

2023

# 50th GST COUNCIL MEETING DT. 11.07.2023- Key Proposals



**PREFACE**

*Dear Readers,*

*The 50<sup>TH</sup> GST Council meeting which was held on 11.07.2023 under the leadership of Hon'ble FM Smt. Nirmala Sitharaman at New Delhi has proposed various trade friendly measures as well as proposed changes in rates of certain goods and services as also rationalization of certain past rates. The meeting was nothing short of a mini GST budget for India Inc. and we shall await the notifications, circulars to be issued soon in terms of the press release issued post the meeting.*

*In this note we have tried to assemble the important changes at a place and the same shall be followed up with other notes as and when the circulars and notifications are issued.*

*We trust the document would be a useful read.*

*Thank you for your support and faith in our firm.*

*Best Regards,*

**Adv. Ankit Kanodia | Team SKKA**

**KEY PROPOSALS AND RECOMMENDATIONS**

<b>Topic</b>	<b>Recommendation</b>	<b>Comments</b>
<b>GTA Services</b>	<ol style="list-style-type: none"> <li>1. As a trade friendly measure, it has been decided that <b>GTAs will not be required to file declaration for paying GST under forward charge every year.</b></li> <li>2. If they have exercised this option for a particular financial year, <b>they shall be deemed to have exercised it for the next and future financial years unless they file a declaration that they want to revert to reverse charge mechanism (RCM).</b></li> <li>3. <b>The last date of exercising the option by GTAs to pay GST under forward charge shall be 31st March of preceding Financial Year instead of 15th March. 1st January of preceding Financial Year shall be the start date for exercise of option.</b></li> </ol>	<i>The above recommendation will make compliance burden easier for the GTA sector as they would not be required to file declaration for FCM every year. However, whether a GTA can change the option in mid year or not is till not clear and will be cleared once the notification comes out for the same.</i>
<b>Director services in Personal Capacity not under RCM</b>	<ol style="list-style-type: none"> <li>1. It has been decided to clarify that <b>services supplied by a director of a company to the company in his private or personal capacity such as supplying services by way of renting of immovable property to the company or body corporate are not taxable under RCM.</b></li> <li>2. Only those services supplied by a director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate under notification No. 13/2017-CTR (Sl. No. 6) dated 28.06.2017.</li> </ol>	<i>A very important clarification as many corporates were discharging RCM on services of director in personal capacity also. However, now, the director may have to take GST registration if value of services crosses the threshold limit of Rs. 20 lacs.</i>
<b>Supply of food and beverage in Cinema Halls to be treated as restaurant service subject to conditions</b>	<ol style="list-style-type: none"> <li>1. It has been decided to clarify that supply of food and beverages in cinema halls is taxable as restaurant service as long as <ol style="list-style-type: none"> <li>(a) they are supplied by way of or as part of a service and</li> <li>(b) supplied independently of the cinema exhibition service.</li> </ol> </li> <li>2. <b>Where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite</b></li> </ol>	Food supplied in cinema halls will be restaurant service attracting GST @ 5% if not supplied together as a combo with cinema tickets.

