



Summary of

Recent GST

Amendment after 55th GST

Council Meeting





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The 55th GST Council meeting was held in Jaisalmer, Rajasthan on December 21st, 2024 under the chairmanship of the Union Finance & Corporate Affairs Minister Smt. Nirmala Sitharaman. The GST Council has *inter-alia* made the following recommendations relating to changes in GST rates on Goods and Services and other measures for facilitation of trade. The key highlights of the meeting are as under:

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1. Rate of Tax on Goods and /services

A. Changes/Clarification w.r.t. Effective Rate of GST on Goods

| S. No. | Description | Effective Rate | Comments |
|--------|---|----------------|--|
| 1. | Fortified rice kernels | 5% | <ul style="list-style-type: none"> • Process to fortify rice mainly consists of Blending of rice flour and Vitamins-Minerals premix. • Now, GST on Fortified Rice Kernels (FRK) classifiable under Heading 1904 has been reduced from 18%, when supplied through the Public Distribution System (PDS) to benefit weaker sections of society. • Earlier, GST Council in its 45th Meeting reduced the GST rate on Fortified Rice Kernels from 18% to 5% for schemes like ICDS etc. |
| 2. | Autoclaved Aerated Concrete (ACC) blocks with a fly ash content exceeding 50% | 12% | <ul style="list-style-type: none"> • ACC blocks containing more than 50% fly ash will be classified under HS Code 6815, which pertains to articles of stone, plaster, cement, asbestos, mica, or similar materials. • GST Council recommended to clarify GST rate 12% instead of 18%, ensuring uniformity in taxation and removing any ambiguity in the applicable tax rate for these products. |
| 3. | Gene therapy, which is a critical treatment for Life-Saving diseases | Nil | Gene Therapy has been fully exempted from GST, recognizing the need to make advanced medical treatments more affordable and accessible. |
| 4. | Extension of IGST Exemption for LRSAM System | Nil | The existing IGST exemption under Notification 19/2019 Customs will be extended to cover Systems, sub-systems, equipment, parts, sub-parts, tools, test equipment, and software required for the assembly/manufacture of the Long Range Surface-to-Air Missile (LRSAM) system. Currently, exemption from basic customs duty (BCD) and IGST is available on |

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| | | | <p>imports of long-range surface to air missile systems (LRSAM).</p> <p>Now, on request of Ministry of Defence, amendment has been proposed to be made in this entry to include “systems, sub-systems, equipment, parts, sub-parts, tools, test equipment, software meant assembly/manufacture of LRSAM system</p> |
| 5. | IGST Exemption on imports of all equipment and consumable samples by the Inspection Team of the International Atomic Energy Agency (IAEA) | Nil | |
| 6. | Compensation Cess on supplies to Merchant Exporters | 0.1% | <p>The rate of Compensation Cess will be reduced to 0.1% on supplies to merchant exporters, aligning it with the concessional GST rate on such supplies. This move promotes exports by reducing the tax burden on intermediary transactions.</p> <p>Earlier, Notification No. 40/2017-CT and 41/2017-IGST dated 23.10.2017, were issued to implement the concessional the GST rate to 0.1% for supplies to merchant exporters, subject to specified conditions.</p> |
| 7. | Concessional GST on Food Inputs for Free Distribution to economically weaker sections under recognized government programs | 5% | <p>Items Covered:</p> <ul style="list-style-type: none"> • Food preparations under HSN 19: Items such as bread, pasta, and food preparations of cereals, flour, starch, or milk. • Miscellaneous edible preparations under HSN 21: Soups, broths, sauces, ice creams, and similar preparations. • Inputs and ingredients used to prepare food intended for free distribution under government welfare schemes |
| 8. | Sale of all old and used vehicles including electric | 18% | <ul style="list-style-type: none"> • Currently, used petrol, LPG, and CNG vehicles with an engine capacity of 1200cc or more and a |

