation postponed the submission of its report to the GST council, it sought to address some immediate issues which require change in law, clarification for reduction in tax disputes, ease of tax compliance and rate rationalisation for certain goods and services.

This ERGO intends to summarise some of the key proposals made by the GST council.

I. Measures pertaining to Law and Procedure

A. **Amendment to Section 17(5)(d)**

The phrase “plant or machinery” used in Section 17(5)(d) of the Central Goods and Services Tax Act, 2017 (CGST Act) will be replaced with the phrase “plant and machinery”, retrospectively, with effect from 01 July 2017.

Comments: This recommendation seeks to overcome the landmark judgment of the Supreme Court of India in the Safari Retreats case and to retrospectively restrict Input Tax Credit (ITC) for specific goods or services used for construction of immovable property. The Chairman of the Central Board of Indirect Taxes and Customs (CBIC) clarified that the amendment has been carried out to correct a “drafting error”.

While this amendment aims to restrict the eligibility of ITC based on the interpretation of the term “plant and machinery”, the Supreme Court's ruling that the construction of immovable property does not qualify as being for one's own account if the intent is to sell, lease, or license it - still stands. Taxpayers may need to reassess their position in light of this recommendation.

B. **Track and Trace mechanism**

The system is proposed to be built based on a Unique Identification Mark, which will be applied to goods or their packaging. This will establish a legal framework for developing the system and assist in implementing a mechanism to trace specified commodities across the supply chain. A new enabling provision in CGST Act through Section 148A is proposed to be inserted to empower the Government to enforce the Track and Trace Mechanism.

Comments: The provision is proposed for specified evasion prone commodities with the objective of achieving enhanced transparency, improved tax compliance, and to ensure that correct taxes are paid at every stage of the supply chain.

C. **Amendment in provisions pertaining to Input Services Distributor (ISD) mechanism**

Provisions pertaining to the ISD mechanism are proposed to be amended to include inter-State transactions that are subjected to reverse charge, under the ISD framework. These changes will be effective from 01 April 2025.

Comments: The Finance Act, 2024 carried out changes to the ISD mechanism based on the recommendations of the GST council in its 50th meeting, followed by the issuance of Circular No. 199/11/2023-GST, dated 17 July 2023 to clarify that ISD provisions will be made mandatory in the future. Notification No. 12/2024-Central Tax dated 10 July 2024 has also been issued to amend Central Goods and Services Tax Rules, 2017 (CGST Rules) for giving effect to the GST council's recommendation from a date to be notified. These amendments covered intra-state reverse charge mechanism (RCM) transactions under the ISD mechanism but missed out on inter-state RCM transactions. Hence, the proposed amendments are intended to include inter-state RCM transactions under the ISD mechanism, which would be made effective from 01 April 2025.

D. Amendment in respect of functionality of Invoice Management System (IMS)

The GST council has recommended the introduction of a legal framework for the generation of Form GSTR-2B based on the action taken by the taxpayers on the IMS. The condition for reduction of output tax liability of the supplier will be contingent upon reversal of ITC by the recipient. Taxpayers would be allowed to furnish Form GSTR-3B for a particular month only after Form GSTR-2B of the said tax period is made available on the portal.

Comments: This facility has been made functional on the GSTN Portal with effect from 01 October 2024, and GSTN has issued an advisory with a step-by-step procedure and key points on IMS. These measures are targeted towards reduction of tax disputes relating to mismatch in ITC and issuance of credit notes by the supplier. These amendments would provide legal backing to the already functional IMS.

E. Pre-deposits for filing appeals involving penalty

The pre-deposit amounts for filing appeals under Section 107(6) and Section 112(8) of the CGST Act in cases involving only demand of penalty without involving the demand of tax are proposed to be reduced to 10% of the penalty amount.

Comments: The pre-deposit for filing appeals in cases involving only demand of penalty without involving the demand of tax was increased to 25% vide the Finance Act, 2021 with effect from 01 January 2022. However, the reduction in pre-deposits pursuant to implementation of the 53rd GST council's recommendations warranted its reduction to bring them at par with the pre-deposit for filing appeals in normal cases.

F. Amendment to the definition of Local Authority

An explanation under Section 2(69)(c) of the CGST Act is proposed to be inserted to define the terms "Local Fund" and "Municipal Fund" used in the clause.

Comments: The exemption for services provided to the local authority is, inter alia, dependent on whether such authority is legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund. The proposal to define the terms "Local Fund" and "Municipal Fund" would remove ambiguity on the scope of exemption notification.

G. Temporary Identification Number (TIN)

Persons who are not required to obtain registration under CGST Act but are liable to make any payment, can be granted TIN by tax officers in terms of Rule 87(4) of the CGST Rules. However, generation of TIN requires an amendment to the registration related provision and the relevant form.

