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Key Takeaways from 53rd GST Council Meeting – 22 June 2024

INTRODUCTION

Much awaited 53rd Goods and Services Tax (GST) council meeting was held on 22 June 2024. Although the council could not take up many critical issues planned in the earlier meetings, it sought to address some immediate issues for reduction in tax disputes, ease of tax compliance and rate rationalisation for specific daily use goods (such as milk cans, paperboard cartons, sprinklers, solar cookers, and services (such as railways and hostel accommodation).

This ERGO seeks to summarise some of the key proposals made by the GST council.

I. MEASURES REGARDING TAX DISPUTE AND SETTLEMENT:

A. Waiver of interest and penalty for normal period demands:

The tax demands for the period April 2017 – March 2020 raised under Section 73 of the Central Goods and Services Tax Act, 2017 (CGST Act) (i.e., demands not involving fraud, suppression or intentional defaults) will not entail interest and penalties, subject to the payment of entire tax demand by 31 March 2025. This waiver will not be applicable for erroneous refund related demands.

B. Extending the time for availment of input tax credit (ITC) for the period April 2017 – March 2021:

The time limit to avail the ITC in relation to any invoice or debit note for the period April 2017 – March 2021 availed till filing of Form GSTR 3B is proposed to be extended to 30 November 2021 by way of retrospective legislative change.

Comments: The proposed amended will enhance the time period for claiming the ITC for past period. However, it is to be seen if the taxpayers who have reversed the ITC based on the demands raised on them will be eligible to claim refund of such amount.

C. Monetary limit for filing of departmental appeals:

To reduce litigation, the monetary limit for filing the appeal by the department is proposed to be as follows:

Forum	Monetary Limit (INR)
GST Appellate Tribunal	20 Lakhs
High Court	1 Crore
Supreme Court	2 Crores

D. Reduction in appeal pre-deposits:

The pre-deposit amounts (both in terms of percentage of the demand and the maximum limit) for filing appeals are proposed to be reduced prospectively, as follows:

#	Percentage of Tax Demand		Maximum Limit	
	Existing	Proposed	Existing	Proposed
Appellate Authority	10%	10%	25 Crores	20 Crores
GST Appellate Tribunal	20%	10%	50 Crores	20 Crores

E. Extension of limitation for filing appeal before GST Appellate Tribunal:

The limitation period of 3 months from the date of receipt of order will begin from the date that will be notified by the government in due course.

F. Transitional Credit:

Input Service Distributors who received services as well as invoices prior to the date of implementation of GST are eligible to avail transitional credit. Section 140(7) of the CGST Act is

proposed to be amended retrospectively to this effect.

Comments: Above measures are targeted towards reduction of tax disputes. Further, the clarification regarding the time limit for filing appeals and reduction in amounts of pre-deposit will provide relief while contesting the huge demands of taxes.

II. TRADE AND COMPLIANCE FACILITATION:

- A. The taxpayers would be allowed to amend/ correct the information reported in Form GSTR-1 by way of Form GSTR-1A for the current tax period, prior to filing Form GSTR-3B for such period.

Comments: It is to be seen if the amendment in outward supply details through Form GSTR-1A would get reflected in Form GSTR-2B of the recipient after 12th of the following month, to enable the recipient to avail ITC based on the amended/corrected details.

- B. Relief for e-commerce operators (ECOs):

Section 122(1B) of the CGST Act was inserted vide Finance Act, 2023 with effect from 1 October 2023 to penalise ECOs for certain offences committed by the supplier supplying goods or services on the e-commerce platform. The provision is proposed to be amended retrospectively to clarify that the said penal provision is applicable only for those ECOs, who are required to collect tax under Section 52 of CGST Act, and not for other ECOs. Reduction of Tax Collection at Source (TCS) by ECOs from the present 1% to 0.5% is also expected.

- C. Appropriation of tax towards pre-deposit:

Any amount paid before or during the adjudication process through Form GST DRC-03 is proposed to be allowed to be adjusted against the amount to be paid as pre-deposit for filing appeal.

Rule 142 of the Central Goods and Services Tax Rules, 2017 (CGST Rules) is proposed to be amended to this effect and a circular to prescribe a mechanism for such adjustment is proposed to be issued.

- D. No interest on the belated tax payments to the extent of the amount which is available in and debited from the Electronic Cash Ledger for tax payments on the due date for filing Form GSTR-3B.

- E. The last date for filing of return (Form GSTR-4A) by composition dealers is proposed to be extended from 30 April to 30 June of the subsequent financial year.

- F. Pan-India roll out of biometric based Aadhaar Authentication for GST registration is proposed in a phased manner.