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| | <p>vehicles (EVs) except categories which already taxed at 18% i.e.</p> <ul style="list-style-type: none"> • Petrol Car with engine capacity up to 1200cc • Diesel Car with engine capacity up to 1500cc • Old EVs | | <p>length exceeding 4000mm are already taxed at 18%. Also, diesel vehicles with an engine capacity of 1500cc or more and SUVs with engine capacities exceeding 1500cc are taxed at 18%. (As notified by Notification No. 8/2018-CT(Rate)).</p> <ul style="list-style-type: none"> • Proposed to provide a uniform tax rate of 18% which were previously taxed at 12%, including old EVs bracket when resold by businesses. • GST Applicability on Margin Value as provided under Rule 32(5) of the CGST Rules, 2017: GST will apply only on the margin of the supplier i.e. Difference between the purchase price and selling price (or the depreciated value, if depreciation has been claimed). If the Sale amount is less than the purchase amount then Margin amount will be Nil and no GST would be charged. • The revised GST rate is not applicable for transactions by unregistered persons i.e. if a person not registered under GST sells their previously owned car, they do not have to collect GST. |
| <p>9.</p> | <p>Pepper and raisins sold directly by agriculturists</p> | <p>Nil</p> | <p>To clarify that Pepper (fresh green or dried) and raisins supplied directly by agriculturists will not attract GST.</p> <p>Definition of Agriculturist: an agriculturist refers to an individual/HUF engaged in the cultivation of land and production of agricultural goods.</p> <p>The exemption aims to support farmers by simplifying compliance and reducing tax burdens on direct agricultural supplies.</p> <p>Note: If these commodities are sold by merchants, then they would be liable to tax as provided by Principal Goods Rate Notification.</p> |

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| | | | Raisin – 5% Pepper – 5% |
| 10. | Classification and GST Rates on Ready – to Eat - Popcorn | <ul style="list-style-type: none"> • <u>Mixed with salt and spices</u> <ol style="list-style-type: none"> a. pre-packaged and labelled – 12% b. Other – 5% • Mixed with sugar (i.e. Caramelized) – 18% | <p>Clarification Purpose</p> <ul style="list-style-type: none"> • Clarification does not introduce any new taxes. • It aims to settle existing disputes and ensure consistent application of GST rates. <p>Proposed Clarification</p> <ul style="list-style-type: none"> • “Ready-to-eat popcorn” which is mixed with salt and spices and has the characteristics of namkeens is classified under HSN 2106 90 99. Currently attracts a 5 percent GST if it is not pre-packaged and labelled. If it is pre-packaged and labelled, the tax rate rises to 12 %. • When popcorn is mixed with sugar, its classification changes to that of sugar confectionery, falling under HS code 1704 90 90, and is therefore subject to an 18 % <p>Regularization of Past Disputes</p> <ul style="list-style-type: none"> • The issues related to varying interpretations in field units will be resolved on an "as is where is" basis • No retrospective tax liability will be imposed beyond what has already been levied. |

B. Changes/Clarification w.r.t. GST on Services

- **Exempt GST on contributions made by general insurance companies from the third-party motor vehicle premiums to the Motor Vehicle Accident Fund (MVA Fund).**

Contributions Covered - Contributions made by general insurance companies to the Motor Vehicle Accident Fund from the third-party motor vehicle insurance premiums collected by them. The contribution must be statutory, mandated under Section 164B of the Motor Vehicles Act, 1988.

Entities Covered: All general insurance companies registered with the Insurance Regulatory and Development Authority of India (IRDAI).

Purpose: To provide compensation and cashless treatment to victims of road accidents, including hit-and-run cases, as stipulated under Section 164B of the Motor Vehicles Act, 1988. Ensures that the full amount of contributions is used for victim compensation and medical care without deductions for GST.

- **Penal Charges collected by Banks and NBFCs:**

Penal charges here refer to fees imposed on borrowers for not complying with loan conditions, such as missing an EMI payment or violating repayment schedules. Penal charges levied by banks and NBFCs for non-compliance with loan terms, such as delayed payments, are compensatory in nature and do not constitute consideration for a supply of goods or services

The Council has recommended to clarify that Penalties collected by banks and NBFCs for non-compliance with loan terms will not attract GST. This clarification aligns with the principle that penalties compensating for breaches of contractual obligations do not constitute consideration for a taxable supply

- **Payment Aggregators and Payment Gateways**

A payment aggregator helps businesses with end-to-end payment services, simplifying the payment process by collecting information, processing payments, and handling refunds. The key question was whether PAs qualify as “acquiring banks” under the notification, which would make them eligible for exemptions.

The Council recommended to clarify the applicability of exemption under entry at Sl. No. 34 of Notification No. 12/2017-CT(R) dated 28.06.2017, which pertains to services provided by acquiring banks, will apply to payment aggregators (PAs) for settlement services involving handling of money, but not for payment gateway (PG) functions. This clarification ensures uniformity in the treatment of financial services under GST, while maintaining the taxability of ancillary services provided by fintech players.

Eligibility of Payment Aggregators

- RBI-regulated Payment Aggregators are deemed to fall within the ambit of "acquiring bank" as defined under Sl. No. 34 of Notification.
- As a result, services provided by Payment Aggregators that involve the settlement of funds up to Rs. 2000 for merchant transactions are eligible for the GST exemption under the said entry.

2. Proposal for Amending GST Structure on Hotel Accommodation Services (Effective date to bring the changes – 01.04.2025)

- **Omission of Concept of Declared Tariff and amend definition of ‘Specified premises’:**
Align the rate of GST on hotel accommodation and restaurant services with the actual value of supply rather than relying on declared tariffs.

