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50th meeting of the GST Council 11th July 2023

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JULY 15

Summary

50th meeting of the GST Council was held in New Delhi on 11th July, 2023 where various measures for simplification, standardisation, rate rationalisation etc. have been recommended by the GST Council.

These recommendations have been declared by way of a press release. We have tried to encapsulate these recommendations in the following Summary of the press release.

1. Declaration to be filed by GTA

- GTA has been given the option to pay GST under reverse charge mechanism or forward charge mechanism. If GTA opts to pay the GST under forward charge mechanism then declaration is required to be made with jurisdictional officer on or before 15th March of the preceding Financial Year.
- Now, it has been decided that GTA will not be required to file declaration every year if opts to pay GST under FCM as once the option exercised it shall be deemed to have exercised for future financial years unless declaration filed to pay the GST under RCM.
- Last date to exercise the option to pay GST under RCM or FCM shall be 31st March of the preceding financial year instead of 15th March.

2. Mismatch in Input Tax Credit

Department had issued Circular 183/15/2022 to allow ITC on invoices which are not appearing in GSTR-2A provided the supplier was able to give a declaration / CA Certificate that GST on such invoice was paid but the invoice has not been uploaded / wrongly uploaded. This benefit was available only for FY 2017-18 and FY 2018-19.

Now, the Council has recommended that this benefit will be allowed for ITC availed between 01.04.2019 to 31.12.2021.

Our views: Circular 183/15/2022 is a beneficial circular for taxpayers. The above extension of this benefit is a major relief for all taxpayers as it gives them a chance to absolve themselves of any liability arising due to mistakes of their suppliers.

One may even argue that this extension of benefit is a tacit acceptance that GSTR-2A is not the ultimate evidence for availing of ITC but only a starting point to identify if any tax has not been paid, as the benefit is extended for the entire period during with GSTR-2A was relevant under Rule 36(4).

3. Registration

- Bank account details to be updated on the GST portal within 30 days from the date of registration or before filing of GSTR-1 / IFF, whichever is earlier.
- In case of failure to update bank details, taxpayer will not be allowed to file GSTR-1 / IFF and the GSTIN may be automatically suspended. Once bank details are updated, GSTIN will automatically be made active again.
- Rule 9 to be amended to allow the Departmental officers to conduct physical verification of premises even in the absence of the taxpayers.
- Amendment to be made in Rule 25 to require Departmental officers to do physical verification of premises in “High-risk cases” even if their Aadhar Authentication is done.

- Pilot programme for Aadhar authentication via biometrics in high-risk cases to be run in Puducherry and Gujarat and after that in Andhra Pradesh.

Our views: Amendment in Rule 9 and Rule 25 would give unbridled power to Departmental officers in conducting physical verification of premises at the time of granting registration and even after. This would be counter-productive to the vision of the Government of providing “Ease of Doing Business” unless detailed guidelines are issued and the same are followed scrupulously by the officers.

4. Liability to pay tax on services provided by Director to Company

- It has been clarified that tax on services provided by a director to the company in his personal capacity (such as renting), are not payable under RCM.
- GST under RCM is required to be paid by the company only when director of a company provides the services in the capacity of director of that company or body corporate.

5. GST Appellate Tribunal (GSTAT)

- Council has recommended rules for appointment of the President and Members of the GSTAT and has also nominated a member for the Search & Selection Committee.
- Effective date for the amendments made to GSTAT Provisions in CGST Act (Constitution and Composition of GSTAT) shall be 01.08.2023.

- State benches to be commenced in a phased manner.

Our views: From the above, it appears that GST Appellate Tribunal could soon become a reality after 6+ gruelling years of GST.

6. Input Service Distributor (ISD)

- It has been decided to clarify that distribution of ITC on services through ISD is not mandatory.
- Council has also recommended that GST Act must be amended to make distribution of ITC on services through ISD as mandatory prospectively.

Our views: Council has finally given some clarification on the major issue of cross charge v/s ISD being faced by the industry at large. The proposed amendment in law to make ISD mandatory from a prospective date may increase the compliance burden of many small players and E-Commerce vendors having registration in multiple States.

7. Taxability on supply of food and beverages in cinema halls

- Supply of food and beverages in cinema halls shall be treated at par with restaurant service if they are supplied as part of service and independently of the cinema exhibition service. Accordingly, these shall be taxable at the rate of 5%.

- If cinema tickets and food and beverages are supplied together, then it will be treated as composite supply and the entire supply will attract the GST at the rate applicable to principal supply i.e., service of exhibition of cinema.

Our views: Considering food & beverages at par with restaurant service would provide relief to cinema goers. However, Cinema halls shall ensure that this benefit is actually passed on to the consumers.

8. Scrutiny of Returns

- Rule 88C and Form DRC-01B was introduced to intimate mismatch where liability disclosed in GSTR-1 is more than liability paid in GSTR-3B. Now in order to initiate recovery of such tax payable under Rule 88C, Form DRC-01D and Rule 142B has been introduced.
- Where the ITC availed in GSTR-3B exceeds GSTR-2B by a certain threshold, then automatic notice in Form DRC-01C shall be issued to the taxpayer. Rule 88D shall also be introduced for this.

