

KEY UPDATES ON THE GST COUNCIL MEETING HELD ON JUNE 28, 2022 AND JUNE 29, 2022

1. Amidst the five year completion of the Goods and Services Tax (“GST”) regime in India, the GST Council (“Council”) held its 47th Meeting on June 28, 2022 and June 29, 2022 in Chandigarh. The Council has made a slew of recommendations, some in line with industry expectations and some with a view to close out litigative positions and bring clarity to business. The digital ecosystem was also waiting with bated breath to see the recommendations which would affect them as various issues still require the attentions on the indirect tax side such as treatment of virtual digital assets (VDA), this entire exercise has been deferred. Further, considering the Group of Ministers (“GoM”) recommendation of tax at the highest rate on online games and some other crucial valuation issues, there was no mention of these in the final recommendations. It appears that the GoM has been asked to review their position again. While the present Alert covers in detail and lists out the recommendations, it is noteworthy to highlight some key announcements and their impact.
2. To begin with, to aid small sellers and the Micro Small and Medium Enterprises (“MSME”) group, the Council has recommended relaxed provisions for supplies made through E-commerce Operators (“ECO”) including a waiver of mandatory registration for some suppliers. With an eye on aiding businesses, the Council has also recommended changes in the formula for calculation of refund in inverted duty structures. This flows from the directive of the Supreme Court to consider the calculation mechanism so that industries suffering from inverted duty structure will have some respite. Additionally, further rates have been increased for certain goods to remove this anomaly.
3. Some other key recommendations which will drive up prices in some areas include GST on hospital room rent (excluding ICU) exceeding INR 5000 will now attract GST at 5% without input tax credit (“ITC”), 12% GST will be levied on hotel accommodation upto INR 1000. LED lamps, lights, fixtures will now attract a higher rate of 18%.
4. Some of the recommendations are in the nature of clarifications to settle either existing disputes or pending cases, such as in vitro fertilization and assisted reproductive technology has been recommended to be covered under the definition of healthcare, thus, will get an exemption now. Further, sale of land after levelling and laying of drainage pipes will be outside the purview of GST. Another interesting recommendation is on food items and grains, where previously exemption was applied for unbranded items or where the assessee was forgoing their rights over the brand. The Council has now suggested revising the scope of the exemption and it may now exclude pre-packaged and prelabelled retail packs (as understood under the Legal Metrology Act, 2009).
5. The Council has made a host of recommendations relating to changes in GST rates on supply of goods and services (please note that all the rate changes are to be made effective from July 18, 2022) and changes related to law and procedure. While the notifications are being issued, GST council discussed and approved the following:

- (a) Recommendations relating to GST rates on certain goods and services.
- (b) Clarifications on GST rate of goods and services and withdrawal of exemptions and rate; rationalisation on certain items.
- (c) Measures for trade facilitation; and
- (d) Other measures.

6. RATE CHANGES

6.1 Rate rationalisation to remove the inverted duty structure:

S. No.	Description	Present GST Rate	GST Rate recommended by GST Council
(a) Goods			
i.	Printing, writing, or drawing ink	12%	18%
ii.	Solar water heater systems	5%	12%
iii.	Knives with cutting blades, Paper knives, Pencil sharpeners and blades therefor, Spoons, forks, ladles, skimmers, cake-servers etc.	12%	18%
iv.	Power driven pumps primarily designed for handling water such as centrifugal pumps, deep tube-well turbine pumps, submersible pumps; Bicycle pumps	12%	18%
v.	Prepared/finished leather/chamois leather/composition leathers	5%	12%
vi.	Machines for cleaning, sorting or grading eggs, fruit or other agricultural produce and its parts, Milking machines and dairy machinery	12%	18%
vii.	LED Lamps, lights, fixtures etc.	12%	18%
(b) Services			
i.	Job work in relation to manufacture of leather goods and footwear	5%	12%
ii.	Services supplied by foreman to chit fund	12%	18%

S. No.	Description	Present GST Rate	GST Rate recommended by GST Council
iii.	Job work in relation to processing of hides, skins, and leather	5%	12%
iv.	Job work in relation to manufacture of clay brick	5%	12%
v.	Works contract supplied to central and state governments, local authorities for historical monuments, canals, dams, pipelines, plants for water supply, educational institutions, hospitals etc. & subcontractor thereof	12%	18%
vi.	Works contract supplied to central and state governments, union territories & local authorities involving predominantly earthwork and sub-contracts thereof	5%	12%
vii.	Works contract for roads, bridges, railways, effluent treatment plant etc.	12%	18%

6.2 Other GST rate changes recommended by the Council amongst others are as follows:

S. No.	Description	Present GST Rate	GST Rate recommended by GST Council
(a) Goods			
i.	Ostomy Appliances	12%	5%
ii.	Orthopaedic appliances	12%	5%
iii.	Tetra Pak (Aseptic Packaging Paper)	12%	18%
iv.	Cut and Polished diamonds	0.25%	1.5%
(b) Services			
i.	Renting of trucks/goods carriage where cost of fuel is included	18%	12%
ii.	Transport of goods and passengers by ropeways	18%	5% (with ITC of services)

7. EXEMPTION WITHDRAWAL AND RATE RATIONALISATION

7.1 Withdrawal of exemptions and rate rationalisations on various good was announced. Some of which are listed below:

GST exemption was enjoyed on specified food items (basis no branding). This has now been recommended to revise the scope of exemption to exclude from it pre-packaged and pre-labelled retail pack in terms of Legal Metrology Act, 2009 including pre-packaged, pre-labelled curd, lassi and butter milk.