- **Determination of GST on Restaurant Services in Hotels**

To Specify the GST rates for restaurant services in hotels based on the preceding financial year's value of supply.

- 18% GST with ITC - Value of supply for any unit of accommodation exceeds ₹7,500 in the preceding financial year.
- 5% GST without ITC: Value of supply of accommodation units below ₹7,500 in the preceding financial year.

- **Optional Scheme Notification**

To Allow hotels the option to opt for 18% GST with ITC on restaurant services by submitting a declaration before the start of the financial year or upon obtaining GST registration, thereby facilitating input tax credit (ITC) utilization.

Present Scenario

Entry No. 7 of the NN. 11/2017-CT(Rate) as amended time to time provision the Taxation scheme for Restaurants as under:

| Rate of Tax | Conditions |
|------------------|---|
| 5% (without ITC) | No ITC is allowed and restaurant is located at other than Specified Premises* |
| 18% (With ITC) | ITC can be availed and the restaurant is located at Specified Premises |

*Specified Premises means premises providing “hotel accommodation” services having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.

Further, “Declared tariff” means charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit.

3. Reverse Charge Mechanism on Services:

A. Sponsorship services provided by the body corporates: Sponsorship Services provided by Body corporate would be subject to Forward charge.

An explanation has been provided in notification no. 13/2017-CGST(Rate) dated 28.06.2017 itself to give definition to the term “body corporate”. According to it, “Body Corporate” has the same meaning as assigned to it in clause (11) of section 2 of the Companies Act, 2013.

As per Section 2 (11) of the companies Act, 2013 “body corporate” or “corporation” includes a company incorporated outside India, but does not include- (i) a co-operative society registered under any law relating to co-operative societies; and (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by Notification, specify in this behalf.

| Service Provider | Service Recipient | Present | Proposed |
|--|--|---------|----------|
| Any Person (other than Body Corporate) | Body Corporate/ Partnership Firm | RCM | RCM |
| Any Person (other than Body Corporate) | Any person other than Body Corporate/ Partnership Firm | FCM | FCM |
| Body Corporate | Body Corporate/ Partnership Firm | RCM | FCM |
| Body Corporate | Any person other than Body Corporate/ Partnership Firm | FCM | FCM |
| | | | |

Earlier, supply of sponsorship by any person to any body corporate or partnership firm located in the taxable territory is chargeable to GST under Reverse Charge Mechanism (RCM). (Entry No. 4 of Notification No. 13/2017-Central Tax (Rate) and Entry No. 5 of Notification No. 10/2017-Integrated Tax (Rate)).

- B. **Renting of Any commercial/ immovable property (other than residential dwelling) by unregistered person:** To Exclude taxpayers registered under the Composition Levy Scheme from the purview of the Reverse Charge Mechanism (RCM) for renting of commercial/immovable property (other than residential dwellings) under Entry 5AB of Notification No. 09/2024-CTR dated 08.10.2024.

| Service Provider | Service Recipient | Present | Proposed |
|------------------|--|---------|----------|
| Unregistered | Unregistered | No GST | No GST |
| Registered | Unregistered | FCM | FCM |
| Unregistered | Registered (other than Composition dealer) | RCM | RCM |
| Unregistered | Composition Dealer | RCM | No GST |
| Registered | Composition Dealer | FCM | FCM |

- **Regularization of Transitional Period** - Treat all transactions under Entry 5AB between 10.10.2024 (effective date of Notification 09/2024-CTR) and the date of issuance of the proposed notification as "regularized" on an "as is where is" basis. Taxpayers who have already discharged their liability shall not be entitled to any refund.
- Ensure no penalties or interest are levied for non-compliance during this transitional period.

Earlier, services of Renting of commercial property by unregistered persons to registered persons was brought under RCM purview as per the recommendation made by the GST

Council in 54th GST Council Meeting held on 09.09.2024.

With effect from 10.10.2024, a new Entry 5AB was inserted in Notification No. 13/2017-CT(Rate) to give this effect.

4. Taxability Issues pertaining to Gift Vouchers

To address long-standing ambiguities regarding the taxability of vouchers under GST and provide clarity on their treatment.

Section 2(118) of the CGST Act, 2017 provides the meaning of ‘Vouchers’, according to it, *“voucher” means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument.*

The GST Council has made the following recommendations.