Our views: A robust mechanism for scrutiny under Section 61 is already in place by way of ASMT-10 and the subsequent process which already covers the mismatch in liability and ITC. Introduction of new forms and rules to do the same thing, albeit a little faster

does not appear to solve the problem, instead does not give room to taxpayers to rectify their mistakes.

9. Amnesty Scheme

Amnesty scheme provided for non-filers of GSTR-4, GSTR-9, GSTR-10 and Revocation of cancellation of GSTIN upto 30.06.2023 has been extended upto 31.08.2023. Capping of late fee for each of these returns shall also be extended.

10. E-Way bill for gold and precious stones

As per Rule 138(14), E-way bill is not required for Gold, Precious and semi-precious stones etc. as covered under Chapter 71. Council has recommended to allow States to make rules for generation of E-way bill for intra-state movement of these goods within their States.

11. Miscellaneous points

- Exemption from filing Annual return i.e., Form GSTR-9/9A for FY 2022-23 to be provided to taxpayers with turnover upto Rs. 2 Crores.
- Relaxation has been recommended in respect of various tables of Form GSTR-9 and Form GSTR-9C for FY 2022-23 the same was provided in FY 2021-22.

- As per Rule 46(f) tax invoice shall contain the name and address of the recipient along with its PIN code and name of the state where any taxable service is supplied by or through E-commerce Operator or by a supplier of OIDAR service to an unregistered recipient.
- Now, to ease the compliance it is recommended to amend the Rule 46 (f) of CGST Rules, 2017 only name of the state of the recipient is required to be provided on tax invoice and not the name and full address of the recipient.
- Under Section 148 of the CGST Act, Special procedure to be provided for filing of appeal manually against the orders passed by proper officers in respect of Form TRAN-1/TRAN-2 filed by the registered persons in pursuance of the directions of Hon'ble Supreme Court in the case of Union of India v/s Filco Trade Centre Pvt Ltd.
- Rule 108(1) Appeal to be filed in APL-01 and Rule 109(1) Appeal to be filed in APL-03 to be amended to provide the manual filing of appeal under certain specified circumstances.
- Special procedure under Section 148 of the CGST Act, 2017 is recommended to the manufacturers of Tobacco, Pan Masala and other similar items for registration of Machines and filling of special monthly returns.

Also, recommended an insertion of new Section 122A in CGST Act, providing special penalty for non-registration of machines by above such manufacturers.

- Also, it is recommended that notification will be issued for amendment in Section 16 of IGST Act, for restriction of IGST refund in respect of exports of tobacco, pan masala, mentha oil and other similar items.
- It is recommended to amend the Form GSTR-3A for issuance of notice to the defaulters of filing of Annual return in Form GSTR-9/9A within the due date.
- Rule 64 of CGST Rules, 2017 Every registered person providing OIDAR service from place outside India to the unregistered person in India is required to file the Form GSTR-5A. Now, it has been recommended to amend the Rule 64 and Form 5A that OIDAR service provider is required to provide the details of supplies made to registered persons as well as unregistered persons in the return in Form GSTR-5A.

This will also help the Department to keep the track of payment of tax by such registered person under RCM for the services received from OIDAR service providers.

- The council has recommended to insert the new clause (ca) under section 10(1) of IGST Act to clarify the place of supply in respect of supply of goods to unregistered persons.

12. Clarification of certain issues

GST Council has recommended to issue clarifications on the following issues to ease out the disputes between Industry and Department:

- No GST Liability or Reversal of ITC in case of goods used for repair / replacement of goods covered in warranty.
- Refund of ITC to be restricted to only those invoices which are reflecting in GSTR-2B.
- Liability to pay TCS of E-commerce operator where multiple e-commerce operators are involved in the same transaction.
- E-invoice shall be applicable for invoices issued to Government departments registered solely for the purpose of TDS
- In case of wrong availment of ITC of IGST, balance in electronic credit ledgers of IGST, CGST and SGST to be considered cumulatively for the purpose of calculation of interest.
- Mere holding of securities in subsidiary company shall not be treated as service and hence, not taxable under GST.
- “Adjusted total turnover” in Rule 89(4) shall include value of export goods as per the explanation to Rule 89(4).
- Clarification to be issued whether refund shall be admissible or not on export of goods, where foreign currency has been realized after the time limit given in Rule 96A.

13. Changes in GST Rates

Sr. No.	Description	From	To
1	Uncooked/unfried Snack pellets	18%	5%
2	Import of Dinutuximab (Quarziba) medicine for personal use	12%	Exempt
3	Import of Medicines and Foods for Special Medical Purposes used in treatment of rare diseases enlisted under National Policy for Rare Diseases, 2021	Different rates	Exempt
4	Supply of raw cotton including kala cotton by agriculturists to cooperatives	FCM	RCM
5	Imitation zari thread or yarn	12%	5%
6	LD slag	18%	5%
7	Fish soluble paste	18%	5%
8	Satellite launch services supplied by Organizations in private sector	18%	Exempt
9	Chips purchased in Casinos	18%	28%
10	Bets placed in online gaming	18%	28%
11	Compensation cess on All Utility Vehicles having Engine capacity more than 1500 CC, Length exceeding 4000 mm and Ground clearance more than 170 mm	20%	22%

While best efforts have been made to summarise the press release for educational purposes, this is not a legal opinion. It is suggested that the press release and the relevant notifications and circulars must be referred to before making any decisions. In case of any query, please feel free to get in touch with us at gst@cbcandco.com.