



Analysis of the recommendations made in 48th GST Council Meeting

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26th December 2022

Recommendations (Source: Press Release dated 17.12.2022)

1. Measures for trade facilitation
2. Clarifications regarding exemption, tax rates, etc.
3. Amendment in CGST Rules, 2017 / CGST Act, 2017
4. Amendment in IGST Act, 2017
5. Changes in tax rates / RCM



Tax
Relief!
😊

Measures for trade facilitation

Welcome step

Refund to unregistered persons

Presently, no prescribed procedure for filing application by the unregistered buyers to claim refund of tax borne by them, where –

- contract for supply of services, like construction of flat/house and long-term insurance policy, is cancelled; and
- credit note is not issued within the permissible time period.

Recommendation – CGST Rules will be amended, and circular will be issued, to prescribe the procedure for claiming refund by unregistered buyers.

Measures for trade facilitation

E-commerce for micro enterprises

Scheme for unregistered suppliers, composition taxpayers to make intra-state supply of goods through e-commerce operators (ECOs) may be implemented w.e.f. 01.10.2023.

Scheme may allow intra-state supply subject to certain conditions.

**Measures
for trade
facilitation**

Retrospective amendment – Schedule III

Following will be outside the GST purview during 01.07.2017 to 31.01.2019 –

- Supplies of goods from a place outside the taxable territory to another place outside the taxable territory [Para 7 of Schedule III]
- High sea sales [Para 8(a) of Schedule III]
- Supply of warehoused goods before home clearance [Para 8(b) of Schedule III]

Condition – Tax already paid will not be refunded.

Q. Impact on past disputes and Implication on the Explanation to Section 17(3)?

Measures
for trade
facilitation



Clarifications
regarding
exemption, tax
rates, etc.

Much needed !

No GST on renting of residential dwelling

No GST on renting of residential dwelling to a registered person in his personal capacity for use as his own residence and on his own account and not on account of his business.

**Clarification
regarding
exemption,
tax rates,
etc.**

Incentive by Govt. to Bank - Subsidy

Incentive paid to banks by Central Govt. under the scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions is in the nature of subsidy and hence, not taxable.

**Clarification
regarding
exemption,
tax rates,
etc.**

Rab Salawat - GST @ 18%

Rab (rab-salawat) - Classifiable under CTH 1702 - GST @ 18%.

CTH 1702 – OTHER SUGARS , INCLUDING CHEMICALLY PURE LACTOSE, MALTOSE, GLUCOSE AND FRUCTOSE, IN SOLID FORM; SUGAR SYRUPS NOT CONTAINING ADDED FLAVOURING OR COLOURING MATTER; ARTIFICIAL HONEY , WHETHER OR NOT MIXED WITH NATURAL HONEY ; CAMEL

Sugar Mills sell molasses after extraction of crystal from it. Buyer used to boil that molasses again to convert it into the form of Rab salawat which is generally use for animal feeding.

Clarification
regarding
exemption,
tax rates,
etc.

Fryums – GST @ 18%

Fryums crispy savoury food product manufactured from wheat flour, superfine wheat flour, rice flour, starch, corn flour, cereal flour.



JAYANT FOOD PRODUCTS - 2022 (57) G.S.T.L. 412 (App. AAR. - GST - Guj.)

PIYUSH JAYANTILAL DOBARIA - 2022 (57) G.S.T.L. 440 (A.A.R. - GST - Guj.)

PAPAD & Fryums - same product

Classifiable under 1905 90 40 and exempt from GST as per Sl. No. 96 of NN 2/2017-C.T. (Rate)

PAPAD & Fryums - different product

Classifiable under 2106 90 99 attracting GST @ 18%

Proposed clarification - Fryums manufactured using extrusion process - Specifically covered under CTH 19059030 - GST @ 18%.

Clarification regarding exemption, tax rates, etc.

SUV – Compensation Cess @ 22%

As per Entry No. 52B of Notification No. 1/2017-C.C. (Rate), Higher Compensation Cess @ 22% is applicable on following goods falling under Chapter 8703 –

“Motor vehicles of engine capacity exceeding 1500 cc, popularly known as Sports Utility Vehicles (SUVs) including utility vehicles.

Explanation. - For the purpose of this entry, SUV includes a motor vehicle of length exceeding 4000 mm and having ground clearance of 170 mm and above.”

Clarification
regarding
exemption,
tax rates,
etc.

SUV – Compensation Cess @ 22%

Particulars	Details
Seating capacity	5 persons including driver
Engine capacity	1956 CC
Fuel	Diesel
Market segment	Utility Vehicle (UV)
Length	4598 mm
Ground clearance (Unladen)	205 mm
Grounds clearance (Laden)	160 mm



Tata Harrier – Higher Compensation Cess @ 22% under Entry No. 52B of Notification No. 1/2017-C.C. (Rate)?

Clarification regarding exemption, tax rates, etc.