- G. Amendment in Section 9(1) of the CGST Act:

Amendment is proposed to be effectuated for not levying GST on Extra Neutral Alcohol (ENA) used for manufacture of alcoholic liquor for human consumption. This measure will help put tax controversies concerning dual levy (i.e., GST and VAT) on ENA at rest. However, ENA for industrial purposes will continue to be taxed at 18% rate.

- H. Introduction of Section 11A in CGST Act:

Under this provision, the Government may regularize non-levy or short levy of GST due to common trade practice. This unique provision will empower the government to grant relief for past tax demands in cases where any industry or majority stakeholders has adopted a tax position on account of interpretational issues, uncertainty in provisions etc.

- I. Mechanism to provide additional IGST refund on account of upward revision in price of the goods subsequent to their export:

This would aid the exporters to claim IGST refunds for price escalations post export of goods, who otherwise have to bear the additional GST burden on account of upfront payment mechanism.

- J. The regular having aggregate annual turnover up to INR two crores as well as composition taxpayers will not be required to file annual returns in Form GSTR-9/9A.
- K. Retrospective amendment is proposed to be made in Section 16(4) of the CGST Act, allowing taxpayer to claim ITC for the duration when GST registration was cancelled, provided returns for the period from the date of cancellation of the registration till the date of revocation of such cancellation are filed within thirty days of the order of revocation. The said amendment would be made effective from 1 July 2017.
- L. *Common time limit for issuance of demand notices and orders:*

It is proposed that for FY 2024-25 onwards, Sections 73 and 74 would be amended and a new Section 74A would be inserted to provide for a common time limit for raising demands or passing orders irrespective of whether case involves fraud, suppression, wilful misstatement etc., or not, with the objective of simplifying these provisions. It is also proposed that the time limit to pay reduced penalty would be increased from 30 days to 60 days.

Comments: These are progressive measures and will help reduce the compliance burden and cost for the taxpayers. The proposal to rollout biometric authentication for GST registration across the country is a welcome step to prevent bogus firms and reduce fake invoicing, its success would lie on seamless functioning of technical resources and infrastructure.

III. NEW RESTRICTIONS AND INCREASE IN COMPLIANCE BURDEN

A. *Restriction in refund:*

The second proviso to Section 54(3) of the CGST Act places restriction to claim refund of unutilised ITC in cases where the goods exported out of India are subjected to export duty. Similar restrictions are also proposed to be placed for export of goods on payment of tax by way of amendment to Section 16 of the Integrated Goods and Services Tax Act, 2017. Such restrictions would also be made applicable for such goods supplied to a SEZ developer or a SEZ unit for authorized operations.

B. *Detailed reporting of B2C supplies:*

Presently, B2C supplies with invoice value in excess of INR 2,50,000 are required to be reported in Form GSTR-1. The threshold for such reporting requirements is proposed to be reduced for invoice value in excess of INR 1,00,000.

C. *Additional compliance for TDS return filers:*

Taxpayers who are required to deduct tax at source under Section 51 of the CGST Act would be required to file Form GSTR-7 every month irrespective of whether any tax has been deducted during that month or not. Such taxpayers may not be required to pay late fee for delayed filing of Nil return. The details are required to be furnished by such taxpayers at invoice level.

IV. RATE RATIONALISATIONS:

A. *GST rate on goods:*

- Exemptions to defence imports extended till 30 June 2029. Further, adhoc IGST exemption on imports of technical documentation for AK - 203 rifle kits imported for Indian Defence forces.

- Exemption to import of equipment and boys for the Research Moored Array for African-Asian-Australian Monsoon Analysis and Prediction (RAMA) programme.
 - Uniform rate of 5% IGST on import of parts, components, testing equipment, tools and toolkits of aircrafts, irrespective of HSN classification for MRO services.
 - Uniform rate of 12% for following items with regularization of past practice on "as is where is" basis:
 - Milk cans of steel, iron and aluminium of a standard size, irrespective of use;
 - Carton boxes and cases made of corrugated and non-corrugated paper or paperboard;
 - Sprinklers including fire water sprinklers;
 - Solar cookers, whether with single or dual energy source.
 - Parts of poultry keeping machinery.
 - Exemption from compensation cess to the following supplies:
 - Imports in SEZ for authorised operations with effect from 1 July 2017;
 - Aerated beverages and energy drinks supplied to authorised customers in Defence run canteens.
- 20,000 per person per student or working professional. The exemption is subject to availment of accommodation for atleast 90 days by the resident.
 - Services provided by railways including platform tickets, lounge charges, battery operated vehicle charges;
 - Intra-railway transactions;
 - Services provided by special purpose vehicle (SPV) entities to Indian railways for using their infrastructure during concession period. Further, services provided by Indian railways to SPV. This exemption has been granted starting from 1 July 2017.
 - Retrocession i.e., insurance services availed by insurance service provider including reinsurance services for specified insurance schemes and schemes where premium paid by government. The past transactions (starting from 1 July 2017) to be regularised on as is where is basis.
 - Statutory collection made by Real Estate Regulatory Authority.
 - Sharing of the incentive by acquiring bank with other stakeholders under "Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions" decided by NPCI.

