

GST Council held its 47th meeting at Chandigarh in the backdrop of increased inflation and an expectation of non-resorting to tax rates hikes. The Council made several recommendations ranging from rate rationalisations to avoid inverted duty structures, tinkering with the GST rates, putting forth various clarifications etc.

We provide a brief of some important recommendations as below:

REGISTRATION RELATED RECOMMENDATIONS

Registration relaxation to persons supplying goods through E-commerce operators (ECOs)

It is recommended to done away with mandatory registration if:

- the aggregate turnover on all India basis does not exceed the turnover specified under sub-section (1) of section 22 of the CGST Act and notifications issued thereunder;
- the person is not making any inter-State taxable supply.

Automatic Revocation of Cancelled Registration in specified cases

It is recommended for automatic revocation for cancellation of registration post filing of pending returns on GST portal in following cases:

- Difference of output liability in GSTR-1 and GSTR-3B;
- Difference of ITC in GSTR-2B and GSTR-3B;
- Non filing of returns by composition dealer for a FY beyond 3 months of due date;
- Non filing of returns by registered person for specified period.

REFUND RELATED RECOMMENDATIONS

Relaxation in limitation period due to COVID 19

- It is recommended that time period from 01.03.2020 to 28.02.2022 to be excluded from calculation of the limitation period for filing refund claim by an applicant under section 54 and 55 of CGST Act, 2017.

Amendment to calculation formulae for refund of ITC under inverted duty structure

- It is recommended to change in formula for calculation of refund under rule 89(5) 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.

Transfer of pending IGST refund claim for risky exporters to jurisdictional GST authorities

- It is recommended to amend Rule 96 of CGST Rules, 2017 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.

Re-credit of erroneous refund claim paid (which has been repaid back by the claimant) in contravention of Rule 96(10) of CGST Rules, 2017

- Rule 96(10) of CGST Rules, 2017 restricts the refund claim in case where the claimant has availed the benefit of exemption on imports by EPCG/EOU etc., and procurement at concessional rate of 0.1% for further exports. It is recommended to issue a new FORM GST PMT-03A to re-credit in electronic credit ledger 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. This will enable the taxpayers to get re-credit of the amount of erroneous refund, paid back by them, in their electronic credit ledger.

Refund of ITC on supplies to SEZ

- It is recommended to clarify that "specified officer" under the said sub-rule shall mean the "specified officer" or "authorized officer", as defined under SEZ Rules, 2006.

Refund of ITC on export of electricity

- It is recommended to provide for refund of unutilized Input Tax Credit on account of Export of Electricity. This would facilitate the exporters of electricity in claiming refund of utilized ITC on zero rated supplies.

Refund filed by Duty Free Shops

- It is recommended that 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 29.06.2019 and related notifications to be rescinded accordingly.

Refund related clarifications to be issued

- It is recommended to issue clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification i.e. 0.1% IGST;
- It is recommended to clarification on the issues pertaining to refund claimed by the recipients of supplies regarded as deemed export.

ITC RELATED RECOMMENDATIONS

- It is recommended to notify the amended Section 50(3) of CGST Act, 2017 providing for non-applicability of interest in case the ITC is only availed and not utilized. It is also recommended to issue detailed rules providing for methodology of interest payment. This would be applicable retrospectively from 01.07.2017.
- It is recommended to amend Rule 43 of CGST Rules, 2017 to provide for no requirement of reversal of input tax credit for exempted supply of Duty Credit Scrips by the exporters.

ITC related clarifications to be issued

- It is recommended to issue clarification on various issues relating to interpretation of section 17(5) of the CGST Act, 2017 i.e., blocked credits.

CASH LEDGER RELATED RECOMMENDATIONS

- It is recommended to notify the amended Section 49(10) of CGST Act, 2017 providing for transfer of cash ledger balance between registrations under same PAN. It is also recommended to issue detailed rules providing for methodology of such a transfer.

RETURN RELATED RECOMMENDATIONS

- It is recommended to extend the waiver of late fee under section 47 for delay in filing FORM GSTR-4 for FY 2021-22 by approximately four more weeks, i.e. till 28.07.2022 (The existing waiver is for the period from 01.05.2022 till 30.06.2022);
- It is recommended to extend the due date of filing of FORM GST CMP-08 for the 1st quarter of FY 2022-23 from 18.07.2022 to 31.07.2022;
- It is recommended to provide an exemption from filing annual return in FORM GSTR-9/9A for FY 2021-22 to be provided to taxpayers having aggregated annual turnover upto Rs. 2 crores.

Return related clarifications to be issued

- It is recommended to issue clarification on mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B.

SECTOR SPECIFIC RECOMMENDATIONS

IT / ITES

GST Rate Alterations on Supply of Goods

- GST Rate on supply of E Waste is recommended to increase from 5% to 18%.

Defense

GST Rate Alterations on Supply of Goods

- IGST on specified defence items imported by private entities/vendors, when end-user is the Defense forces has been reduced from applicable rate to Nil.

Food processing

GST rate Alterations on Supply of prepackaged and prelabelled retail packs

- Hitherto there was an exemption on supply of unbranded goods or branded goods where right to enforce the brand name has been foregone. The exemption has been revoked on supply of pre-packaged and pre-labelled retail packs as per Legal Metrology Act, 2009.

Financial Services

GST Rate Alterations on Supply of Services

- GST Rate on supply of services by foreman to chit-fund recommended to increase from 12% to 18%.

GST Exemption Alterations

- Exemption on Services by RBI, IRDA, SEBI, FSSAI is recommended to be revoked.