SUV – Compensation Cess @ 22%

Scope of Entry No. 52B of Notification No. 1/2017-C.C. (Rate)

Whether the ground clearance of the vehicle is to be considered in laden condition or in unladen condition?

TATA MOTORS LIMITED - 2019 (24) G.S.T.L. 780 (A.A.R. - GST) –
Unladen condition and hence, Compensation Cess @ 22%

TATA MOTORS LIMITED - 2019 (31) G.S.T.L. 544 (App. A.A.R. – GST)



- Ground clearance of the vehicle is to be considered in laden condition only and hence, not attract CC @ 22%

Clarification
regarding
exemption,
tax rates,
etc.

SUV – Compensation Cess @ 22%

Recommendation – Higher compensation cess @ 22% is applicable to motor vehicle fulfilling all four condition –

1. Popularly known as SUV,
2. Engine capacity exceeding 1500 cc,
3. Length exceed 4000 mm; and
4. Ground clearance - 170 mm or above.



**Clarification
regarding
exemption,
tax rates,
etc.**

No claim bonus – Admissible deduction

No claim bonus offered by insurance company to insured is an admissible deduction for valuation of insurance services.

Representation filed – On going dispute regarding valuation

Clarification
regarding
exemption,
tax rates,
etc.

ITC – GSTR 3B vs GSTR 2A

Procedure for verification of ITC in cases involving difference in ITC availed in GSTR-3B vis a vis available as per GSTR-2A during FY 2017-18 and 2018-19.

Mechanism already prescribed by the Govt. of Maharashtra vide [Internal Circular No. 02A of 2022](#)
[Date. 25.02.2022](#)

Clarification
regarding
exemption,
tax rates,
etc.

Re-determination of demand – S.75(2)

S. (2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under S. 74(1) is not sustainable as the charges of fraud or any wilful misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under S. 73(1).

Recommendation - Clarification on the manner of re-determination of demand in terms of S. 75(2).

Clarification
regarding
exemption,
tax rates,
etc.



GST
Goods & Services Tax

Amendment in CGST Rules, 2017 / CGST Act, 2017

Amendment in Rule 8 and Rule 9

Rule 8 – Application for registration

Rule 9 – Verification of the application and approval

Recommendation - Biometric-based Aadhaar authentication and risk-based physical verification of registration applicants.

Objective - Tackle fake and fraudulent registrations.

Amendment
in CGST
Rules, 2017
/ CGST Act,
2017

Amendment in Rule 8 and Rule 9

Rule 8 – Application for registration

Rule 9 – Verification of the application and approval

Recommendation - PAN-linked mobile number and e-mail address (fetched from CBDT database) to be captured and recorded in FORM GST REG-01 and OTP-based verification to be conducted at the time of registration on such PAN-linked mobile number and email address.

Objective - To restrict misuse of PAN of a person by unscrupulous elements without knowledge of the said PAN-holder.

Amendment
in CGST
Rules, 2017
/ CGST Act,
2017

Amendment in Rule 12(3)

Rule 12 – Grant of registration to persons required to deduct tax at source or to collect tax at source –

(3) Where, upon an enquiry or pursuant to any other proceeding under the Act, the proper officer is satisfied that a person to whom a certificate of registration in FORM GST REG-06 has been issued is no longer liable to deduct tax at source u/s 51 or collect tax at source u/s 52, the said officer may cancel the registration issued under sub-rule (2) and such cancellation shall be communicated to the said person electronically in FORM GST REG-08.

Recommendation - On request cancellation of GST registration of registered person liable to TCS u/s 52 or TDS u/s 51.

Amendment
in CGST
Rules, 2017
/ CGST Act,
2017

Retrospective Amendment - Rule 37(1)

Rule 37(1) – A registered person, who has availed of ITC on any inward supply, other than the supplies on which tax is payable on RCM basis, but fails to pay to the supplier thereof, amount towards the value of such supply along with tax payable thereon, within the time limit specified in the 2nd proviso to S. 16(2), shall pay an amount equal to ITC availed in respect of such supply along with interest payable thereon u/s 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of 180 from the date of issue of invoice:

Recommendation – Reversal of ITC, in terms of 2nd proviso to S. 16, only proportionate to the amount not paid to the supplier vis a vis the value of supply, including tax payable. W.e.f. 01.10.2022.

Objective – To instate the position effected till 30.09.2022.

Amendment
in CGST
Rules, 2017
/ CGST Act,
2017

New Rule 37A

Section 16(2) – Notwithstanding anything contained in this section, no registered person shall be entitled to credit of any input tax in respect of any supply of goods or services or both to him unless,—

(c) subject to the provisions of S. 41, tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of ITC admissible in respect of the said supply.

Recommendation – Rule 37A will provide the mechanism for reversal of ITC by a RTP if tax is not paid by the supplier by a specified date and mechanism for re-availment of such credit, if the supplier pays tax subsequently.

Objective – To ease the process for complying with the condition specified u/s 16(2)(c).

