



## The Institute of Chartered Accountants of India GST & Indirect Taxes Committee

### GOODS & SERVICES TAX UPDATE-206

#### Recommendations of the 52<sup>nd</sup> GST Council Meeting

The various recommendations made at the 52<sup>nd</sup> GST Council Meeting held on 7<sup>th</sup> October, 2023 are given as under:

#### A. Goods-Rate changes

1. Rate of “Food preparation of millet flour in powder form, containing at least 70% millets by weight”, falling under HS 1901-
  - (a) 0% if sold in other than pre-packaged and labelled form
  - (b) 5% if sold in pre-packaged and labelled form
2. To clarify that imitation zari thread or yarn made out of metallised polyester film /plastic film, falling under HS 5605, shall be covered by the entry for imitation zari thread or yarn attracting 5% GST rate. However, no refund will be allowed on polyester film (metallised) /plastic film on account of inversion.
3. Foreign going vessels are liable to pay 5% IGST on the value of the vessel if they convert to coastal run. It has been recommended to provide conditional IGST exemption to foreign flag foreign going vessel when it converts to coastal run subject to its reconversion to foreign going vessel in six months.

#### B. Goods-Other changes

1. It has been recommended to keep Extra Neutral Alcohol (ENA) used for manufacture of alcoholic liquor for human consumption outside GST. Law Committee shall examine suitable amendment in law to exclude ENA for use in manufacture of alcoholic liquors for human consumption from ambit of GST.
2. A separate tariff HS code has been created at 8-digit level in the Customs Tariff Act to cover rectified spirit for industrial use. The GST rate notification shall be amended to create an entry for ENA for industrial use attracting 18% GST.
3. To reduce GST on molasses from 28% to 5%.

### C. Services- Rate Changes

It has been recommended to exempt services of water supply, public health, sanitation conservancy, solid waste management and slum improvement and upgradation supplied to Governmental Authorities.

### D. Services- Other Changes

1. To clarify that job work services for processing of barley into malt attracts GST @ 5% as applicable to "job work in relation to food and food products" and not 18%.
2. To place the liability to pay GST on the ECO under section 9(5) of the CGST Act, 2017 with effect from 1<sup>st</sup> January 2022, in case of bus transportation services supplied through Electronic Commerce Operators (ECOs).
3. To clarify that District Mineral Foundations Trusts (DMFT) set up by the State Governments across the country in mineral mining areas are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.
4. Supply of all goods and services by Indian Railways shall be taxed under Forward Charge Mechanism to enable them to avail ITC.

### E. Measures for facilitation of trade

#### 1. **Amnesty Scheme for filing of appeals against demand orders in cases where appeal could not be filed within the allowable time period:**

It has been recommended to provide an amnesty scheme through a special procedure for taxable persons-

- who could not file an appeal under section 107 of the said Act, against the demand order under section 73 or 74 of CGST Act, 2017 passed on or before the 31.03.2023, or,
- whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in section 107(1)

In all such cases, filing of appeal by the taxpayers will be allowed against such orders upto 31<sup>st</sup> January 2024, subject to the condition of payment of an amount of pre-deposit of 12.5% of the tax under dispute, out of which at least 20% (i.e., 2.5% of the tax under dispute) should be debited from Electronic Cash Ledger.

#### 2. **Clarifications regarding taxability of personal guarantee offered by directors to the bank against the credit limits/loans being sanctioned to the company and regarding taxability of corporate guarantee provided for related persons including corporate guarantee provided by holding company to its subsidiary company.**

It has been recommended to:

- a) issue a circular clarifying that when no consideration is paid by the company to the director in any form, directly or indirectly, for providing personal guarantee to the bank/ financial institutes on their behalf, the open market value of the said transaction/ supply may be treated as zero and hence, no tax to be payable in respect of such supply of services.
- b) to insert sub-rule (2) in Rule 28 of CGST Rules, 2017, to provide for taxable value of supply of corporate guarantee provided between related parties as one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher.
- c) to clarify through a circular that after the insertion of the said sub-rule, the value of such supply of services of corporate guarantee provided between related parties would be governed by the proposed sub-rule (2) of rule 28 of CGST Rules, 2017, irrespective of whether full ITC is available to the recipient of services or not.

### **3. Provision for automatic restoration of provisionally attached property after completion of one year**

The Council has recommended an amendment in sub-rule (2) of Rule 159 of CGST Rules, 2017 and FORM GST DRC-22 to provide that the order for provisional attachment in FORM GST DRC-22 shall not be valid after expiry of one year from the date of the said order. This will facilitate the release of provisionally attached properties after expiry of period of one year, without need for separate specific written order from the Commissioner.

### **4. Clarification on various issues related to Place of Supply**

The Council has recommended to issue a Circular to clarify the place of supply in respect of the following supply of services:

- a) Supply of service of transportation of goods, including by mail or courier, in cases where the location of supplier or the location of recipient of services is outside India
- b) Supply of advertising services
- c) Supply of the co-location services.

### **5. Issuance of clarification relating to export of services**

The Council has recommended to issue a circular to clarify the admissibility of export remittances received in Special INR Vostro account, as permitted by RBI, for the purpose of consideration of supply of services to qualify as export of services in terms of the provisions of sub-clause (iv) of clause (6) of section 2 of the IGST Act, 2017.

### **6. Allowing supplies to SEZ units/ developer for authorised operations for IGST refund route by amendment in *Notification 01/2023-Integrated Tax dated 31.07.2023***

The Council has recommended to amend *Notification No. 1/2023-Integrated Tax dated*

31.07.2023 w.e.f. 01.10.2023 so as to allow the suppliers to a Special Economic Zone developer or a Special Economic Zone unit for authorised operations to make supply of goods or services (except the commodities like pan masala, tobacco, gutkha, etc. mentioned in the *Notification No. 1/2023-Integrated Tax dated 31.07.2023*) to the Special Economic Zone developer or the Special Economic Zone unit for authorised operations on payment of integrated tax and claim the refund of tax so paid.

**F. Other measures pertaining to law and procedures:**

**1. Alignment of provisions of the CGST Act, 2017 with the provisions of the Tribunal Reforms Act, 2021 in respect of Appointment of President and Member of the proposed GST Appellate Tribunals.**

The Council has recommended amendments in section 110 of the CGST Act, 2017 to provide that:

- a) an advocate for ten years with substantial experience in litigation under indirect tax laws in the Appellate Tribunal, Central Excise and Service Tax Tribunal, State VAT Tribunals, by whatever name called, High Court or Supreme Court to be eligible for the appointment as judicial member.
- b) the minimum age for eligibility for appointment as President and Member to be 50 years.
- c) President and Members shall have tenure up to a maximum age of 70 years and 67 years respectively.

**2. Law amendment with respect to ISD as recommended by the GST Council in its 50<sup>th</sup> meeting**

GST Council in its 50<sup>th</sup> meeting had recommended that ISD (Input Service Distributor) procedure as laid down in Section 20 of the CGST Act, 2017 may be made mandatory prospectively for distribution of ITC in respect of input services procured by Head Office (HO) from a third party but attributable to both HO and Branch Office (BO) or exclusively to one or more BOs. The Council has now recommended amendments in Section 2(61) and section 20 of CGST Act, 2017 as well amendment in rule 39 of CGST Rules, 2017 in respect of the same.

[Press Release](#)

*Vice - Chairman*  
**GST & Indirect Taxes Committee**

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**GST & Indirect Taxes Committee**

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