	<p><b>supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply</b></p>	
<p><b>Taxability of Online Gaming</b></p>	<ol style="list-style-type: none"> <li><b>All three namely Casino, Horse Racing and Online gaming to be taxed at the uniform rate of 28%</b></li> <li>Tax will be applicable on the face value of the chips purchased in the case of casinos, on the full value of the bets placed with bookmaker/totalisator in the case of Horse Racing and on the full value of the bets placed in case of the Online Gaming.</li> </ol>	<p>Recently the Karnataka HC had quashed the demands of GST on Online Gaming and with the present proposal, the said judgment will stand to be overruled.</p>
<p><b>GST Appellate Tribunal (GSTAT) to come in to force w.e.f. 01.08.2023</b></p>	<ol style="list-style-type: none"> <li>The Council has recommended the Rules governing appointment and conditions of President and Members of the proposed GST Appellate Tribunal for enabling smooth constitution and functioning of GST Appellate Tribunal.</li> <li><b>The Council also recommended that provisions of Finance Act, 2023 pertaining to GST Appellate Tribunal may be notified by the Centre with effect from 01.08.2023, so that the same can be brought into operation at the earliest.</b></li> </ol>	<p><i>GSTAT may see the light of the day by end of the FY if all goes as per plan.</i></p>
<p><b>Annual Returns for FY 2022-23</b></p>	<ol style="list-style-type: none"> <li>Relaxations as provided for FY 21-22 in various tables of GSTR 9 to continue for FY 22-23 also.</li> <li>Further, for easing compliance burden on smaller taxpayers, <b>exemption from filing of annual return (in FORM GSTR-9/9A) for taxpayers having aggregate annual turnover up to two crore rupees, to be continued for FY 2022-23 also.</b></li> </ol>	<p><i>Trade friendly measure for MSMEs.</i></p>
<p><b>Input Service Distributor and Cross Charge</b></p>	<ol style="list-style-type: none"> <li>The Council has recommended to clarify through a circular that <b>Input Services Distributor (ISD) mechanism is not mandatory for distribution of input tax credit of common input services</b> procured from third parties to the distinct persons as per the present provisions of GST law.</li> <li>The Council has also recommended that <b>amendment may be made in GST law to make ISD mechanism mandatory prospectively</b> for distribution of input tax credit of such common input services procured from third parties.</li> <li>It will also clarify <b>issues regarding taxability of internally generated services provided by one distinct person to another distinct person i.e. cross</b></li> </ol>	<p><i>A very welcome clarification indeed for the trade that ISD cannot be stated to be a mandatory mechanism for transfer for common HO credits. However in future it may be made mandatory.</i></p> <p><i>Also suitable clarifications to be issued for valuation of cross charge amongst distinct</i></p>

<p><b>Replacement during warranty- No GST and No ITC reversal</b></p>	<p><b>charge valuation for salary of staff etc.</b></p> <ol style="list-style-type: none"> <li>1. Circular to be issued to provide clarity on various issues pertaining to the GST liability as well as the liability to reverse input tax credit in cases involving warranty replacement of parts and repair services during warranty period without any consideration from the customers, clarifying <i>inter alia</i> that <b>no GST is chargeable by the manufacturer on such replacement of parts and/ or repair service and also, no reversal of input tax credit is required to be made by the manufacturer.</b></li> </ol>	<p><i>persons.</i> <i>While the clarification is a welcome one, its applicability at service provider end also needs to be examined in due course.</i></p>
<p><b>Refund related clarifications</b></p>	<ol style="list-style-type: none"> <li>1. Circular to be issued clarifying-             <ol style="list-style-type: none"> <li>a. Refund of accumulated input tax credit (ITC) under Section 54(3) of CGST Act, 2017 for a tax period to be restricted to ITC on inward supplies reflected in FORM <b>GSTR-2B of the said tax period or any previous tax period.</b></li> <li>b. the value of export goods, to be included while calculating “adjusted total turnover” in the formula under rule 89(4) will be as per Explanation inserted in rule 89(4) of CGST Rules vide Notification No. 14/2022- CT dated 05.07.2022</li> </ol> </li> </ol>	<p><i>Procedural amendments in Refund related provisions</i></p>
<p><b>Manner of calculation of interest in IGST ITC cases</b></p>	<ol style="list-style-type: none"> <li>a. In cases of wrong availment of IGST credit, <b>the balance of input tax credit (ITC) in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has to be taken in consideration while calculating such interest liability as per rule 88B of CGST Rules, 2017.</b></li> </ol>	<p><i>A welcome clarification to reduce the burden of interest liability on tax payer.</i></p>
<p><b>No services by holding company to subsidiary co on mere shareholding</b></p>	<ol style="list-style-type: none"> <li>1. Circular to be issued clarifying that <b>mere holding of securities of a subsidiary company by a holding company cannot be treated as a supply of services and therefore, cannot be taxed under GST.</b></li> </ol>	<p><i>A welcome change as department was levying GST under RCM in case the subsidiary company was located outside India.</i></p>
<p><b>ITC related proposals</b></p>	<ol style="list-style-type: none"> <li>1. Difference in ITC as per GSTR 2A and GSTR 3B can be <b>reconciled by self-certificate/ CA certificate for the period 2019-20 and 2020-21 (upto 31.12.2021)</b> also in terms of Circular No. 183/15/2022-GST dated 27th December, 2022.</li> <li>2. The Council has recommended a mechanism for system-based intimation to the taxpayers in respect of the excess availment of ITC in <b>FORM GSTR-3B</b> vis a vis that made available in <b>FORM GSTR-2B</b> above a <b>certain threshold</b>, along with the procedure of auto-</li> </ol>	<p><i>The applicability of Circular 183 for FY 2019-20 and 2020-21 was already allowed by the Hon’ble Karnataka HC and now the GST council has also proposed the same which is a welcome step.</i></p>