Amendment in CGST Rules, 2017 / CGST Act, 2017

New Rule 88C & Form GST DRC-01B

Recommendation – Intimation to the taxpayer about the difference between the liability reported in GSTR-1 and GSTR-3B for a tax period, where difference exceeds a specified amount and / or percentage, for payment of differential liability or explain the difference.

Intimation shall be automatic by the common portal.

Objective – To facilitate taxpayers to pay/ explain the reason for the difference in liabilities reported by them, without intervention of the tax officers.

Amendment
in CGST
Rules, 2017
/ CGST Act,
2017

New clause (d) to Rule 59(6)

Rule 59 - Form & manner of furnishing details of outward supplies

Rule 59(6) provides the scenarios where the registered person is not allowed to file GSTR-1.

Recommendation – New clause (d) will be added to restrict furnishing of GSTR-1 for a subsequent tax period if the taxpayer has neither deposited the amount specified in the intimation in FORM GST DRC-01B nor furnished a reply explaining the reasons for the unpaid amount.

Objective – To make the taxpayer GST compliant.

Amendment
in CGST
Rules, 2017
/ CGST Act,
2017

Amendment of Rule 108(3) & Rule 109

Rule 108 – Appeal to the Appellate Authority.

(3) A certified copy of the decision or order appealed against shall be submitted within 7 days of filing the appeal under sub-rule (1) and a final acknowledgement, indicating appeal number shall be issued thereafter in FORM GST APL-02 by the Appellate Authority or an officer authorized by him in this behalf:

109. Application to the Appellate Authority.-

(2) A certified copy of the decision or order appealed against shall be submitted within 7 days of the filing the application under sub-rule (1) and an appeal number shall be generated by the Appellate Authority or an officer authorized by him in this behalf.

Amendment
in CGST
Rules, 2017
/ CGST Act,
2017

Amendment of Rule 108(3) & Rule 109

Recommendation – Facility for withdrawal of an application of appeal up to certain specified stage.

Objective – Reducing litigations at the level of appellate authorities.

Amendment
in CGST
Rules, 2017
/ CGST Act,
2017

New Rule 109C & Form GST APL-01/03

Section 109. Application to the Appellate Authority.-

(1) An application to the Appellate Authority under Section 107(2) shall be made in FORM GST APL-03, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner.

Recommendation – Facility for withdrawal of an application of appeal up to certain specified stage.

Objective – Reducing litigations at the level of appellate authorities.

Amendmen
t in CGST
Rules, 2017
/ CGST Act,
2017

Amendment to Sections 37, 39, 44 & 53

Section 37 – Furnishing details of outward supplies (GSTR-1)

Section 39 – Furnishing of Return (GSTR-3B)

Section 44 – Annual Return (GSTR-9)

Section 52 – TCS - Furnishing of Statement

Recommendation – To restrict filing of returns / statements to a maximum period of 3 years from the due date of filing of the relevant return / statement.

Amendment
in CGST
Rules, 2017
/ CGST Act,
2017

Amendment to Sections 132 & 138

Recommendation –

1. Raising of threshold of tax amount for launching prosecution under GST from Rs. 1 crore to Rs. 2 crores, **except for the offence of issuance of invoices. without supply.**
2. Reducing the compounding amount from the range of 50% to 150% of tax amount to the range of 25% to 100%.
3. Decriminalize of following offences -
 - obstruction or preventing any officer in discharge of his duties; [S. 132(1)(g)]
 - deliberate tempering of material evidence; [S. 132(1)(j)]
 - failure to supply the information. [S. 132(1)(k)]

Amendment in CGST Rules, 2017 / CGST Act, 2017

Section 12(8) – Proviso to be omitted

Section 12 – Place of supply of services where location of supplier and recipient is in India –

Section 12(8) – PoS of service by way of transportation of goods, including by mail or courier to,—

(a) Registered Person (RP) - location of such person;

(b) Person other than RP, - location at which such goods are handed over for their transportation.

Provided that where transportation of goods is to a place outside India, PoS shall be the place of destination of such goods.

Proviso was inserted vide IGST (Amendment) Act, 2018 w.e.f. 01-02-2019

Amendmen
t in IGST
Act, 2017

Section 12(8) – Proviso to be omitted

Recommendation – Proviso to Section 12(8) will be omitted.

Circular will be issued clarifying the issues pertaining to –

- PoS of services of transportation of goods in terms of the proviso to Section 12(8) of the IGST Act, 2017.
- Availability of ITC to the recipient of such supply.

**Amendmen
t in IGST
Act, 2017**



Changes in Tax rates / RCM

Reduction in rate of Tax

Recommendations –

- Husk of pulses including chilka & concentrates including chuni /churi, khanda (5% to Nil)
- Intervening period starting from the date of issuance of Circular No. 179/11/2022-GST, dated 3-8-2022 shall be regularized.
- Ethyl alcohol supplied to refineries for blending with petrol (18% to 5%).
- Supply of Mentha arvensis to attract GST under RCM like Mentha oil.

Changes in Tax Rate & RCM



Thank You !

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