



## ERGO

*Analysing developments impacting business*

### KEY DECISIONS TAKEN IN 45<sup>TH</sup> GST COUNCIL MEETING

29 September 2021

The 45<sup>th</sup> Goods and Services Tax ("GST") council meeting was concluded on 17 September 2021. Few major issues that were deliberated upon include, inclusion of Petroleum within the ambit of GST, compensation cess, COVID-19 related relief measures and change in rate of tax on multiple goods and services. The council has also suggested a series of steps with a view of streamlining compliance procedures under GST regime. This ERGO intends to summarise some of the key proposals made by the GST council.

#### **COVID-19 related relief**

Concessional rate of tax on 4 key drugs namely Amphotericin B, Remdesivir, Tocilizumab and Anti-coagulants would be extended up till December 2021. Further, duty on 7 key drugs namely Itolizumab, Posaconazole, Infliximab, Favipiravir, Casirivimab & Imdevimab, 2-Deoxy-D-Glucose, and Bamlanivimab & Etesevimab is slashed to 5%.

**Comment:** Although the second COVID-19 wave is waning, danger of third wave looms large and therefore these reliefs bode well to society. However, need of the hour is to make them nil rated to ensure affordability for general public.

#### **GST on e-commerce operators**

With effect from 1 January 2022, e-commerce operators would be liable to pay GST on restaurant / food delivery services and transport of passengers by any type of motor vehicles provided through them.

**Comment:** A large number of restaurants / operators below the threshold limit would be brought under the tax net. This step is aimed at augmenting revenue. However, it will inevitably deal a deadly blow to several start-ups.

#### **Interest on ineligible input tax credit ("ITC")**

Interest would be payable only if ineligible ITC has been utilised and not merely claimed. Section 50(3) of the CGST Act would be amended retrospectively with effect from 1 July 2017.

**Comment:** This will provide a huge relief to the taxpayer wherein the ITC has been availed under a bona fide belief but for reasons viz. mismatch of credits, the recipients were saddled with interest liabilities.

### **Transfer of balances in electronic cash ledger**

Transfer of unutilised balances in CGST and IGST electronic cash ledger would be allowed amongst distinct GSTINs of same entity across states.

**Comment:** This is a positive move in the direction of allowing 'distinct entities' of the same company to seamlessly utilise excess cash balance across registrations in multiple states.

### **Restriction on credit as per GSTR 2B**

The council recommended amendment to Rule 36(4) of CGST Rules upon notification of Section 16(2)(aa) that was inserted *vide* Finance Bill, 2021.

**Comment:** The Finance Bill, 2021 inserted Clause (aa) to Section 16(2) in the CGST Act. Essentially, ITC would be available only when corresponding details are furnished by a supplier in outward supplies and details have been communicated to the recipient through GSTR 2B. This decision is in line with Government's plan to confine the ITC only on such supplies for which tax has been paid by the supplier. The said section can be notified anytime soon and would require a parallel amendment to Rule 36(4) of the CGST Rules which permits recipient to avail up to 5% of matched credit, from the pool of unmatched credits.

### **Conditions for exemption on lease import rationalised**

The council meeting proposed and approved the exemption on payment of IGST on goods imported on lease to avoid double taxation. The council clarified that exemption will be extended so long as GST liability is discharged on lease amount. The exemption is available even when such goods are transferred to a new lessee in India upon termination of the old lease and lessor located in SEZ discharges GST on forward charge.

**Comment:** The move can be of some relief to the airline industry that is already suffering from myriad of issues. The clarity can smoothen the process of claiming exemption upon import of aircraft on lease basis, which is a prevalent model followed by the industry. Overall, the taxability of lease transactions will gain rationality in view of the express clarification in favour of IGST exemption.

### **Clarifications**

- A. Export by establishment of distinct person: On the recommendation of the council meeting, Central Board of Indirect Tax and Customs ("CBIC") *vide* Circular No. 161/17/2021-GST dated 20 September 2021, has clarified that a person incorporated under the laws of India and a person incorporated under the laws of any other country are to be treated as separate legal entities and not establishment of distinct person.