• Clarifications on Various Aspects of Vouchers under GST:

Transactions in Vouchers: Not a Supply of Goods or Services. As Vouchers by their nature, represent a means of exchange and are not considered taxable supplies until they are redeemed or exchanged for goods or services

Distribution of Vouchers on Principal-to-Principal Basis: Principal-to-Principal refers to situations where a voucher is sold or transferred directly between the original issuer and the end customer without any agency involvement. When vouchers are distributed on a principal-to-principal basis, no GST is applicable. This means that the mere act of distributing vouchers, without any intermediary relationship, does not attract GST.

Commission/Fees on Vouchers Distributed on Principal-to-Agent Basis: When vouchers are distributed on a principal-to-agent basis, the commission/fee or any other amount charged by the agent for distributing the voucher is taxable under GST. This means that agents earning commissions for acting as intermediaries in the distribution of vouchers are liable to GST on their commission/fee.

Additional Services Related to Vouchers: Services such as advertisement, co-branding, marketing and promotion, customization, technology support, and customer support, which are related to vouchers, will attract GST. The GST will be levied on the amounts paid for these services, as they are distinct services provided in relation to the voucher. These services are considered ancillary to the issuance or use of the voucher and will therefore be subject to GST on the transaction value.

Unredeemed Vouchers (Breakage): Any Voucher which has not been redeemed by the merchant with the Company as of such date. Income or amounts booked in accounts related to unredeemed vouchers. This means businesses will not be required to account for GST on any income derived from the non-redemption of vouchers.

- **Omission of Certain Provisions from the CGST Act, 2017 and CGST Rules, 2017 relating to Vouchers:** The GST Council proposed to Omit Sections 12(4) and 13(4) of the CGST Act, 2017, and Rule 32(6) of the CGST Rules, 2017. These provisions have created confusion in the treatment of vouchers, and their removal will simplify the tax treatment of vouchers.

Current Scenario:

- Provision of Section 12(4) and Section 13(4) of the CGST Act, 2017 provides the time of supply in case of Vouchers i.e.

| Section | Situation | Time of Supply |
|--|--|----------------------------------|
| Section 12(4): Time of Supply in case of Vouchers exchangeable for goods | Supply is identifiable at the point at which voucher is identified | Date of issuance of the voucher. |
| | Supply is not identifiable at the point at which voucher is identified | Date of redemption of voucher. |
| Section 13(4): Time of Supply of services in case of vouchers | Supply is identifiable at the point at which voucher is identified | Date of issuance of the voucher. |
| | Supply is not identifiable at the point at which voucher is identified | Date of redemption of voucher. |

- Rule 32(6) of the CGST Rules, 2017 provides for the uniform method of valuation for tokens, vouchers, coupons, or stamps (excluding postage stamps) that are redeemable against the supply of goods or services. According to it, value of such instruments, including tokens, vouchers, coupons, or stamps, shall be equal to the **money value** of the goods or services or both that are redeemable against them.

Related judgments by the High Courts

- The Madras High Court in the case of Kalyan Jeweller vide Writ Petition No. 5130 of 2022 dated 27.11.2023, has provided clarity on the levy of GST against gift vouchers. The High Court clarified that a 'gift voucher' is an 'actionable claim' (enforceable debt), not constituting a supply of goods or services under Schedule III. The High Court here, further disagreed with the stand taken by AAAR and rejected the notion that the 'time of supply' is exclusively the date on which the gift voucher was issued. Instead, it held that the tax liability is determined based on the inherent nature of the transaction. It clarified that in instances where the gift voucher pertains to identified goods, tax liability would arise at the time of issuance of the gift voucher, whereas in all other

cases, the date of redemption of such voucher would be construed in terms of GST provisions.

- Similar judgment was passed by the Karnataka High Court in the case of **M/s PREMIER SALES PROMOTION PVT LIMITED v. THE UNION OF INDIA & ORS** vide W.P No.5569 OF 2022 dated 16.01.2023.

5. Proposal to make Amendment in GST Law

A. Appeals

Amendment in Section 107 and Section 112 of CGST Act for reducing the amount of pre-deposit required to be paid for filing of appeals under GST for demand involving Penalty only:

The GST Council recommended reducing the amount of pre-deposit for filing of appeals under GST aiming to ease the financial burden on taxpayers by reducing the pre-deposit requirement for cases where the dispute is only regarding penalties and not the actual tax demand. This encourages taxpayers to challenge penalty orders without having to pay a large pre-deposit.

The GST Council's recommendation is tabulated below:

| Appellate Level | Current | Proposed |
|------------------------|---------------------------|---------------------------|
| Appellate Authority | 25% of the Penalty Amount | 10% of the Penalty Amount |
| Appellate Tribunal | Law silent on the same | 10% of the Penalty Amount |

Appeal before Appellate Authority:

As per Section 107(6) of the CGST Act, 2017, provides that no appeal before the Appellate Authority shall be filed against an order u/s 129(3), unless a Specified percentage of penalty involved has been deposited as pre-deposit. Further, Section 129(3) of the CGST Act, is that the proper officer detaining or seizing goods or conveyances shall issue a notice in 'FORM GST MOV-07' within seven days of such detention or seizure, specifying the tax and penalty payable.