S. No.	Description	Present GST Rate	GST Rate recommended by GST Council
(a) Goods			
i.	Maps and hydrographic or similar charts of all kinds, including atlases, wall maps, topographical plans, and globes, printed	NIL	12%
ii.	Parts of goods of heading 8801	NIL	18%
iii.	Petroleum/ Coal bed methane	5%	12%
iv.	Cheques, loose or in book form	NIL	18%
v.	E-Waste	5%	18%

7.2 Withdrawal of exemptions on certain services are also announced. Some of which are listed below:

- (a) Exemption on transport of passengers by air to and from Northeast states of India and Bagdogra is being restricted to economy class;
- (b) Transportation by rail or a vessel of railway equipment and material;
- (c) Services by Reserve Bank of India, Insurance Regulatory and Development Authority, Securities and Exchange Board of India (“SEBI”), Food Safety and Standards Authority of India (“FSSAI”) and Goods and Service Tax Network (“GSTN”);
- (d) Renting of residential dwelling to business entities (registered persons);
- (e) Hotel accommodation priced upto INR 1000 per day shall be taxed at GST rate of 12%;
- (f) Room rent (excluding ICU) exceeding INR 5000 per day per patient charged by a hospital shall be taxed at the GST rate of 5% (no ITC);
- (g) Fumigation in a warehouse of agricultural produce; and
- (h) Services provided by the cord blood banks by way of preservation of stem cells.

7.3 Following clarifications are provided among others:

- (a) Electric vehicles whether or not fitted with a battery pack are eligible for a concessional rate of GST at 5%.
- (b) Sewage treated water is exempted from GST and is not the same as purified water provided in S. No. 99 of notification 2/2017-CT(Rate). The word 'purified' is being omitted to make this amply clear.
- (c) GST rate on all forms of mango under Customs Tariff Head 0804 including mango pulp attract GST at the rate of 12%. Entry is also being amended to make this amply clear. Raw mangoes continue to be exempt.
- (d) Nicotine Polarilex Gum attracts GST at the rate of 18%.
- (e) Sale of land after levelling, laying down of drainage lines etc. is sale of land and does not attract GST.
- (f) Renting of motor vehicles for transport of passengers to a body corporate for a period is taxable in the hands of body corporate by reverse charge mechanism ("RCM").
- (g) Services in the form of ART/ IVF are covered under the definition of healthcare services for the purposes of exemption under GST.
- (h) Due to ambiguity in GST rates on supply of ice-cream-by-ice-cream parlours, GST charged at the rate of 5% without ITC on the same during the period July 01, 2017 to October 05, 2021 shall be regularized to avoid unnecessary litigation.
- (i) Application fee charged for entrance or for issuance of eligibility certificate for admission or issuance of migration certificate by universities is exempt from GST.
- (j) Renting of vehicle with operator for transportation of goods on time basis is classifiable under Heading 9966 (rental services of transport vehicles with operators) and attracts GST at 18%. GST on such renting where cost of fuel is included in the consideration charged is being prescribed at 12%.
- (k) Activity of selling of space for advertisement in souvenirs published in the form of books is eligible for concessional GST at 5%.
- (l) Services associated with transit cargo both to and from Nepal and Bhutan are covered by exemption under entry 9B of notification No. 12/2017-CT® dated June 28, 2017.

7.4 The other miscellaneous changes are as following:

- (a) Goods transport agency is being given the option to pay GST at the rate of 12% or 5% on forward charge basis. This option to be exercised at the beginning of the financial year. RCM option to continue.
- (b) Services provided by an Indian tour operator to a foreign resident for a tour partially in India and partially outside India is to be subjected to tax proportionate to the tour conducted in India subject to the condition that this concession does not exceed half of tour duration.
- (c) All taxable service of department of posts of India would be subject to forward charge. Hitherto certain taxable services of department of post of India were taxed on reverse charge basis.

8. MEASURES FOR TRADE FACILITATION

8.1 Supplies through ECO

- (a) Relaxation in the provisions for suppliers making supplies through ECO.
- (b) Waiver of requirement of mandatory registration for person supplying goods through ECOs, subject to (i) all India turnover does not exceed the turnover specified; and (ii) the person is not making any inter-state taxable supply.
- (c) Composition taxpayers would be allowed to make intra-state supply through e-commerce operators subject to certain condition.

The details of the scheme will be worked out by the Law Committee of the Council. The scheme would be tentatively implemented with effect from January 01, 2023, subject to preparedness on the portals as well as ECO's.

