

UPDATE

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Highlights of the 53rd GST Council Meeting

The 53rd GST Council (GSTC) meeting was held in New Delhi on 22nd June 2024. The GSTC meeting has taken place nearly 8 months after the last meeting in October 2023. The important recommendations based on the Press Release dated 22.6.2024 and the clarification provided by the GSTC during the Press Conference held on 22.6.2024 are as under:

I. MEASURES REGARDING TAX DISPUTE AND SETTLEMENT

a. Insertion of section 128A in Central Goods and Services Tax Act, 2017 (CGST Act) for Waiver of Interest/ penalty for non-fraud cases pertaining to FY 2017-18, 2018-19, and 2019-20

The GSTC has recommended, waiving interest and penalties for demand notices for the fiscal years 2017- 18, 2018-19 and 2019-20, in cases where the taxpayer pays the full amount of tax demanded in the notice up to 31.03.2025. The above is applicable only for cases where proceedings have been initiated under section (u/s) 73 of the Act i.e., cases where fraud, suppression etc. is not involved. Thus, for cases, where *men's-rea* is involved, there is no relaxation. Further, the waiver does not cover the demand of erroneous refunds.

AQUILAW Comments - *For those who have already paid interest/ penalty - refund remedy must be made available by the Government. Identify all open cases at various levels to strategize the next course of action specially evaluating the merit of the matter, quantum of liability vis-à-vis savings on interest/penalty to take the final decision.*

b. Relaxation under section 16(4) w.r.t. availment of Input Tax Credit (ITC) for the FY 2017-18, 2018-19, 2019-20, 2020-21

The GSTC has recommended extension of time-limit for availment of ITC for the period July 2017 to March 2021 to 30th November 2021, retrospectively w.e.f. 01-07-2017. It means, the ITC availed in any GSTR-3B filed up-to 30th November 2021, for the above financial years would not be barred by the limitation of time u/s 16(4). Earlier the time limit for availing such ITC was 30th September, following the financial year to which such invoice pertains.

AQUILAW Comments - *This would not only resolve pending disputes of the past but would also allow refund of those ITC where ITC was reversed under protest by the taxpayers. The refund could be filed as soon as the amendment is notified by the Government.*

c. Fixing of monetary limits for filing appeals under GST by the GST Authorities

The GSTC has recommended fixing monetary limits for the filing of appeals by the department to reduce government litigation under GST subject to certain exclusions. The following monetary limits have been recommended by the Council:

- **GSTAT: Rs. 20 lakhs**

- **High Court: Rs. 1 crore**
- **Supreme Court: Rs. 2 crores**

AQUILAW Comments - Based on past experience the Notification to be issued in this regard might have issues involving valuation, classification, place of supply etc. out of the ambit of such threshold.

- d. **Amendment in section 107 and section 112 of CGST Act for reducing the amount of pre-deposit required to be paid for filing of appeals under GST.**

To limit the impact on working capital in appeals the pre-deposit has been reduced as per table below:

Authority	Percentage and cap
Appellate authority	10 % (unchanged) subject to a maximum of Rs. 20 Cr. under SGST/CGST each [reduced from 25 crores]
GSTAT	An additional 10% (reduced from 20%) with a cap of Rs. 20 Cr. under SGST/CGST each.

Thus, the maximum amount of pre-deposit is reduced from 30% to 20%.

AQUILAW Comments - This would reduce the working capital burden on the taxpayer.

- e. **Time for filing appeals in GST Appellate Tribunal**

The GST Council recommended amendment of section 112 of the CGST Act to allow the three-month period for filing appeals before the Appellate Tribunal to start from a date to be notified by the Government in respect of appeal/ revision orders passed before the date of said notification. This will give sufficient time to the taxpayers to file an appeal before the Appellate Tribunal in the pending cases.

AQUILAW Comments - Specific provisions should be inserted so that GST Authorities should not initiate recovery proceedings once the time limit of filing appeal lapses.