Comments: The inconvenience of obtaining a separate registration for payment of any amount in the State where the violation or evasion is detected in respect of goods in transit can be overcome with the proposed amendment.

H. Modification of registration category to be allowed for composition taxpayers

Rule 19(1) of the CGST Rules is proposed to be amended to allow composition taxpayers to modify the registration category through Form GST REG-14.

II. Trade and Compliance Facilitation

A. **The Supply of goods warehoused in SEZ or FTWZ are not leviable to GST**

The supply of goods stored in a Special Economic Zone (SEZ) or Free Trade Warehousing Zone (FTWZ) to any person, prior to the clearance of such goods for export or to the Domestic Tariff Area, shall be considered neither a supply of goods nor a supply of services. This proposal shall be carried out retrospectively with effect from 01 July 2017 through the insertion of clause (aa) in paragraph 8 of Schedule III of the CGST Act.

Comments: This aligns transactions involving the supply of goods stored in SEZ/FTWZ with the existing provisions in GST for transactions in customs bonded warehouses. This amendment was required since warehousing of goods in SEZ or FTWZ do not require permission for bonding. It is to be seen if the taxpayers can seek a refund for tax payments, if the incidence of such tax is borne by them.

B. **Taxability of vouchers**

The GST council arrived at a consensus that the supply of vouchers are not taxable under GST laws. Presently, GST laws define voucher and also prescribes its time of supply value. Based on the GST council's recommendation, the provisions relating to its time of supply of vouchers and valuation mechanism are proposed to be omitted.

The CBIC will clarify the following issues relating to vouchers:

- transactions in vouchers shall not be treated as a supply of goods or a supply of services;
- the distribution of vouchers on a principal-to-principal basis shall not be subject to GST. However, when vouchers are distributed on a principal-to-agent basis, any commission, fee, or other charges collected by the agent for such distribution will be taxable under GST;
- additional services related to vouchers, such as advertising, co-branding, marketing and promotion, customization, technology support, customer support, etc., will be subject to GST on the amount paid for these services; and
- unredeemed vouchers (breakage) will not be treated as supply under GST, and no GST will be applicable on the income recognized in the accounts for breakage.

III. Clarification to remove ambiguity and legal disputes

- A. **ITC reversal by electronic commerce operators**: The GST Council has recommended that electronic commerce operators (ECOs) are not required to proportionally reverse ITC under Section 17(1) or Section 17(2) of the CGST Act, for supplies on which they are obligated to pay tax under Section 9(5) of the CGST Act.
- B. **ITC on supply of goods ex-works**: The GST Council recommended clarifying that in an ex-works contract, where goods are handed over by the supplier to the recipient or transporter at the supplier's business premises, and ownership of the goods transfers to the recipient at that point, the goods are deemed to be 'received' by the recipient under Section 16(2)(b) of the CGST Act. Accordingly, the recipient may claim ITC on such goods, subject to the satisfaction of conditions specified in Sections 16 and 17 of the CGST Act.
- C. **Applicability of late fee on delayed filing of Form GSTR-9C for the financial years (FYs) 2017-18 to 2022-23**: The GST Council recommended issuing a circular to clarify that late fees under Section 47(2) of the CGST Act, are applicable for delay in filing the complete annual return under Section 44 of the CGST Act. This includes both Form GSTR-9 (Annual Return) and Form GSTR-9C (Reconciliation Statement), where applicable.

For annual returns for the FYs 2017-18 to 2022-23, the GST Council also recommended issuing a notification under Section 128 of the CGST Act, to waive the late fee amount for delays in filing Form

GSTR-9C. The waiver applies to the portion of the late fee exceeding the amount payable up to the filing date of Form GSTR-9 for the respective years, provided Form GSTR-9C is filed by 31 March 2025.

- D. **Capturing correct details for B2C supplies:** The GST Council has recommended issuance of a circular to clarify that for the supply of 'Online Services,' such as online money gaming and OIDAR services to unregistered recipients, the supplier is required to mandatorily record the name of the recipient's State on the tax invoice. The recorded State name will be deemed to be the 'address on record' of the recipient for the purposes of Section 12(2)(b) of the IGST Act, read with the proviso to Rule 46(f) of the CGST Rules.
- E. **Additional compliance for TDS return filers:** Taxpayers who are required to deduct tax at source under Section 51 of the CGST Act would be required to file Form GSTR-7 every month irrespective of whether any tax has been deducted during the said month or not. Such taxpayers may not be required to pay late fee for delayed filing of nil return. The details are required to be furnished by such taxpayers at the invoice level.