	<p>compliance on the part of the taxpayers, to explain the reasons for the said difference or take remedial action in respect of such difference. For this purpose, <b>rule 88D</b> and <b>FORM DRC-01C</b> to be inserted in CGST Rules, 2017, along with an amendment in <b>rule 59(6)</b> of CGST Rules, 2017. <b>This will help in reducing ITC mismatches and misuse of ITC facility in GST.</b></p>	<p><i>As regards difference in 3B vs 2B ITC, the proposed mechanism would help in checking the difference on monthly basis and avoiding future litigation on this score.</i></p>
<p><b>Other Recommendations</b></p>	<ol style="list-style-type: none"> <li>1. Circular to be issued to provide clarification regarding <b>TCS liability under Sec 52 of the CGST Act, 2017 in cases where multiple E-commerce Operators (ECOs) are involved in a single transaction of supply of goods or services or both.</b></li>   <li>2. <b>Special procedure to be provided under section 148 of CGST Act, 2017 to enable manual filing of appeal against the orders passed by proper officers in respect of TRAN-1/ TRAN-2 claims of the registered persons, filed in pursuance of the directions of Hon'ble Supreme Court in case of the Union of India v/s Filco Trade Centre Pvt. Ltd.</b></li>   <li>3. <b>Rule 108(1) and rule 109(1) of CGST Rules, 2017 to be amended to provide for manual filing of appeal under certain specified circumstances.</b></li>   <li>4. <b>Amnesty scheme for non-filers of FORM GSTR-4, FORM GSTR-9 &amp; FORM GSTR-10 returns, revocation of cancellation of registration and deemed withdrawal of assessment orders issued under Section 62 of CGST Act, 2017, shall continue till 31.08.2023.</b></li>   <li>5. <b>EWB for intra-State movement of gold and precious stones under Chapter 71 within their States to be operational as per States discretion</b></li>   <li>6. Provisions of section 123 of Finance Act, 2021, amending <b>section 16 of IGST Act, to be notified</b></li> </ol>	

	<p><b>with effect from 01.10.2023</b> and notification to be issued under section 16(4) of IGST Act, 2017 to provide for restriction of IGST refund route in respect of exports of tobacco, pan masala &amp; other similar items as well as mentha oil.</p> <p><b>7. The Council has recommended insertion of a clause (ca) in sub-section (1) of section 10 of the IGST Act, 2017 to clarify the place of supply in respect of supply of goods to unregistered persons</b></p> <p><b>8. The Council has recommended insertion of Rule 142B in the CGST Rules, 2017 and insertion of a FORM GST DRC-01D to provide for manner of recovery of the tax and interest in respect of the amount intimated under rule 88C which has not been paid and for which no satisfactory explanation has been furnished by the registered person.</b></p>	

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