- f. **Amendment to section 140(7) of CGST Act, retrospectively w.e.f. 01.07.2017:**

Retrospective amendment in section 140(7) of CGST Act w.e.f. 01.07.2017 is recommended by GSTC to provide for transitional credit in respect of invoices pertaining to services provided before appointed date, and where invoices were received by Input Service Distributor (ISD) before the appointed date.

AQUILAW Comments - A long-standing dispute is proposed to be resolved where the service tax invoices were received by ISD prior to the appointed date, however, were not distributed pre-introduction of GST, as was required by the transition provisions.

II. TRADE AND COMPLIANCE FACILITATION

- a. Form GSTR-1A is proposed to be issued to amend the details in FORM GSTR-1 for a tax period and/ or to declare additional details, if any, before filing of return in FORM GSTR-3B for the said tax period.

AQUILAW Comments - It would be important to keep a tab on the relevant entry in GSTR 2B post

amendment in GSTR 1 and the corresponding synchronization of GSTR 1, GSTR 1A with GSTR 2B.

- b. Amendment is proposed to be made in section 122(1B) of the CGST Act retrospectively w.e.f. 01-10-2023 to clarify that the penal provisions would apply to only those Electronic Commerce Operators (ECO) who are liable to collect TCS under section 52 of the CGST Act.
- c. Relaxation in rate of TCS to be collected by ECOs for the supplies made through ECOs is proposed. The rate of TCS reduced from present 1% (0.25% CGST and 0.25% SGST/UGST, or 1% IGST) to 0.5% (0.25% CGST and 0.25% SGST/UGST, or 0.5% IGST).
- d. Amendment is proposed to be made to facilitate adjustment of tax paid in respect of demand through GST DRC-03 against amount to be paid as pre-deposit for filing appeal and a circular will be issued to prescribe the mechanism of adjustment.

***AQUILAW Comments** - Presently there is no system to consider the amount paid through DRC-03 at earlier or during Appeal filing stage against pre-deposit required to be made for filing of Appeal which otherwise creates extra burden on the taxpayers. The proposed mechanism is a welcome step and aims towards ease of doing business.*

- e. The GSTC recommended to prescribe amendment in rule 88B of the Central Goods and Services tax Rules, 2017 (CGST Rules) to provide that an amount, which is available in the Electronic Cash Ledger on the due date of filing of return in FORM GSTR-3B, and is debited while filing the said return, shall not be included while calculating interest under section 50 of the CGST Act, in respect of delayed filing of the said return.

***AQUILAW Comments** - Interest is already not leviable where the balance is available in the Electronic Credit Ledger and such amendments have already been done in section 50(1) of the CGST Act, read with Rule 88 of the CGST Rules. This amendment is based on various High Court judgements, including the order of the **Hon'ble Madras High Court** in the case of **Eicher Motors Ltd**. Re-examination is also required for on-going disputes regarding calculation of interest.*

- f. The due date for filing the return in **FORM GSTR-4** for **composition taxpayers** will be extended from **30th April to 30th June** following the end of the financial year and the same will be applicable from the financial year 2024-25 onwards.
- g. The GSTC has recommended to roll-out biometric-based Aadhaar authentication of registration applicants on pan-India basis to combat fraudulent availment of ITC and fake invoices.
- h. The GSTC has recommended amendment to section 9(1) of the CGST Act for not levying GST on Extra Neutral Alcohol (ENA) used for the manufacture of alcoholic liquor for human consumption.
- i. The GSTC recommended inserting a new section 11A in CGST Act, to give powers to the Government, on the recommendations of the Council, to allow regularization of non-levy or short levy of GST, where tax was being short paid or not paid due to common trade practices.

***AQUILAW Comments** - This section should clearly provide for the grant of refund subject to unjust enrichment in cases taxes have been paid in the past voluntarily or consequent to some legal proceeding.*

- j. The GSTC recommended prescribing a mechanism for claiming a refund of additional IGST paid due to upward revision in the price of goods after export. This will assist taxpayers who need to pay additional IGST on such revisions in **claiming refunds**.