IV. Rate Rationalisations

A. **GST rate on Goods:**

- GST on the sale of all old and used vehicles, including electric vehicles (EVs), are proposed to be increased from 12% to 18%. Presently only old and used petrol vehicles with an engine capacity of 1200 cc or more and a length of 4000 mm or more, diesel vehicles with an engine capacity of 1500 cc or more and a length of 4000 mm, and SUVs are taxable at 18%.

(Note: GST is applicable only on the value representing the supplier's margin, i.e., the difference between the purchase price and the selling price (or depreciated value if depreciation has been claimed), and not on the full value of the vehicle. Additionally, GST is not applicable on sale of old and used vehicles by unregistered persons.)

- Supply of gene therapy is proposed to be exempted from payment of GST to reduce the cost of treatment, prevention, or to cure certain diseases and medical disorders.
- Import of systems, sub-systems, equipment, parts, sub-parts, tools, test equipment, software meant assembly/manufacture of Long Range Surface-to-Air Missile system is proposed to be exempted from payment of Integrated Tax to bring down the overall cost of defence procurements.
- Import of all equipment and consumable samples by the International Atomic Energy Agency (IAEA) Inspection Team is proposed to be exempted from payment of Integrated Tax, subject to specified conditions.
- Reduction in the rate of GST on supply of Fortified Rice Kernel classifiable under Chapter Heading 1904 from 18% to 5%.
- Food inputs classified under Chapters 19 or 21 are proposed to be taxable at concessional rate of 5%, when supplied for the preparation of food intended for free distribution to economically weaker sections under a government program, subject to the existing conditions.
- The Compensation Cess rate on supplies to merchant exporters is proposed to be reduced to 0.1% to bring them at par with the rate of GST on supply of goods to merchant exporters.
- GST Council has proposed for an amendment in the definition of 'pre-packaged and labelled' to include all commodities intended for retail sale, weighing no more than 25 kg or 25 litres, that are 'pre-packed' as defined under the Legal Metrology Act, or for which a label is affixed that must bear the declarations required under the provisions of the Act and its rules.

Note: At present, the expression 'pre-packaged and labelled' means a 'pre-packaged commodity' as defined under Section 2(l) of the Legal Metrology Act, 2009 where, the package in which the commodity is pre-packed or label securely affixed thereto, is required to bear the declarations under the provisions of the Legal Metrology Act, 2009 and the rules made thereunder.

Comments: The consistency in tax rates is a positive development and will reduce the disputes on classification and rates. Further, exemptions granted on defence imports are aimed at easing working capital requirements for defence relating procurements.

B. **GST rate on Services:**

- **Hotel accommodation:** The definition of 'declared tariff' is proposed to be omitted and the definition of 'specified premises' is proposed to be amended in the service rate and exemption notifications to link it with the actual value of supply for any unit of accommodation provided by the hotel. The GST rate on restaurant services in such hotels for a given financial year will depend on the value of supply of accommodation units in the preceding financial year:
 - **18% with ITC** if the value of supply for any accommodation unit exceeded INR 7,500 in the preceding financial year.
 - **5% without ITC** if the value of supply was INR 7,500 or less.

Additionally, hotels will have the option to pay GST on restaurant services at 18% with ITC by submitting a declaration to that effect either before the beginning of the financial year or upon obtaining registration. These changes will take effect from 01 April 2025, to ensure a smooth transition.

- **No GST under RCM on renting of commercial property by composition taxpayer:** The taxpayers registered under the composition levy scheme are proposed to be excluded from the entry at Sr. No. 5AB of Notification No. 13/2017-Central Tax (Rate) dated 28 June 2017, as amended by Notification No. 09/2024-Central Tax (Rate) dated 08 October 2024, which brought the renting of any commercial/immovable property (other than residential dwelling) by an unregistered person to a registered person under the reverse charge mechanism. Additionally, GST Council has also recommended to regularize the period from 10 October 2024, until the issuance of the proposed notification, on an "as is where is" basis.
- **Sponsorship services:** Supply of sponsorship services by a body corporate is proposed to be taxable under forward charge mechanism. Note: Sponsorship services provided by any person other than by a body corporate will continue to be taxable under reverse charge mechanism.
- **Exemption for Motor Vehicle Accident Fund:** GST Council has recommended granting exemption from payment of GST on contributions made by general insurance companies from third-party motor vehicle premiums collected by them towards the Motor Vehicle Accident Fund (for providing compensation and cashless treatment to road accident victims, including hit-and-run cases), established under Section 164B of the Motor Vehicles Act, 1988.

V. Clarifications (subject to detailed circulars)

The GST Council has mulled over the several litigious issues and would be issuing clarifications in respect of the following:

- A. **GST on ACC Blocks:** To clarify that Autoclaved Aerated Concrete (ACC) blocks containing more than 50% fly ash will be classified under Chapter Heading 6815 and subject to a 12% GST.