8.2 Some welcome amendment related to GST refunds which among others include:

- (a) Change in formula for calculation of refund under Rule 89(5) of Central Goods and Services Tax Rules (“**CGST Rules**”) to take into account utilization of ITC on account of inputs and input services for payment of output tax on inverted rated supplies in the same ratio in which ITC has been availed on inputs and input services during the said tax period. This would help those taxpayers who are availing ITC on input services also.
- (b) Time period from March 01, 2020, to February 28, 2022 to be excluded from calculation of the limitation period for filing refund claim by an applicant under Sections 54 and 55 of Central Goods and Services Tax Act, 2017 (“**CGST Act**”), as well as for issuance of demand/order (by proper officer) in respect of erroneous refunds under Section 73 of CGST Act.
- (c) Integrated Goods and Services Tax (“**IGST**”) refund claims – In some cases where the exporter is identified as risky exporter requiring verification by GST officers, or where there is a violation of provisions of Customs Act, the refund claims in respect of export of goods are suspended/withheld. Amendment in Rule 96 of the CGST Rules has been recommended to provide for transmission of such IGST refund claims on the portal in a system generated FORM GST RFD-01 to the jurisdictional GST authorities for processing. This would result in expeditious disposal of such IGST refund claims, after due verification by GST officers, thus benefitting such exporters.
- (d) Re-credit of amount in electronic credit ledger to be provided in those cases where erroneous refund amount sanctioned to a taxpayer on account of accumulated ITC or on account of IGST paid on zero rated supply of goods or services, in contravention of Rule 96(10) of the CGST Rules, is deposited by him along with interest and penalty, wherever applicable. A new FORM GST PMT- 03A is introduced for the same. This will enable the taxpayers to get re-credit of the amount of erroneous refund, paid back by them, in their electronic credit ledger.
- (e) Amendment in CGST Rules to provide for refund of unutilized ITC on account of export of electricity. This would facilitate the exporters of electricity in claiming refund of utilized ITC on zero rated supplies.

9. OTHER KEY MEASURES

- 9.1 Waiver of late fee for delay in filing FORM Goods and Services Tax Return (“**GSTR**”) -4 for Financial Year (“**FY**”) 2021-22 and extension of due date for filing FORM GST CMP-08 for the first quarter of FY 2022-23.

- (a) To extend the waiver of late fee for delay in filing FORM GSTR-4 for FY 2021-22 by approximately four more weeks, i.e., till July 28, 2022 (The existing waiver is for the period from May 01, 2022, till June 30, 2022).
 - (b) To extend the due date of filing of FORM GST CMP-08 for the first quarter of FY 2022-23 from July 18, 2022, to July 31, 2022.
 - (c) GSTN has also been asked to expeditiously resolve the issue of negative balance in electronic cash ledger being faced by some of the composition taxpayers.
- 9.2 Proposal for comprehensive changes in Form GSTR 3B to be placed in public domain for seeking inputs/suggestions of the stake holders.
- 9.3 Provisions of automatic revocation or suspension of registration in cases where suspension of registration was done by the system under Rule 21A (2A) of the GSTR Rules, for non-compliance in terms of clause (b) or clause (c) of Section 29 (2) (continuous non filing of specified number of returns) once all the pending returns are filed on the portal by the taxpayer.
- 9.4 Issuance of circulars in order to remove ambiguity and legal disputes on various issues (which among others include applicability of demand and penalty provisions, claiming refund under inverted duty structure wherein supply is made under concessional rate system) thereby benefitting taxpayers at large.
- 9.5 Present exemption of IGST on import of goods under advance authorisation or export promotion capital goods or export-oriented unit scheme to be continued and e-wallet scheme not to be pursued further.
- 9.6 Limitation under Section 73 of CGST Act for FY 2017-18 for issuance of order in respect of other demands linked with due date of annual return, to be extended till 30 September 2023.
- 9.7 Exemption from filing annual return in FORM GSTR-9/9A for FY 2021-22 to be provided to taxpayers having annual aggregate turnover upto INR 2,00,00,000.
- 9.8 Unified payments interface and immediate payment services to be provided as an additional mode for payment of Goods and Services Tax to taxpayers under Rule 87(3) of CGST Rules.
- 9.9 In respect of refunds pertaining to supplies to Special Economic Zone (“SEZ”) developer or unit, an explanation to be inserted in Rule 89 (1) of CGST Rules to clarify that “specified officer” under the said sub-rule shall mean the “specified officer” or “authorized officer”, as defined under SEZ Rules, 2006.
- 9.10 Supplies from Duty Free Shops (“DFS”) at international terminal to outgoing international passengers to be treated as exports by DFS and consequential refund benefit to be available to them on such supplies. Rule 95A of the CGST Rules, Circular No. 106/25/2019-GST dated June 29, 2019, and related notifications to be rescinded accordingly

10. INDUSLAW VIEW

Majority of the decisions (with some exceptions) are in line with the industry expectations on several issues including the take on correcting the rate structure of various products from an inverted duty structure perspective. The Council’s proposal for amending the refund formula in case of inverted duty structure is indeed a welcome move.

Overall, the Council has taken some important decisions towards trade facilitation and ease of doing business.

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