**Comment:** Although the law was clear, field formations were denying refund to a large number of BPOs working as back-office or call centres of the parent companies. This clarification is likely to reduce avoidable litigation and speed up the refunds.

- B. Scope of 'intermediary services': On the recommendation of the council meeting, CBIC *vide* Circular No. 159/17/2021-GST dated 20 September 2021 has clarified

meaning and scope of intermediary service. Few illustrations have been provided to remove ambiguity in the interpretation.

**Comment:** This is an important move forward from the already meddled split opinion as provided by High Courts. Illustrations provided in the clarification are likely to reduce litigation.

- C. Relevant date for debit/credit note: On the recommendation of the council meeting, CBIC vide Circular No. 160/17/2021-GST dated 20 September 2021 has clarified that relevant financial year for the debit/credit note would be the date of issuance of such notes. Date of issuance of debit note has been delinked from the date of issuance of the underlying invoice for purposes of availing ITC.
- D. Refund of tax wrongly paid: CBIC vide Circular No.162/17/2021-GST dated 25 September 2021, has clarified that refund under Section 77 of CGST Act / Section 19 of IGST Act 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head, i.e., integrated tax paid in respect of subsequently held inter-State supply, or central and state tax in respect of subsequently held intra-State supply, as the case may be.

### **Formation of Group of Ministers ("GoM") for addressing the following pressing issues**

The GST council meeting has recommended that a committee of GoM should be set up for addressing the following pressing issues as brought forward in practice and implementation of GST:

#### **A. Correction in Inverted Duty Structure**

The council has acknowledged and recommended that a correction in inverted duty structure for footwear, textiles, and other sectors is required.

**Comment:** GoM in this case will be tasked with correction of inverted duty structure for major sectors and rationalise rates. It appears that increasing the GST rate for sectors like ores, metals, railway parts, locomotives etc., stems from a two-pronged purpose of improving tax collections and reducing the accumulation of ITC. The GST rate changes for correction in inverted duty structure are to be implemented from January 2022.

#### **B. Improvement in Technological Infrastructure**

The council meeting has recommended a committee of GoM to review the existing technology and suggest concrete improvements for e-way bill systems, e-invoices, and FASTag data utility among others. The technological enhancement is aimed at strengthening the institutional mechanism for sharing of intelligence and taking coordinated enforcement actions.

**Comment:** The initial years of GST implementation had been riddled with technical glitches and its spill over to litigation at various levels is still abreast. Therefore, this approach of the Government to address the exiting technological gaps and enhance the same for smooth implementation of a uniform indirect tax regime, is pragmatic.

### **Other Important Measures to streamline procedural compliances and remove ambiguities**

- 1. Aadhaar authentication of registration to be made mandatory for - (a) Being eligible to file refund claim and (b) Application to revoke cancellation of registration.

2. Rule 59(6) of the CGST Rules is to be amended with effect from 1 January 2022 to provide that a registered person shall not be allowed to furnish FORM GSTR-1 if he has not furnished the return in FORM GSTR-3B for the preceding month.
3. Clarification is proposed to the effect that, restriction imposed under Section 54(3) of CGST Act, 2017 from availing refund of accumulated ITC will only be applicable in cases where some export duty has been paid at the time of export.
4. Removal of ambiguity regarding procedure and time limit for filing refund of wrong tax paid.
5. Services by cloud kitchens/central kitchens are covered under 'restaurant service' and to attract 5% GST without ITC and 12% with ITC.
6. The council has suggested a host of other changes with respect to applicable rate on various goods and services and rationalization therewith.
7. Refund to be disbursed in the bank account, that is linked with same PAN on which registration has been obtained under GST.
8. With effect from 1 January 2021 the date of issuance of debit note (and not the date of underlying invoice) shall determine the relevant financial year for the purpose of Section 16(4) of CGST Act, 2017.

A few of the above proposals have been clarified *vide* CBIC Circular No. 160/16/2021-GST dated 20 September 2021.

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