***AQUILAW Comments** - Since there is no automated system for claiming refund, manual refund filing should be allowed and the time-limit should also be aligned with section 54 of the CGST Act, i.e., 2 years from the relevant date.*

- k. For FY 2023-24, taxpayers having aggregate annual turnover of up to Rs. 2 crores are not required to file GSTR 9/9A.
- l. A retrospective amendment in section 16(4) of CGST Act, is recommended, effective from 1st July 2017 wherein provisions of section 16(4) are conditionally relaxed for cases where returns for the period from the date of cancellation of registration/ effective date of cancellation of registration till the date of revocation of cancellation of the registration are filed within thirty days of the order of revocation of cancellation of registration.
- m. The GSTC proposed amendments in section 73 and 74 of CGST Act for common time limit for issuing demand notices and orders will be prescribed irrespective of fraud or not, for FY 2024-25 onwards and for increased time limit for taxpayers to avail the benefit reduced of penalty **from 30 to 60 days**.

III. NEW RESTRICTIONS AND INCREASE IN COMPLIANCE BURDEN

- a. The GSTC proposed to amend section 16 of the Integrated Goods and Services Tax Act, 2017 (IGST Act) and section 54 of the CGST Act to restrict the refund of goods subjected to export duty. Such a restriction would apply irrespective of whether the goods are exported with or without payment of taxes. This would also apply where the goods are supplied to a SEZ developer or a SEZ unit for authorized operations.

***AQUILAW Comments:** All past exports should be evaluated if refund claims should be filed unless already filed subject to limitation of time once new provisions are implemented.*

- b. Threshold for Reporting B2C Inter-State Supplies invoice-wise in Table 5 of FORM GSTR-1 reduced from Rs 2.5 lakh to Rs 1 lakh.
- c. The GSTC recommended monthly filing of FORM GSTR-7 regardless of tax deduction. Further, there will not be any late fee for delayed filing of NIL GSTR-7 and the invoice - wise details may be required in the FORM GSTR-7 Return.

IV. CLARIFICATIONS (SUBJECT TO DETAILED CIRCULARS)

The GSTC considered several litigious issues and shall issue clarifications in respect of the following:

- a. The Place of Supply (POS) of custodial services supplied by Indian banks to Foreign Portfolio Investors will be the location of the recipient of such services as determined by section 13(2) of the IGST Act.
- b. The GSTC recommended amendment of rule 28(2) of CGST Rules retrospectively with effect from 26.10.2023 and issuance of a circular to clarify various issues regarding valuation of services of providing corporate guarantees between related parties. Valuation under rule 28(2) of CGST Rules would not be applicable in case of export of such services and also where the recipient is eligible for full input tax credit.

- c. The Council recommended to clarify that in cases of supplies received from unregistered suppliers, where tax has to be paid by the recipient under reverse charge mechanism (RCM) and invoice is to be issued by the recipient only, the relevant financial year for calculation of time limit for availment of input tax credit under the provisions of section 16(4) of the CGST Act, is the financial year in which the invoice has been issued by the recipient.

AQUILAW Comments: *The time limit for issuance of invoice in terms of section 16(4) of the CGST Act, has to be considered, considering the date of issuance of invoice, and not from the FY to which such invoice pertains. For e.g., if an invoice pertaining to supply made during FY 2018-19 is issued in June 2024, the time limit for availing such ITC may be considered as 30th November 2025, as the Government stands compensated by way of interest for such delay.*

- d. The GSTC clarified that the ITC in respect of ducts and manholes used in the network of Optical Fiber Cables (OFCs) shall be available and not restricted under section 17(5)(c) or (d) of the CGST Act.
- e. The GSTC proposed to issue clarification on taxability of re-imbursment of securities/shares as ESOP/ESPP/RSU provided by a company to its employees
- f. Clarification provided about the valuation for provision of services by foreign affiliates to domestic (Indian) entity where the Indian entity is eligible for full ITC. In such cases the value declared on the invoice shall be considered as open market value and where there is no invoice for such services, the value shall be considered as NIL and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules. Thus, there shall be no tax liability under RCM for import of services, if not paid already.