Job Work Services

GST Rate Alterations on Supply of Services

- GST Rate on supply of job work services in relation to processing of hides, skins and leather is recommended to increase from 5% to 12%;
- GST Rate on supply of job work services in relation to manufacture of leather goods and footwear is recommended to increase from 5% to 12%;
- GST Rate on supply of job work services in relation to manufacture of clay bricks is recommended to increase from 5% to 12%.

Works Contract Services

GST Rate Alterations on Supply of Services

- GST Rate on supply of Works contract for roads, bridges, railways, metro, effluent treatment plant, crematorium etc. is recommended to increase from 12% to 18%;
- GST Rate on supply of Works contract supplied to central and state governments, local authorities for historical monuments, canals, dams, pipelines, plants for water supply, educational institutions, hospitals etc. & sub-contractor thereof is recommended to increase from 12% to 18%;
- GST Rate on supply of Works contract supplied to central and state governments, union territories & local authorities involving predominantly earthwork and sub-contracts thereof is recommended to increase from 12% to 18%.

Logistics (Goods & Passengers) Services

GST Rate Alterations on Supply of Services

- GST Rate on supply of transport of goods and passengers by ropeways is recommended to reduced from 18% to 5% with ITC;
- GST Rate on supply of renting of truck/goods carriage where cost of fuel is included is recommended to reduce from 18% to 12%.

GST Exemption Alterations

- Exemption on transport of passengers by air to and from Northeastern States And Bagdogra is recommended to be restricted to economy class;
- Transportation of railway equipment and material by rail or a vessel is recommended to be revoked.

Clarifications:

- To clarify that 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(R) dated 28.06.2017;
- To clarify that 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 recommended for at 12%;
- To clarify that the expression 'public transport' used in the exemption entry at SI No. 17(d) of notification No. 12/2017-CT(R), which exempts transport of passengers by public transport other than predominantly for tourism purpose, in a vessel between places located in India, means that such transport should be open to public for point to point transport [e.g. such transport in Andaman and Nicobar islands].

Other Changes:

- It is recommended that GTA needs to opt for payment of GST under forward charge at the start of financial year otherwise RCM option would continue.

Agriculture

GST Exemption Alterations

- Exemption on storage or warehousing of commodities (nuts, spices, copra, jaggery, cotton etc.) is recommended to be revoked;
- Exemption on fumigation in a warehouse of agricultural produce is recommended to be revoked.

Renting of Immovable Property

GST Exemption Alterations

- Exemption on renting of residential dwelling to business entities (registered persons) is recommended to be revoked. Corporates need to rejig their tax positions in this respect with associated ITC.

Health

GST Exemption Alterations

- Exemption on Services provided by the cord blood banks by way of preservation of stem cells is recommended to be revoked;
- Exemption on common bio-medical waste treatment facilities for treatment or disposal of biomedical waste is recommended to be revoked with resultant GST Rate of 12% with ITC;
- Exemption on room rent (excluding ICU) exceeding Rs 5000 per day per patient charged by a hospital is recommended to be revoked with resultant GST Rate of 5% without ITC.

Clarifications:

- To clarify that Services in form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF) are covered under the definition of health care services for the purpose of exemption under GST.

Hospitality

GST Exemption Alterations

- Exemption on hotel accommodation priced upto Rs. 1000/day is recommended to be revoked with GST Rate of 12%.

Clarifications

- To regularise GST charged @5% during 01.07.2017 to 05.10.2021 on supply of ice-cream-by-ice-cream parlours. Tax rate on such supplies is prescribed @18%.

Others

- Service provided by Indian Tour operator to a foreign resident for a tour partially in India and partially outside India is to be subject to tax proportionate to the tour conducted in India for such foreign tourist subject to conditions that this concession does not exceed half of tour duration.

Education

GST Exemption Alterations

- Exemption on training or coaching in recreational activities relating to arts or culture, or sports is recommended to be restricted to such services when supplied by an individual.

Clarifications:

- To clarify that application fee charged for entrance or for issuance of eligibility certificate for admission or issuance of migration certificate by universities is exempt from GST;
- To clarify that activity of selling of space for advertisement in souvenirs published in the form of books is eligible for concessional GST at 5%.

Real Estate

Clarifications:

- To clarify that allowing choice of location of a plot is part of supply of long-term lease of plot of land. Therefore, location charge or preferential location charges (PLC) are part of consideration charged for long term lease of land and shall get the same treatment under GST;
- To clarify that sale of land after leveling, laying down of drainage lines etc. is sale of land and does not attract GST.

Toll

Clarifications:

- To clarify that Additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and shall be given the same tax treatment as given to toll charges. Presently toll charges are exempted from GST.

Miscellaneous

- Exemption on services by GSTN is recommended to be revoked.
- All taxable service of Department of Posts would be subject to forward charge. Hitherto certain taxable services of Department of post were taxed on reverse charge basis.
- Relaxation for composition persons to make intra-state supplies through E-commerce operators (ECOs) subject to certain conditions.
- Present exemption of IGST on import of goods under AA/EPCG/EOU scheme to be continued and E-wallet scheme not to be pursued further.
- Clarifications to be issued for perquisites provided by an employer to an employee as per contractual agreement.
- It is recommended to UPI & IMPS to be provided as an additional mode for payment of Goods and Services Tax to taxpayers under Rule 87(3) of CGST Rules.
- It is recommended that time period from 01.03.2020 to 28.02.2022 to be excluded from calculation of the limitation period for issuance of demand/ order (by proper officer) in respect of erroneous refunds under section 73 of CGST Act. Further, limitation under section 73 for FY 2017-18 for issuance of order in respect of other demands linked with due date of annual return, to be extended till 30th September, 2023.

Abbreviations:	
CGST	Central Goods and Service Tax
IGST	Integrated Goods and Service Tax
GTA	Goods Transport Agency
ITC	Input Tax Credit
GSTN	Goods and Service Tax Network
Section 73 CGST	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts