



# SUMMARY OF RECENT GST AMENDMENT AFTER **48<sup>th</sup> GST COUNCIL MEETING**

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## Summary of Recommendations of 48<sup>th</sup> GST Council Meeting

Recently 48<sup>th</sup> GST Council meeting was held on 17 December 2022 under the chairmanship of Hon'ble Minister of Finance and Corporate Affairs, Smt. Nirmala Sitharaman to discuss the changes/amendments that need to be made in the GST law for trade facilitation and to streamline the compliances under the GST law.

The gist of changes/ issues on which clarification/circulars/notifications will be issued by the Central Board of Indirect taxes and customs in the coming days is as follow:

### **A. Change in rate of Tax and issuance of circulars clarifying rate of certain goods:**

- The council, *inter alia*, recommended the change in rate of tax on the following goods:

Sr. No.	Description	From (Earlier Rate)	To (New Rate)
1	Husk of pulses including chilka and concentrates including chuni/churi, Khanda	5%	NIL
2	Ethyl alcohol supplied to refineries for blending with motor spirit (petrol)	18%	5%

- Further, the council decided to include supply of Mentha arvensis under Reverse charge mechanism under GST.
- The higher rate of Compensation cess of 22% will be applicable to motor vehicles satisfying the following four conditions:
  - The vehicle should be classified as SUV
  - Engine capacity exceeding 1500cc
  - Length exceeding 4000 mm
  - Ground Clearance of 170 mm or above
- Goods falling under low-rate category i.e., 5 Percent under schedule I of Notification 1/2017 – CTR, imported for Petroleum operations will attract lower rate of 5 percent and 12 percent will be applicable only if general rate is more than 12 Percent.
- Further, clarification that Rab (rab-salawat) and Fryums manufactured using the process of extrusion will attract GST at the rate of 18%

## B. Trade facilitation measures: -

- **Decriminalization of certain offences under GST Law**

- (i) **Increase in threshold limit for initiating prosecution proceedings**

Present Scenario – Presently, as per Section 132 of the CGST Act, 2017 prosecution proceedings under the GST law are initiated if the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds **one crore rupees** but not exceeding two crore rupees in a offence.

Proposed Changes –

The GST council **proposed to raise the threshold limit** of initiating the prosecution proceedings under GST from Rupees One crore to **Two crore rupees, except for the matter involving fake invoicing.** Further, it is proposed to decriminalize offences namely obstruction or preventing any officer in discharge of duties; deliberate tempering of material evidence and failure to supply the information as prescribed in Section 132 of the CGST Act, 2017.

- (ii) **Reduction in rate of compounding**

Present scenario – As per Sub section 2 Section 138 of the CGST Act, 2017 the minimum amount for compounding of offences should not be less than ten thousand rupees or fifty percent of the tax involved, whichever is higher and maximum amount should not be less than thirty thousand rupees or one hundred and fifty percent of the tax involved whichever is higher.

Proposed Change – The council proposed to change the limit prescribed for compounding of offences under GST law as under:

Particulars	Present Limit	Proposed Limit
Minimum Amount	Rs. 10,000 or <b>50%</b> of tax involved whichever is higher	Rs. 10,000 or <b>25%</b> of tax involved whichever is higher
Maximum Amount	Rs. 30,000 or <b>150%</b> of tax involved whichever is higher	Rs. 30,000 or <b>100%</b> of tax involved whichever is higher

- Further, it was suggested that a **procedure for refund of tax borne by unregistered buyers** must be introduced in cases where the contract/agreement with the suppliers is cancelled and the time limit for issuance of credit note has elapsed. Also, a circular prescribing the procedure to claim refund by the said buyers will be brought by the CBIC.

- **Extension of date from which facility for unregistered person and composition taxable person will be able to make intra state supplies of goods through E commerce operators:**

Present scenario – Currently, any person who is supplying goods through E commerce operators (ECO) cannot be registered under composition scheme as envisaged under sub section 2 of Section 10 of the CGST Act, 2017. However, this position has been changed to “unregistered person and composition taxable person will be able to make intra state supply of goods through ECO subject to certain conditions by the recommendation of GST council in its 47<sup>th</sup> council meeting. It was proposed that the said measure will be implemented from 01 January 2023.

Proposed change – The effective date of implementation of the said change has been extended to 01 October 2023 to allow the GST portal and ECO(s) to make requisite changes.

- **Retrospective amendment to schedule III of CGST Act, 2017**

Present scenario – In schedule III of the CGST Act, 2017 which prescribes those certain transactions shall be treated neither as supply of services nor supply of goods, amendment was brought w.e.f. 01 February 2019 which excluded supplies of goods from a place outside the taxable territory to another place outside the taxable territory, high sea sales and supply of warehoused goods before their home clearance. However, certain ambiguities were present in the domain for the effect of this amendment for the period prior to 01 February 2019.

Proposed change – To remove the ambiguities, it is proposed to make the said amendment effective from 01 July 2017. However, no refund will be allowed if any person has paid tax on the said transaction during the period 01 July 2017 to 31 January 2019.

- **Insertion of sub rule (1) of Rule 37 of CGST Rules, 2017 retrospectively from 01 October 2022**

Present scenario - Currently, as per Rule 37(1) of CGST rules 2017, a registered person has to reverse the entire ITC pertaining to a supplier if payment is not made to such supplier within 180 days from issuance of invoice by the said supplier.

Proposed Change - It has been proposed to amend the provision related to reversal of ITC if payment is not made to supplier within 180 days as per Rule 37 of CGST Rules, 2017 from date of issuance of invoice to only such portion of amount for which payment is pending to be made by the registered person.

- **Insertion of Rule 37(A) to CGST rules, 2017**

Present scenario -Currently as per Section 16(2)(C) of the CGST Act, 2017 the registered person can avail ITC only if tax on the said transaction has been paid by the supplier to the government exchequer and this has been a major litigative issue as no mechanism was available for the recipient to check whether the supplier has paid tax to the government or not.

Proposed Change - The GST council has proposed to insert rule 37A in the CGST rules, 2017 prescribing a mechanism that will enable the recipients to check whether the tax has been paid on the said transaction by the supplier and in case if answer to the said question is negative then the ITC will be reversed by the recipient and will be later on re-claimed when tax will be paid by the supplier.

- **Amendment in sub rule 3 of Rule 108 and Rule 109 of CGST Rules, 2017**

The GST council has proposed to provide clarity on the requirement of submission of certified copy of order appealed against and issuance of final acknowledgment of appeal filed by amendment of Rule 109 and sub rule 3 of Rule 108.

- **Insertion of Rule 109(c) to CGST Rules, 2017 and facility of Form APL-01/03**

A facility for withdrawal of an application for appeal through the Form APL – 01/03 would be enabled for the tax payers to withdraw their application at a specified stage to reduce litigation.

- **No claim bonus offered by the insurance companies to be admissible for deduction for valuation of insurance services**

As per recommendations of GST council a circular on the said matter will be issued by the CBIC.

- **Amendment in Rule 161 of CGST rules 2017 and in FORM DRC – 25**

The GST council recommended that a circular should be issued to clarify the treatment of statutory dues under GST law in case of person who has gone into insolvency proceedings under the Insolvency and bankruptcy code, 2016 and the proceedings under the said act have been finalized along with amendment in Rule 161 related to continuation of recovery proceedings and to FORM DRC 25 for facilitating the said clarification.

- **Amendment in sub rule 3 of Rule 12 of CGST Rules, 2017**

Present Scenario: As per sub rule 3 of Rule 12 of the CGST Rules, 2017 only the proper officer has the power to cancel the registration of the person who is required to deduct TDS under Section 51 or liable to collect TCS under Section 52 of the said person pursuant to an enquiry if the said person is not required to deduct TDS or to collect TCS.

Proposed Change: The GST council has proposed an amendment to the said rule so as to enable the registered person to submit a request for cancellation of registration.

- **Clarification on Place of Supply of services of transportation of goods**

The GST council has proposed that a circular will be issued to clarify the issues related to place of supply of services of transportation of goods as per Sub section 8 of Section 12 of the IGST Act, 2017 and availability of ITC to the recipient. Further, it is recommended to omit proviso to Sub section 8 of Section 12 of the IGST Act, 2017. This will help in reducing the ambiguities in claiming ITC pertaining to supply made in the form of export of goods through transporters as earlier, suppliers (transporters/courier) mentions services provided in other territories on invoice which results in mismatch of Place of Supply as a result of which recipient is unable to claim ITC on the said transactions.

- **Circulars on following matter to be issued:**

- **Procedure for verification of ITC** availed in GSTR 3B *vis-à-vis* ITC available as per GSTR 2A for **the period 2017 – 18 and 2018 – 19**. This will be a major step in curbing litigation going on in GST as various judgements are available which held that mapping of ITC with GSTR 2A in the initial stage of implementation of GST is not applicable as the GSTR 2A was made operational from September 2018 only.
- Clarificatory circular on the provision of sub section 2 of Section 75 will be issued prescribing the manner in which the proper officer will issue fresh notice under sub section 1 of Section 73 in case the appellate authority finds that the notice issued under sub section 1 of Section 74 is not sustainable as no charges of fraud or willful misstatement has been established.
- **Clarification** to be issued to provide that **e invoicing provisions** as mentioned in Sub rule 4 of Rule 48 of CGST Rules, 2017 will be **applicable to which entities**.

### C. **Measures for streamlining compliance under GST**

- To tackle the issue of fake and fraudulent registration a pilot project will be started in Gujarat for bio metric Aadhar authentication and risk based physical verification will be done of the applicants by amending Rule 8 and 9 of the CGST Rules, 2017
- Facility of recording PAN linked mobile number and e-mail on FORM REG 01 and OTP based verification to be done on such PAN linked mobile and email at time of registration to prevent misuse of PAN by unscrupulous means.
- **Restriction in time limit for filing the returns** prescribed under Section 37(GSTR 1), Section 44(Annual Return), Section 52 (return by person liable to collect TCS IN form GSTR 8) and Section 39(GSTR 3B, return by composition taxable person, return by ISD and return by person liable to deduct TDS) **to 3 years from the due date of filing of the relevant return.**



- **Amendment in FORM GSTR 1** to enable the **supplier supplying Goods through ECO** covered under Section 52 and Section 9(5) of the CGST Act, 2017 **to separately report such transactions** and to enable the ECO to report such transactions made under Section 9(5) of the CGST Act.
- To curb the litigation, **Rule 88C and Form GST DRC – 01B will be inserted** which will enable the tax payers to **know the difference of liability reported by them in GSTR 1 vis-à-vis Liability reported in GSTR 3B** when the difference is more than a certain amount **and accordingly the registered person will be liable to pay the differential amount of tax or explain the reasons for the same.** Further, the registered person will **not be able to file the GSTR 1 for the subsequent period if differential tax has not been paid or reasons for mismatch has not been explained.**

#### D. Miscellaneous

- Amendment in definition of Nontaxable online recipient as per Section 2(16) of the IGST Act, 2017 and “Online Information and Database access or retrieval services as per Section 2(17) of the CGST Act.
- **No GST** will be paid where **residential dwelling is given on rent to registered person in his/her person capacity for use as residence or in his own account** and not for use as business.
- Incentive paid to banks by Central Government for promotion of Rupay cards and low value BHIM UPI transactions are kind of subsidy and thus not taxable.

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