Appeal before Appellate Tribunal:

As per Section 112(6) of the CGST Act, 2017, provides that no appeal before the Appellate Tribunal shall be filed against the order of Appellate Authority, unless the specified percentage of Pre-deposit has been deposited. Currently, the law was not clear for the quantum of pre-deposit to be deposited with the Appellate Tribunal against the order of Appellate Authority in cases involving only penalty us/ 129(3).

Now, the Council proposed to insert new proviso to section 112(8) of CGST Act, 2017 providing for payment of pre- deposit at 10% for filing appeals before Appellate Tribunal in cases involving only demand of penalty without involving the demand of tax.

B. Amendment in Section 17(5) to replace phrase “plant or machinery” with “plant and machinery”, retrospectively, with effect from 1 July 2017: The GST Council recommended replace the plant or machinery” with “plant and machinery” used in Section 17(5) of the CGST

Act, 2017. The Council calls the expression “plant or machinery” used in the said section as drafting error and that proposed to correct the error, retrospectively w.e.f. 01.07.2017.

Rationale for the proposed amendment

- Aiming to clarify the legislative intent behind Section 17(5)(d), which deals with the restriction on Input Tax Credit (ITC) on certain items, including plant and machinery
- Original wording "plant or machinery" led to some confusion and ambiguity regarding whether ITC is available for both plant and machinery together or only for one of them. The amendment replaces this with the term "plant and machinery" to eliminate any uncertainties and ensure that both terms are treated together.
- Explanation at the end of Section 17 of the CGST Act, 2017 clearly defines plant and machinery for the purposes of the law. The amendment aligns the language in Section 17(5)(d) with this definition, ensuring that the provision is interpreted consistently with the other provisions of the Act.

Impact on the judgment passed by the Supreme Court in Safari Retreats Case

In the Safari Retreats case, the Supreme Court addressed the eligibility of Input Tax Credit (ITC) on immovable property under Section 17(5)(d) of the CGST Act, particularly commercial properties like shopping malls meant for leasing/renting. The Court rejected a narrow interpretation of the term “plant” as used in the bracketed portion of Section 17(5)(d), which typically excludes land, buildings, or civil structures. Instead, it extended the possibility that a building could qualify as a “plant” if it serves a functional purpose crucial to the business activity, such as renting or leasing. A building that functions as a plant can be excluded from the disallowance of ITC under Section 17(5)(d), as it would fall under the exception for plant or machinery. This judgment has huge implications for the real estate and construction sectors, particularly for builders who previously faced restrictions on claiming ITC for construction-related expenses.

With the recommendation of the GST Council, the amendment will have a huge impact on the assesses who were benefitted from the said decision. As many companies, relying on the Supreme Court decision, had claimed ITC for immovable properties qualifying as plant. Now, all such claims must be reversed.

C. Amendment in Definition of "Local Fund" and "Municipal Fund"

The GST Council has proposed the following changes to Section 2(69) of the CGST Act, 2017 to provide greater clarity regarding the terms Local Fund and Municipal Fund.

- Amendment to Clause (c) of Section 2(69) - Currently, Clause (c) defines "local authority" and references funds like Local Fund and Municipal Fund without a detailed definition.
- Insertion of Explanation - An Explanation will be added under clause (c) of Section 2(69) to define the terms Local Fund and Municipal Fund explicitly.

D. Provisions Pertaining to Input Services Distributor (ISD)

The Council proposed amendment aiming to explicitly include interstate Reverse Charge Mechanism (RCM) transactions under ISD, by including reference to supplies subject to tax under section 5(3) and 5(4) of IGST Act, 2017 in the said provisions. Also, similar amendment proposed to be made under various sections of CGST Act, and Rule 39(1A), which lays down the procedure for the distribution of input tax credit by the ISD to reflect the inclusion of interstate RCM transactions under the ISD mechanism. These amendments to be made effective w.e.f. 01.4.2025.

Earlier, various amendment was made in the provisions relating to ISD vide the Finance Act, 2024 dated 01.02.2024. CBIC vide Notification No. 16/2024-Central Tax dated 06 August 2024, has notified the effective date of ISD-related amendments from 1 April 2025.

E. Amendment in the Definition of "Pre-Packaged and Labelled" Under GST

- **Expansion of the Definition of "Pre-Packaged and Labelled"**

Proposed - The definition will be expanded to include all commodities intended for retail sale, which contain not more than 25 kg or 25 litres, and which are Pre-packed as defined under the Legal Metrology Act, 2009 and Labelled to comply with the declarations required by the Legal Metrology Act and its associated rules.