Comments: The Gujarat Advance Ruling as well as Appellate Authority for Advance Ruling In Re: Dipakkumar Ramjibhai Patel ruled that Fly Ash Bricks containing fly ash content of 40-60% classifiable specifically under Tariff Item 6815 99 10 and GST is chargeable @ 12% GST up to 14 November 2017 and @ 18% GST with effect from 15 November 2017. This clarification is a welcome move for the industry.

- B. **GST on Pepper and Raisins:** To clarify that pepper, whether fresh green or dried, and raisins, when supplied by an agriculturist, are not liable to GST.

Comments: This is a much needed relief for agriculturists that are facing litigation.

- C. **GST on popcorn:** To clarify that ready-to-eat popcorn mixed with salt and spices is classified under Tariff Entry 2106 90 99 and attracts 5% GST when supplied as non-pre-packaged and labelled, and 12% GST when supplied as pre-packaged and labelled. However, when popcorn is mixed with sugar, altering its character to a sugar confectionery (e.g., caramel popcorn), it will be classified under Tariff

Entry 1704 90 90 and subject to 18% GST. The GST Council has decided to regularize past issues on an 'as is where is' basis.

Comments: The recommendation to provide clarification regarding multiple tax rates on supply of popcorn in different form may not affect the cinema industry or multiplexes since food and beverages sold at the cinemas get covered under the definition of 'restaurant services' and are subject to 5% GST (without ITC).

- D. **Cess on utility vehicles:** To clarify that the explanation in Sl. No. 52B of Notification No. 1/2017-Compensation Cess (Rate) dated 28 June 2017, regarding ground clearance, is applicable from 26 July 2023.

Comments: According to the explanation, the ground clearance of utility vehicles of 170 mm and above is to be measured in an unladen condition. While the automobile industry has been paying Compensation Cess on the supply of utility vehicles at 20%, departmental authorities have demanded Cess at 22% for the period from 11 September 2017 to 26 July 2023, based on the ground clearance measured in a laden condition. The industry had anticipated that this issue would be regularized on an 'as is where is' basis, given that the Government has accepted the industry practice.

- E. **GST on financial services:** To clarify that RBI-regulated Payment Aggregators qualify for the exemption under Sl. No. 34 of Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017, as they fall within the scope of the term 'acquiring bank' defined in the said entry. It is further clarified that this exemption does not extend to payment gateways or other fintech services that do not involve the settlement of funds.

Comments: The exemption is available for supply of services by an acquiring bank, to any person in relation to settlement of an amount upto INR 2,000 in a single transaction transacted through credit card, debit card, charge card or other payment card service. Many payment gateways and fintech service providers have claimed exemption from payment of GST and are facing tax demands from the authorities.

- F. **GST on penal charges:** To clarify that GST is not applicable on 'penal charges' imposed and collected by banks and NBFCs from borrowers for non-compliance with loan terms.

Comments: Tax authorities have demanded tax on the penal charges collected by banks and NBFCs from borrowers if they fail to comply with the terms of borrowing. As per RBI, these penal charges are nothing but interest, which are exempt from payment of GST vide entry 27 of Notification No. 12/2017-Central Tax (Rate), dated 28 June 2017.

Overall remarks: These clarifications would be aimed at reducing the existing disputes and tax demands faced by the industry due to innovative interpretations adopted by tax authorities. However, the exact contours of the clarifications will be detailed in the circulars proposed to be issued in due course.

VI. Other issues:

- The Council reviewed the procedural rules proposed for the internal functioning of the GST Appellate Tribunal (GSTAT), which will be notified after examination by the Law Committee, facilitating the operationalization of the GSTAT.
- The GST Council approved the recommendations of the committee of officers on measures addressing various issues raised by States concerning IGST settlement and directed the committee to finalize the necessary changes by March 2025.
- The GST Council decided to extend the timeline for the Group of Ministers on restructuring GST Compensation until 30 June 2025.
- In response to a request from the State of Andhra Pradesh, the Council recommended constituting a Group of Ministers to examine legal and structural issues and propose a uniform policy for imposing levies during natural disasters or calamities within the State.

Comment: Taxpayers can expect additional levies on intra-State B2C supplies similar to the one imposed pursuant to Kerala Floods in the year 2019.

- The issue of whether charges collected by municipalities for granting Floor Space Index (FSI), including additional FSI, are subject to GST on a reverse charge basis was raised in the Council. The matter was deferred for further examination at the request of the Central Government, noting that such charges pertain to municipalities or local authorities.
 - The GST council did not discuss the issue of reduction of tax rates for insurance sector or GST rate on food delivery charges collected by e-commerce aggregators. The issue of correcting inverted tax structure and rate rationalisation would be finalised by the Fitment Committee and presented to the GST Council for further deliberation.
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