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SNR – GST UPDATE

12th September 2024

The 54th GST Council meeting under the Chairmanship of Union Minister for Finance & Corporate Affairs Smt. Nirmala Sitharaman was held on 09th September 2024. The council deliberated upon various issues under GST and made various recommendations. The council recommended several measures for streamlining compliances in GST apart from recommending issuance of various circulars/ clarifications on multiple issues for trade facilitation. In this update, we have highlighted the key recommendations of GST Council.

1. Significant changes relating to GST

E-invoicing for B2C sector: After the successful implementation of e-invoicing in the B2B sector, the Council recommended roll out of a pilot for B2C e-Invoicing to improve business efficiency of retail sector. It would also provide an opportunity to the retail customers to verify the reporting of the invoice in the GST return. The pilot will be rolled out on voluntary basis in selected Sectors and States.

RCM for Metal Scrap: RCM will be introduced for the supply of metal scrap from unregistered to registered persons. The unregistered supplier must obtain registration once their sales exceed the threshold limit, and the recipient, liable to pay under RCM, must pay the tax even if the supplier has not yet registered. Additionally, a Tax Deducted at Source (TDS) of 2% will apply to B2B supplies of metal scrap by registered persons.

Exemption for supply of research and development services: The GST Council recommended exempting the supply of research and development services provided by a Government Entity, or by research associations, universities, colleges, or other institutions notified under clauses (ii) or (iii) of sub-section (1) of Section 35 of the Income Tax Act, 1961, when funded by government or private grants. Past demands for these services will be regularized on an 'as is where is' basis.

Taxability of Affiliation services: Affiliation services provided by educational boards like CBSE are taxable, but affiliation services offered by State/Central educational boards and similar bodies to Government Schools will be exempted prospectively. Past issues from July 1, 2017, to June 17, 2021, will be regularized on an 'as is where is' basis. A circular will issue to clarify that affiliation services provided by universities to their constituent colleges are not exempt under notification No. 12/2017-CT(R) and are subject to an 18% GST rate.

2. Recommendations relating to GST law and procedure:

The GST Council has *inter-alia* made the following recommendations relating to GST law and procedure:

A. Measures for Trade Facilitation includes:

- **Procedure and Conditions for Waiver of Interest or Penalty or Both Under Section 73 of the CGST Act, 2017 for FYs 2017-18, 2018-19, and 2019-20 as per Section 128A of the CGST Act, 2017:** The GST Council has recommended introducing Rule 164 in the CGST Rules, 2017, along with specific Forms, to establish the procedure and conditions for waiving interest or penalties for tax demands under Section 73 of the CGST Act for the FY 2017-18, 2018-19, and 2019-20, in line with Section 128A of the CGST Act. It also suggested setting the deadline for registered persons to make the necessary tax payments to qualify for this waiver as March 31, 2025. Additionally, the Council proposed issuing a circular to clarify various issues related to the waiver and recommended that Section 146 of the Finance (No. 2) Act, 2024, which introduces Section 128A into the CGST Act, be notified to take effect from November 1, 2024.

- **Mechanism for Implementing Newly Inserted section 16(5) and 16(6) of the CGST Act, 2017:** The GST Council recommended promptly notifying Sections 118 and 150 of the Finance (No. 2) Act, 2024, which introduce Sub-sections (5) and (6) into Section 16 of the CGST Act, 2017, retroactively from July 1, 2017. It also suggested creating a special procedure under Section 148 for rectifying orders related to incorrect input tax credit claims, where the credit is now allowed under the new provisions, provided no appeal has been filed. Additionally, the Council proposed issuing a circular to clarify the implementation and address issues related to these new sub-sections.
- **Amendments to Rule 89 and Rule 96 and to provide clarification on IGST Refunds for Exports where benefits of concessional notification availed:** The GST Council has recommended clarifying the process for IGST refunds on exports when concessional or exemption notifications under Rule 96(10) of the CGST Rules, 2017, have been used for inputs. Specifically, if inputs were imported without paying IGST and compensation cess under N/N 78/2017-Customs and No. 79/2017-Customs but paid later and the Bill of Entry is reassessed, the IGST refunded on exports will not be considered non-compliant with Rule 96(10). To address difficulties faced by exporters due to refund restrictions, the Council proposed removing Rules 96(10), 89(4A), and 89(4B) from the CGST Rules, 2017, to simplify and speed up the refund process.
- Council recommended issue of circular to provide clarity and to remove any doubt or ambiguity on the following issues:
 - 1) Clarification on the Place of Supply of advertising services provided by Indian advertising companies to foreign entities.
 - 2) Clarification regarding availability of Input Tax Credit on demo vehicles by the dealers of the vehicle manufacturers.
 - 3) Clarification on Place of Supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India.
 - 4) That the approved flying training courses conducted by DGCA approved Flying Training Organizations (FTOs) are exempt from the levy of GST.