Comments: The consistency in tax rates is a positive development and will reduce the disputes on classification and rates. Further, exemptions granted on defence imports are aimed at easing working capital requirements for defence relating procurements.

Comments: Exemption to railway services will definitely help the common man. The exemption for special purpose vehicle entities to Indian railways for using their infrastructure during concession period would also mitigate several ongoing high-value disputes.

B. GST rate on Services:

- Exemption to following services:
 - Hostel accommodation provided outside campus of educational institutions for a consideration up to INR

Regarding the exemption on personal accommodation, the Finance Minister remarked that the same is for the hostel accommodation providers situated outside the campus of educational institution and would be subject to condition such as minimum 90 days' stay continuously to avoid abuse by

other accommodation service providers. The requirement of 90 days therefor would mandate such service providers to keep record of the residents to avail such benefit.

Further, specific clarificatory exemptions to retrocession, statutory charges by RERA, incentive sharing by banks are welcome measures to provide certainty for these transactions.

C. Transactions excluded from scope of supply:

- 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 co-insurance agreements.
- Transaction of ceding commission/re-insurance commission between insurer and re-insurer. Past cases to be regularized on as is where is basis.

Comments: This clarification is a direct consequence of industry representations and will be a huge relief for insurance companies facing enormous tax scrutiny and demands on this issue.

V. CLARIFICATIONS (SUBJECT TO DETAILED CIRCULARS):

The GST Council has mulled over the several litigious issues and would be issuing clarifications in respect of the following:

A. The place of supply of custodial services supplied by Indian banks to foreign portfolio investors (FPIs) will be the location of the recipient of such services. This would be relevant for the Indian Banks providing custodial services to FPIs outside India.

B. *Corporate guarantee:*

Clarification on various issues regarding valuation of services of providing corporate guarantees between related parties is proposed to be issued. Rule 28(2) of the CSGT Rules, which was

inserted with effect from 26 October 2023 to deem the value of corporate guarantee services at 1% of the guarantee may not be made applicable in case of export of services and where the recipient is eligible for full ITC.

C. *Time limit for availing ITC:*

In scenarios involving supplies from 'unregistered suppliers' where tax is payable by the recipient under reverse charge mechanism, the time limit for availing ITC therefor is to be considered based on the financial year in which the invoice is issued by the recipient. This may potentially be useful for various scenarios of belated GST payments, for example cross-border secondments.

D. Availability of ITC in respect of ducts and manholes used in network of optical fibre cables and non-applicability of Section 17(5)(c) or (d) in respect of such activities.

E. Taxability of issuance of ESOP/ESPP/RSU by a foreign entity to employees of Indian subsidiary, the expenses for which is reimbursed by Indian subsidiary.

F. 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.

G. 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.

H. Valuation guidelines will be issued for wreck and salvage values under the motor vehicle insurance claims.

I. Valuation and taxability of goods and services provided under warranty /

extended warranty by OEMs to end consumers.

- J. Availability of ITC on repair costs reimbursed by insurance companies for settlement of motor vehicle insurance claims.
- K. GST on loans and advances amongst related persons or related party transactions.
- L. Time of supply in cases of hybrid annuity model government contracts.
- M. Time of supply and consequent GST payments in respect of license fee and spectrum usage charges paid by telecom companies for allot of spectrum.
- N. Determination of place of supply to unregistered persons in case of different billing and delivery address.
- O. Procedural mechanism (in form of evidence to be provided by supplier) for reversal of ITC by recipient on account of post-sale discounts.
- P. Issues pertaining to special procedures for tobacco manufacturers such as registration of packaging machinery etc.

Comments: These clarifications would be aimed at reducing the existing

disputes and tax demands faced by the industry due to innovative interpretations adopted by tax authorities. However, the exact contours of the clarifications will be detailed in the circulars proposed to be issued in due course.

VI. OTHER ISSUES:

The sunset date for anti-profiteering provisions would be 1 April 2025. The cases pending for adjudication will be heard by the Principal Bench of GST Appellate Tribunal, upon constitution.

The GST council did not take up the review of the new GST provisions which were introduced with effect from 1 October 2023 for online gaming companies; neither did it discuss the issue of retrospective GST demands against such companies – the same may get taken up in the next meeting proposed to be held in the second half of August 2024. The issue of correcting inverted tax structure and rate rationalisation would be taken up by the Fitment Committee of the GST Council.

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