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1 October 2024

## **Key GST Amendments and Clarifications Pursuant to the 54th GST Council Meeting**

## INTRODUCTION

The 54<sup>th</sup> GST Council meeting, chaired by Union Finance and Corporate Affairs Minister Nirmala Sitharaman, took place on 9 September 2024. In this meeting, the GST Council recommended issuance of several amendments in the GST statutes, clarifications and trade facilitation measures aimed at resolving contentious issues across multiple sectors. While some of these recommendations have now been implemented through recent amendments to the law as well as clarificatory circulars, further circulars and notifications implementing legal amendments are still awaited to fully implement the GST Council recommendations.

This ergo seeks to summarise the clarifications and changes issued post the GST Council meeting and also take count of recommendations that await implementation.

## I. KEY TRADE FACILITATION AMENDMENTS AND CLARIFICATIONS ISSUED PURSUANT TO THE RECOMMENDATIONS OF GST COUNCIL

### Waiver of interest and/or penalty as per newly introduced section 128A of CGST Act – procedure and conditions

Section 128A was inserted in the Central Goods and Services Tax Act, 2017 (CGST Act) pursuant to the 53<sup>rd</sup> GST Council meeting providing for conditional waiver of interest and penalty on demands made under Section 73 of CGST Act, where the final order has not been passed. The waiver provided under section 128A is subject to payment of the disputed tax amount.

- (i) In the light of the above, the GST Council, during its 54<sup>th</sup> meeting, recommended insertion of a new Rule 164 into the Central Goods and Services Tax Rules, 2017 (CGST Rules). This has been implemented and the newly inserted Rule 164 outlines the terms and conditions for availing the benefit under Section 128A and prescribe the applicable forms required for the same.

- (ii) The Council provided 31 March 2025 as the date on or before which the payment of tax may be made by the registered persons, to avail the said benefit as per section 128A of the CGST Act.
- (iii) Pursuant to the said recommendation, Notification No. 17/2024 - Central Tax dated 27.09.2024 has now been issued which notifies that this waiver/amnesty scheme would come into force from 01.11.2024

### Implementation of newly inserted sub-sections (5) and (6) in Section 16 of CGST Act

The Finance Act, 2024 brought about amendments in Section 16 intending to regularize the Input Tax Credit taken after the limitation period as prescribed in Section 6(4) of the CGST Act. In this regard:

- (i) The GST Council proposed measures for the implementation of the sub-section (6) was added to Section 16 of the CGST Act.
- (ii) The Council recommended that amendments proposed by Finance (No. 2) Act, 2024, which provides for insertion of sub-sections (5) and sub-section (6) in Section 16 of CGST Act with effect from 1 July 2017, be notified at the earliest.
- (iii) A special procedure may be notified for assesses against whom any order under Section 73 or Section 74 or Section 107 or section 108 of the CGST Act has been passed.
- (iv) Further the Council recommended issuance of a circular to clarify the procedure and various issues related to implementation of the said provisions of sub-section (5) and sub-section (6) of Section 16 of CGST Act.
- (v) Vide Notification No. 17/2024 - Central Tax dated 27.09.2024 it was notified that the above amendments to section 16 will come into force from 27.09.2024

Clarificatory circular regarding regularization of refund of IGST availed in contravention of Rule 96(10) of CGST Rules where the exporters had imported certain inputs without payment of IGST and Compensation Cess

- (i) Rule 96(10) of the CGST Rules restricts the refund of IGST paid on exports when inputs are sourced using benefits from specific notifications, viz EOU, Advance Authorisations, EPCG.
- (ii) On recommendation of GST Council, a circular has been issued which clarifies that in cases where inputs were initially imported without payment of IGST and compensation cess but subsequently, IGST and compensation cess on the imported inputs are paid, along with interest, and the bill of entry in respect of the import of the said inputs got reassessed to this effect, in such cases, it can be considered that the benefits of notifications mentioned in Rule 96(10)(b) of CGST Rules have not been availed for the purpose of said sub-rule.

**Comment:** By allowing the refund of IGST in cases where the imported inputs were initially claimed as exempt from IGST and compensation cess, but were later paid with interest and reassessed, this circular ensures that exporters are not unfairly penalized. This adjustment aligns the rule with practical business scenarios and promotes smoother compliance while maintaining the integrity of the export benefit schemes.

*[Circular No. 233/27/2024-GST dated 10 September 2024]*

Clarificatory circular regarding treatment for advertising services provided by Indian companies to foreign clients

- (i) This circular clarifies that Indian advertising agencies when providing comprehensive advertising services to foreign clients on principal-to-principal basis do not fulfil the criteria of "intermediary" under Section 2(13) of the IGST Act. The place of supply in such cases is not determined based on the intermediary provisions under Section 13(8)(b).