B. Measures for streamlining compliances includes:

- The GST Council recommended introduction of Reverse Charge Mechanism (RCM) ledger, an Input Tax Credit Reclaim ledger and an Invoice Management System (IMS). Taxpayers would be given the opportunity to declare their opening balance for these ledgers by 31 October 2024. IMS will allow the taxpayers to accept, reject, or to keep the invoices pending for the purpose of availment of ITC. This will be an optional facility for taxpayers to reduce errors in claiming ITC and improve reconciliation. This is expected to reduce notices issued on account of ITC mismatch in the returns
- Ancillary/intermediate services are provided by GTA in the course of transportation of goods by road and GTA also issues consignment note, the service will constitute a composite supply and all such ancillary/intermediate services like loading/unloading, packing/unpacking, transshipment, temporary warehousing etc. will be treated as part of the composite supply. However, if these ancillary services are not provided during transportation and are invoiced separately, they will not be classified as part of the composite supply of goods transport.

- GST council recommended to **regularise** the GST liability for the past period prior to 01.10.2021 on 'as is where is' basis, where the film distributor or sub-distributor acts on a principal basis to acquire and distribute films
- GST council recommended to **exempt services related to electricity transmission and distribution**, such as application fees, rental charges for meters, testing fees, labor charges for shifting meters, and charges for duplicate bills, when these services are provided as part of a composite supply. GST for these services from previous periods will be regularized on an 'as is where is' basis.
- The council recommended to implement RCM on **renting of commercial property by unregistered person to a registered person** to prevent revenue leakage.
- 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 shall be exempt.
- Roof Mounted Package Unit (RMPU) Air Conditioning Machines for Railways would be classified under HSN 8415 attracting a GST rate of 28%.
- The GST Council recommended forming a Group of Ministers (GoM) to comprehensively address issues related to GST on life and health insurance. The GoM is expected to submit its report by the end of October 2024.
- It is clarified that Preferential Location Charges (PLC) paid as part of the consideration for construction services of residential, commercial, or industrial complexes, prior to the issuance of the completion certificate, are considered part of the composite supply. Since **PLC is naturally bundled with the main service of construction**, it should receive the same tax treatment as the primary service, i.e., construction services.

3. Recommendations relating to GST rates on goods and services:

GST council recommended change in GST rates on following supply:

S.NO	Description of Supply	Tax Rate
1.	Cancer drugs namely, Trastuzumab Deruxtecan, Osimertinib and Durvalumab	5%
2.	Transport of passengers by helicopters on seat share basis	5%
3.	Car seats of motor cars classifiable under 9401	28%
4.	Namkeens and Extruded/Expanded Savoury food products other than unfried or uncooked snack pellets	12%

Based on recommendations of GST Council, CBIC has issued following 5 circulars encompassing diverse areas on 10th September 2024.

S. No.	Circular No.	Brief Particulars
1	Circular No. 233/27/2024 Regularization of refund of IGST availed in contravention of rule 96(10) of CGST Rules, 2017.	It is clarified that if inputs were initially imported without paying integrated tax and compensation cess by utilizing benefits under Notification No. 78/2017-Customs or Notification No. 79/2017-Customs, but IGST and compensation cess are subsequently paid along with interest, and the Bill of Entry for the import is reassessed by the relevant Customs authorities, then the IGST refunded on exports will not be deemed in violation of sub-rule (10) of Rule 96 of the CGST Rules.
2	Circular No. 232/26/2024 POS of data hosting services provided by service providers located in India to cloud computing service providers located outside India	Circular clarified the following issues: <ol style="list-style-type: none"> 1. Data hosting services are not considered "intermediary services" since the data hosting provider operates independently and does not facilitate the main supply between cloud computing providers and end users. 2. These services are not provided in relation to goods made available by the recipient or directly related to immovable property. 3. Consequently, the place of supply should be determined based on the default rule in Section 13(2) of the IGST Act, which is the location of the recipient of the services. Thus, if the recipient is outside India, the place of supply is also deemed to be outside India. <p>Therefore, such data hosting services are treated as exports, provided they meet other conditions outlined in Section 2(6) of the IGST Act.</p>
3	Circular No. 231/25/2024 Availability of input tax credit in respect of demo vehicles	Since demo vehicles aid in the sale of similar vehicles, they can be considered for ITC as they contribute to further supply. If demo vehicles are capitalized as capital goods in the dealer's books, ITC is available as these vehicles are used in the course of business and If depreciation is claimed on

		<p>the tax component under the Income-tax Act, ITC on that component will not be allowed.</p> <p>If a capitalized demo vehicle is sold, tax adjustments must be made as per Section 18(6) and Rule 44(6) of the CGST Rules.</p>
4	<p>Circular No. 230/24/2024</p> <p>Clarification in respect of advertising services provided to foreign Clients.</p>	<p>The clarification addresses the treatment of advertising services provided by Indian agencies to foreign clients, focusing on the POS and eligibility for export benefits.</p> <p>The advertising agency is not considered an "intermediary" under Section 2(13) of the IGST Act. It is engaged in principal-to-principal transactions with both media owners and foreign clients. Therefore, the place of supply should not be determined based on the agency's location.</p> <p>Since the advertising services do not fit specific provisions of Section 13, the default provision applies. Thus, the POS is where the recipient (foreign client) is located, making the services exports subject to export benefits under Section 13(2) of the IGST Act.</p> <p>If an Indian advertising company merely facilitates media space procurement between the foreign client and media owners, it acts as an intermediary. In such cases, the POS is determined by the location of the advertising company as per Section 13(8)(b) of the IGST Act.</p>



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