AQUILAW Comments: *Real challenge would be to determine the valuation of supply in case where recipient is not entitled to ITC.*

- g. The value declared in the invoice to be treated as the open market value under Rule 28(1) of the CGST Rules for the supply of services from the foreign affiliate to the related domestic entity. Further, where the invoice is not issued, the value of such services may be deemed to be declared as Nil under the said rule. This clarification will mitigate valuation dispute by the department on cross-border related party transactions including those pertaining to corporate guarantees, issuance of ESOPs etc.
- h. Reversal of ITC for amount of life insurance premium not included in the taxable value thereof as per Rule 32(4) of the CGST Rules.
- i. Valuation guidelines will be issued for wreck and salvage values under the motor vehicle insurance claims.
- j. Valuation and taxability of goods and services provided under warranty / extended warranty by OEMs to end consumers.
- k. Availability of ITC on repair costs reimbursed by insurance companies for settlement of motor vehicle insurance claims.
- l. GST on loans and advances amongst related persons or related party transactions.
- m. Time of supply in cases of hybrid annuity model government contracts.

- n. Time of supply and consequent GST payments in respect of license fee and spectrum usage charges paid by telecom companies for a lot of spectrum.
- o. Determination of place of supply to unregistered persons in case of different billing and delivery address.
- p. Procedural mechanism (in form of evidence to be provided by supplier) for reversal of ITC by recipient on account of post-sale discounts.
- q. Issues pertaining to special procedures for tobacco manufacturers such as registration of packaging machinery etc.
- r. Clarification that retrocession is 're-insurance of re-insurance' and therefore, eligible for the exemption under Sl. No. 36A of the notification No. 12/2017-CTR dated 28.06.2017.
- s. Clarification that statutory collections made by Real Estate Regulatory Authority (RERA) are exempt from GST as they fall within the scope of entry 4 of No.12/2017-CTR dated 28.06.2017.
- t. Clarification that sharing of the incentive by acquiring bank with other stakeholders, where the sharing of such incentive is clearly defined under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions and is decided in the proportion and manner by NPCI in consultation with the participating banks is not taxable.

V. OTHER ISSUES

- a. GSTC recommended amendment in section 171 and section 109 of CGST Act, to provide a sunset clause for anti-profiteering under GST and to provide for handling of anti-profiteering cases by Principal bench of GST Appellate Tribunal (GSTAT) and also recommended the sunset date of 01.04.2025 for receipt of any new application regarding anti-profiteering.

VI. RATE RATIONALISATIONS

a. GST Rates of Goods

Particulars	GST Rate
Aircraft parts	5%
Milk cans irrespective of their use	12%
Carton, boxes and cases	12%
Solar cookers	12%
Poultry keeping Machinery and parts thereof	12%
Sprinklers	12%
Imports of specified defense items	Exemption extended for 5 years

b. **GST Rate on Services**

Particulars	GST Rate
Co-insurance premium apportioned by lead insurer to the co-insurer for the supply of insurance service by lead and co-insurer to the insured in coinsurance agreements	No Supply
Transaction of ceding commission/re-insurance commission between insurer and re-insurer	No Supply
Accommodation services having value of supply of accommodation up to Rs. 20,000/- per month per person. The above would be subjected to the condition that the accommodation service is supplied for a minimum continuous period of 90 days. AQUILAW Comments: <i>This may lead to grant of refund of earlier paid taxes and regularization of past demands.</i>	Exempt
Services provided by Indian Railways to general public, namely, sale of platform tickets, facility of retiring rooms/waiting rooms, cloak room services and battery-operated car services and the Intra-Railway transactions.	Exempt
Services provided by Special Purpose Vehicles (SPV) to Indian Railway by way of allowing Indian Railway to use infrastructure built & owned by SPV during the concession period and maintenance services supplied by Indian Railways to SPV.	Exempt

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