- (ii) The recipient of advertising services is the foreign client who pays for the service. Neither the representative of the foreign client in India nor the target audience in India can be considered the recipient.
- (iii) The provisions for performance-based services do not apply to advertising services in this context as the services do not require the physical presence of the recipient with the supplier. Therefore, the place of supply is not determined based on where services are performed in India.
- (iv) Place of supply is determined as per the default provision, i.e., Section 13(2), the location of the recipient.
- (v) There may be cases where the advertising company located in India merely acts as an agent of the foreign client in engaging with the media owner for providing media space. In such cases, the Indian service provider would be regarded as an intermediary and the transaction would become taxable in India.

**Comment:** Several advertising companies had received notices from the department seeking to deny export benefits on the ground that the advertising companies were acting as intermediary. The clarifications in this circular should help putting these litigations to rest.

*[Circular No. 230/24/2024-GST dated 10 September 2024]*

Clarificatory circular on availability of input tax credit (ITC) for demo vehicles used by authorized dealers of motor vehicles.

- (i) The circular provides that demo vehicles which are used to promote the sale of similar vehicles (i.e., further supply) is considered to be a part of the further supply chain of such motor vehicle, thereby exempting them from ITC blockage under Section 17(5)(a).
- (ii) However, where motor vehicles are used by an authorized dealer for purposes other than for making further supply of such motor vehicles, input tax credit in respect of such motor vehicles would not

be excluded from in terms of sub-clause (A) of clause (a) of section 17(5) of CGST Act.

- (iii) Where authorized dealer merely acts as an agent or service provider to the vehicle manufacturer for providing marketing service, in such a case, the authorized dealer is merely providing marketing and/or facilitation services to the vehicle manufacturer and therefore, input tax credit in respect of such demo vehicle would not be excluded from blockage in terms of sub-clause (A) of clause (a) of Section 17(5) of CGST Act.

**Comment:** This clarification from the CBIC has been highly anticipated and is a significant step toward resolving long-pending disputes in this sector. It is important to note that the circular specifically addresses demo cars purchased by dealers for demonstration purposes to potential buyers. However, it remains to be seen whether the underlying logic of this circular can be extended to vehicles procured by manufacturers for testing and research purposes.

*[Circular No. 231/27/2024-GST dated 10 September 2024]*

[Clarificatory circular regarding the place of supply in relation to data hosting services provided by service providers in India to overseas cloud computing service providers](#)

- (i) CBIC clarified that data hosting service providers are not intermediaries under Section 2(13) of the IGST Act. They provide services directly to cloud computing service providers on a principal-to-principal basis, and not as facilitators or brokers between the cloud computing service provider and their end users. Therefore, the place of supply cannot be determined as per Section 13(8)(b) of the IGST Act.
- (ii) The place of supply is determined as per the default provision of Section 13(2) of the IGST Act, which is the location of the recipient.

**Comment:** This circular provides much-needed clarity for data hosting service providers by confirming that they do not fall

under the definition of intermediaries affecting their Place of Supply leading to denial of export benefit. The circular reinstates that the place of supply is governed by the default rule for such services, which identifies the location of the recipient, ensuring a clearer tax treatment and avoiding the complexities associated with intermediary services.

*[Circular No. 232/27/2024-GST dated 10 September 2024]*

## II. FURTHER AMENDMENTS AND CLARIFICATORY CIRCULARS THAT ARE EXPECTED PURSUANT TO THE GST COUNCIL RECOMMENDATIONS

The GST Council had also recommended several other clarifications and trade facilitation measures as discussed below – those will get implemented as and when the necessary notifications and circulars get issued.

- (i) The GST Council had recommended that that GST rate of extruded or expanded products, savoury or salted (other than un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion), falling under HS 1905 90 30 be reduced from 18% to 12% at par with namkeens, bhujia, mixture, chabena (pre-packaged and labelled) and similar edible preparations in ready for consumption form.
- (ii) The GST Council had recommended that the GST rate on cancer drugs Trastuzumab Deruxtecan, Osimertinib and Durvalumab to be reduced from 12% to 5%.
- (iii) The GST Council had clarified that Roof Mounted Package Unit (RMPU) Air Conditioning Machines for Railways would be classified under HSN 8415 attracting a GST rate of 28%.
- (iv) The GST Council had recommended that the GST rate on car seats to be increased from 18% to 28%. This uniform rate of 28% prospectively in order to bring parity with GST rate on seats of motorcycles.
- (v) The GST Council had clarified that transport of passengers by helicopters



on seat share basis would attract GST at the rate of 5%. The GST for past period would be regularized on 'as is where is' basis. Charter of helicopter will continue to attract 18% GST.