Current - On recommendation of the GST Council in 47th GST Council Meeting, the Government has levied GST on Pre-packaged and labelled commodity on various specified food items covering under Chapter Heading 1 to 21 of Customs Tariff by amending CGST Rate Notification No. 01/2017 ('Rate Notification') by notification No. 6/2022-Central Tax (Rate) and was made applicable w.e.f. 18.07.2022. Under the existing GST provisions, the term 'pre-packaged and labelled' refers to commodities that are packaged and labelled for retail sale, with the focus primarily on certain categories of goods.

- **Rationale of Amendment:**

- To ensure uniformity in the treatment of goods that are pre-packed and labelled for retail sale, regardless of their category, as long as they meet the specified weight and volume thresholds.
- The amendment eliminates ambiguities in the treatment of goods that are packaged and labelled for retail sale, making it easier for businesses to comply with GST requirements related to packaged goods.

F. Amendment in Schedule III to CGST Act, 2017:

The Council proposed to insert Clause (aa) in Paragraph 8 of Schedule III w.e.f. 01.07.2017, to provide Transactions involving goods warehoused in an SEZ or FTWZ (Free Trade Warehousing Zone) before their clearance for exports or to the Domestic Tariff Area (DTA) will not be treated as a supply of goods or services under GST, and the same would not attract GST. This measure aligns the treatment of goods warehoused in SEZ or FTWZ with the existing GST provisions related to goods stored in customs bonded warehouses, ensuring uniformity in the tax treatment.

Currently, Clause 8(a) of Schedule III, provides that Supply of warehoused goods to any person before clearance for home consumption shall be treated neither as a supply of goods nor supply of services. In the subject case the supply of warehoused goods is of two types, namely;

1. Clearance from Bonded Warehouses to the vessels, and
2. Clearance from Non-Bonded Warehouses to the vessels.

6. Removal of ambiguity and legal disputes on various GST issues (Clarifications):

A. Applicability of Late fees for GSTR-9 and GSTR-9C and Amnesty Scheme:

Form GSTR-9C is a reconciliation statement that compares the taxpayer's audited financial records to their annual return (GSTR-9). Taxpayers with more than Rs.5 crores in annual revenue in a financial year are required to file. It eliminates discrepancies between reported and audited financials and ensures that tax declarations are correct and transparent.

- **Applicability of Late Fee for Delay in Filing FORM GSTR-9C** – The Council propose to clarify that GST Annual return comprises of Both GSTR-9 and GSTR-9C, and when both forms are filed only then the filing of Annual returns would be considered as complete.

Section 44(2) of the CGST Act, 2017 provides that Return in GSTR-9C should be filed along with the Annual Return GSTR-9. Also, as per Section 44(1), the due date to file an Annual Return is on or before 31st December following the end of the financial year for which the return is prepared. Thus, the due date for filing GSTR-9C is on or before 31st December, following the end of the financial year for which the return is prepared.

Quantum of Late fees:

| Aggregate Turnover in a F.Y. | Late fees |
|-------------------------------------|---|
| *Upto Rs. 5 Cr | Rs. 50 per day (Rs. 25 CGST + Rs. 25 SGST), subject to maximum of 0.04% of turnover in the State or UT |
| *Rs. 5 Cr to Rs. 20 Cr | Rs. 100 per day (Rs. 50 CGST + Rs. 50 SGST), subject to maximum of 0.04% of turnover in the State or UT |
| Above Rs. 20 Cr | Rs. 200 per day (Rs. 100 CGST + Rs. 100 SGST), subject to maximum 0.5% of turnover in the State or UT. |

**Rationalized vide NN. 07/2023-CT for F.Y. 2022-23 and onwards.*

- **Amnesty Scheme by waiving of the Late fees for Past years:**

The GST Council proposes to provide conditional waiver on the late fee for filing GSTR-9C by March 31, 2025, in the event of delayed FORM GSTR-9C furnishing from 2017-18 to 2022-23. For this purpose, a notification under Section 128 of the CGST Act, 2017 will be issued to waive the excess late fees for delayed filing of FORM GSTR-9C.

Condition - The waiver will apply if FORM GSTR-9C is filed on or before 31 March 2025, provided FORM GSTR-9 for the corresponding period has already been filed.

Implications: For any of the financial years from 2017-18 to 2022-23, in case the GSTR-9C has not been filed for any of the years, the same could be filed upto 31.3.2025 and no Late fees

shall be levied u/s 47. The late fee paid in GSTR-9 alone shall be enough. Further, where return in FORM GSTR-9C filed after 31st March 2025 the late fee could be levied for late filing of GSTR-9C as per Section 47.