- (vi) The GST Council had recommended that GST on a reverse charge basis be levied on the supply of metal scrap by unregistered persons to a GST registered person. The supplier shall be liable to take registration after the threshold limit.
- (vii) The GST Council also proposed that renting of commercial property by the unregistered person to a registered person be taxed under the reverse charge mechanism.

**Comment:** The above recommendations aim to rationalise GST rates, curtain tax evasion and bring to rest disputes across sectors like FMCG, pharmaceutical, metal scrap, etc. Requisite notifications and circulars implementing the above are expected to be issued shortly.

- (viii) The GST Council had also recommended that location charges or Preferential Location Charges (PLC) paid along with the consideration for the construction services of residential/commercial/industrial complex (prior to issuance of completion certificate) forms part of the composite supply where supply of construction services is the main service and PLC is naturally bundled with it and are eligible for same tax treatment as the main supply that is, construction service.

**Comment:** Prior to this clarification PLC was seen as a separate supply of services and was taxed at 18% GST. In this regard several GST notices were also issued. This clarification, once implemented through a formal circular, will provide much needed clarity to builders and buyers.

- (ix) The GST Council recommended to exempt supply of research and development services by a government entity; or a research association, university, college or other institution, notified under clauses (ii) or (iii) of sub-

section (1) of Section 35 of the Income Tax Act, 1961 using Government or private grants. Past demands to be regularized on 'as is where is' basis.

**Comment:** In the recent past several education institutions had received notices from the DGCI whereby it was contended that the grants received by these educational institutes were in lieu of taxable services. Whereas the institutes contended that the grants were mere financial assistance in lieu of which no taxable services were provided. This recommendation, once implemented formally, will essentially settle this dispute.

- (x) The GST Council recommended that affiliation services by State/Central Educational Boards to Government Schools to be exempt from GST prospectively. The issue for the past period between 1 July 2017 to 17 June 2021 to be regularized on 'as is where is' basis. However, the Council clarified that affiliation services provided by universities to their constituent colleges are not covered within the ambit notification No. 12/2017-CT(R) dated 28 June 2017 and GST at the rate of 18% is applicable.
- (xi) The GST Council recommended that import of services by an establishment of a foreign airlines company from a related person or any of its establishment outside India, when made without consideration is exempted. The Council also recommended to regularize the demands under this head for the past period on an 'as is where is' basis.

**Comment - what does regularization on an 'as is where is' basis mean:** In *JK Papad Industries and Another v Union of India and Others [2024 (9) TMI 759]* the petitioners had claimed exemption under the Tariff Item no. 19059040 by claiming exemption to pay GST on the product manufactured by them, the same was required to be regularised on 'as is' basis as per the minutes of the meeting of GST Council as well as the notification issued by the Board on 1 August 2023. However the department raised a demand misconstruing the word 'as is where is' that The Hon'ble Gujarat High Court observed

that board were of the opinion to regularise the issue for the past period on 'as is where is' basis meaning thereby whatever situation was prevailing with regard to the status of payment of GST by the petitioners shall continue to prevail up to 22 July 2023 and the petitioners have claimed their product to be exempt from GST, therefore, the petitioners cannot be subjected to levy of GST in order to regularise their returns which have been filed at Nil rate of GST.

Therefore, with respect to the demands regularised on 'as is where is' basis the taxpayers can place reliance on the aforementioned judgment to argue that any demand for the past period would not sustain, wherever covered by any such regularization process.

(xii) The GST Council had clarified that services like loading/unloading, packing/unpacking, transshipment, temporary warehousing etc. provided by GTA in the course of transportation of goods by road will be treated as part of the composite supply. However, when invoiced separately, then these services will not be treated as composite supply of transport of goods

(xiii) The GST Council had recommended that supply of services such as application fees for providing electricity connection, rental charges against electricity meter, testing fees for meters/transformers/capacitors, labour charges from customers for shifting of

meters/service lines, charges for duplicate bills etc. which are incidental, ancillary or integral to the supply of transmission and distribution of electricity by transmission and distribution utilities to their consumers, when provided as a composite supply shall be exempted. GST for the past period to be regularized on 'as is where is' basis.

(xiv) The GST Council recommended launching a pilot for B2C e-invoicing. The B2C e-invoicing pilot will begin voluntarily in selected sectors and states.

(xv) The GST Council introduced a Reverse Charge Mechanism ledger, an ITC Reclaim ledger, and an Invoice Management System (IMS). Taxpayers will have until October 31, 2024, to declare their opening balances for these ledgers. The IMS will allow taxpayers to accept, reject, or hold invoices for ITC purposes.

**Comment:** With the proposal to introduce IMS system the assesses may need to amend and upgrade their existing systems.

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