B. Input Tax Credit:

- **Availability of Input Tax Credit u/s 16(2)(b) in respect of goods which have been delivered by the supplier at his (supplier's) place of business**

The Council recommended to clarify that in case of an Ex-Works contract, the property in goods transfers to the recipient at the time ownership transfers to the recipient. For the purpose of availing ITC u/s 16(2)(b) of the CGST Act, 2017, the recipient may claim the ITC at that time subject to the conditions outlined in Sections 16 and 17.

This Clarification provides legal certainty for recipients involved in Ex-Works contracts. Further, ensures that genuine ITC claims are not denied due to logistical arrangements where goods are delivered at the supplier's location.

- **Reversal of Input Tax Credit by Electronic Commerce Operators (ECOs) in respect of supplies made under section 9(5)**

No proportional reversal of Input Tax Credit (ITC) under Sections 17(1) or 17(2) of the CGST Act, 2017 is required to be made by ECOs in respect of supplies for which they are required to pay tax under Section 9(5). ECOs are liable to pay tax on behalf of the suppliers under Section 9(5), and this liability does not impact their ITC claims for general business inputs.

Earlier, vide Circular No. 167 / 23 /2021 – GST dated 17.12.2021, CBIC clarified that E-commerce operator shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act.

C. Compensation Cess on Motor vehicles (Utility Vehicles)

The Council has clarified that explanation provided in Sl. No. 52B of Notification No. 1/2017-Compensation Cess (Rate) dated 28.6.2017, concerning ground clearance shall be deemed to have come into effect from **26th July 2023**. The Explanation provides that the Ground Clearance means ground clearance in unladen condition.

A ground clearance of over 170 millimetres is one of the three key points to consider a vehicle under the category of utility vehicles (UVs) and bring it under bracket of 22% compensation cess.

Earlier, the GST Council in its 50th Meeting held on 11.07.2023, has clarified that a uniform rate of 22% percent compensation cess will be levied on all SUVs (irrespective of the auto OEM's nomenclature) if the vehicle is popularly known as an SUV and has a length greater than 4 metres, an engine over 1,500cc capacity, and at least 170mm ground clearance, & above and to clarify by way of explanation that 'Ground clearance' means Ground Clearance in un-laden condition. Further, CBIC issued Notification No. 03/2023-Compensation Cess (Rate) dated 26.07.2023 w.e.f. 27.07.2023, to give effect to this recommendation.

Unladen weight means the weight of a vehicle without passengers, goods, or other items,

including the body and all typical parts used with the vehicle or trailer when it is used on a road.

7. Miscellaneous

A. Invoice Management System

Presently, GSTN has introduced the functionality called Invoice Management System (IMS) on GST portal, from 1 October 2024 onwards. IMS is aimed at establishing a communication mechanism between suppliers and recipients by creating an additional layer of document verification and reconciliation.

The GST Council in 54th GST Council Meeting has proposed this functionality to allow the taxpayers to accept, reject, or to keep the invoices pending for the purpose of availment of Input Tax Credit. Subsequent to this many Advisories were also released by the GSTN. However, there was no legal backing for the same.

Now, the GST Council recommended several amendments to the CGST Act, 2017 and CGST Rules, 2017 to enhance the functionality of the IMS. These amendments are aimed at streamlining the process of managing invoices, input tax credit (ITC), and the filing of returns. The Proposed changes are as under:

- Amendment to Section 38 of CGST Act, 2017 and Rule 60 of CGST Rules, 2017 - to explicitly establish the process for generating FORM GSTR-2B based on the action taken by taxpayers within the IMS. Amendment in Rule to align the rules with the revised processes for generating the GSTR-2B form.
- Amendment to Section 34(2) of CGST Act, 2017 – To clarify that the recipient must reverse the ITC associated with the credit note issued by the supplier. This ensures that the supplier's output tax liability can be adjusted appropriately.
- Insertion of new Rule 67B - To specify the process and method through which the supplier's output tax liability will be adjusted when a credit note is issued
- Amendment to Section 39(1) of CGST Act, 2017 and Rule 61 of CGST Rules, 2017 - To ensure that FORM GSTR-3B can be filed only after FORM GSTR-2B has been made available for the corresponding tax period.

B. 'Track and Trace Mechanism' for specified evasion-prone commodities

In a significant move to plug leakage, the Council approved a proposal to implement 'Track and Trace Mechanism' for specified evasion-prone commodities, under which a unique mark will be affixed on such goods or packages to trace them throughout the supply chain. The introduction of the Track and Trace Mechanism will help authorities monitor and trace goods throughout the supply chain, significantly reducing the possibility of tax evasion, under-invoicing, or other fraudulent activities.

This is to insert an enabling provision in CGST Act, 2017 through Section 148A so as to empower the government to enforce the Track and Trace Mechanism for specified evasion-

prone commodities. The Procedures outlining the framework for the **Track and Trace Mechanism** may be notified later.

Unique Identification Marking (UIM)

The system will rely on the use of a **Unique Identification Marking (UIM)** that will be **affixed** on the goods or the packages containing the goods. The UIM will serve as a unique identifier for each package, enabling it to be tracked from manufacturing to the final point of sale.

C. Supply of Online Services to Unregistered Recipients

The Council proposed to provide clarity on the tax invoice requirements for suppliers of online services such as online money gaming, OIDAR services, and other digital services, when provided to by OIDAR service provider located in India to an unregistered recipients in India.

Place of Supply u/s 12(2)(b): Place of Supply where both Supplier and recipient of OIDAR Services are located in India, and recipient is un-registered person shall be governed by provisions of Section 12(2)(b) which provides that, POS will be the address-on-record of such person and where such address is not available, it will be the location of supplier.

Mandatory Requirement for Suppliers: **The Council clarified that the** Suppliers of online services to unregistered recipients will be required to mandatorily record the name of the State of the recipient on the tax invoice. (Proviso to Rule 46(f) of the CGST Rules)

Purpose of Recording the State Name: The Council clarified that the name of the **State** of the unregistered recipient recorded on the tax invoice will be deemed to be the **address on record** of the recipient for the purposes of Section 12(2)(b) of the IGST Act, 2017. By mandating the recording of the **State** of the recipient, the **location** of the unregistered recipient becomes clear for tax purposes, enabling the supplier to correctly determine the place of supply for **GST** applicability

Legal provisions of Section 12(2)i.e. Place of Supply where Both Supplier of services and recipient is in India:

Section 12(2) provides Place of Supply where both Supplier and recipient are located in India, and where the supply of service does not fall in any of the specified cases.

Accordingly, Place of supply in respect of supply of services will be as follows:

12(a) - Where the services are supplied to a recipient who is registered, POS will be the location of such person

12(b) - Where the services are supplied to a recipient who is not registered, POS will be the address-on-record of such person and where such address is not available, it will be the location of supplier.

D. Grant of Temporary Identification Number (TIN) by Tax Officers to Persons Not Liable to Be Registered

The Council proposed to provide for the generation of a Temporary Identification Number (TIN) for persons who are not otherwise required to be registered under the CGST Act, 2017,

but are still required to make a payment under Rule 87(4) of the CGST Rules, 2017. This new rule would ensure proper identification and tracking of such persons when they make payments, thereby improving compliance and ensuring that necessary tax payments are captured effectively.

The Proposed recommendation would involve:

- Insertion of New Rule 16A in CGST Rules, 2017 - to provide a separate provision for the generation of a Temporary Identification Number
- Amendment to Rule 87(4) of CGST Rules, 2017 – To incorporate a reference to the new Rule 16A
- Modification of FORM GST REG-12 - FORM GST REG-12, which is used for GST registration purposes, will be modified to reflect the inclusion of Rule 16A. The modifications will ensure that persons requiring a TIN under the new provision can generate the necessary identification for the purpose of payment.

8. **Decisions Deferred For Future deliberations:**

- **Floor Space Index:** GST on Floor space index should be in reverse charge or forward charge.
- **Aviation Turbine Fuel (ATF):** States have rejected a proposal to include Aviation Turbine Fuel (ATF) in the ambit of the Goods and Services Tax (GST) regime, Finance Minister Nirmala Sitharaman said on December 21 during a briefing after the GST Council meeting. Periodically, there have been requests from the Civil Aviation Ministry as well as the industry to include ATF in GST, however, while the Council deliberated on this issue, it was not agreed to.
- **Food delivery apps:** Food delivery by e-commerce and quick commerce — taxation for delivery and taxation for food was deliberated. However, no decision has been taken yet. GST Council has not taken any decision on this, it has been deferred, the GoM will deliberate on this once again.
- **Calamity Cess:** The Council has agreed to form a GoM, including representatives from West Bengal, Uttar Pradesh, Andhra Pradesh and other states to determine the procedure and system for implementing a 1 percent calamity cess on certain goods and services. This cess will help states recover from natural disasters.
- **Insurance Policies:** The decision to reduce GST on health and life insurance has been postponed to the next meeting. After getting IRDAI's inputs, GoM will finalise report. No timeline has been given to GoM on cess to finalise report.
- **Rate Rationalization:** GoM on GST rate rationalisation deferred submission of its report, which suggested rate rationalisation in 148 items.