

Impact Analysis of 50th GST Council Decisions



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Agenda

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2. ISD Vs Cross Charge
3. Warranties under GST
4. Interest
5. Gaming/Casinos/Horse-racing
6. ITC & Mismatches
7. Metal Scrap under RCM
8. Relaxation for GTAs
9. F&B Services in Cinema Halls
10. GST Refunds
11. GSTAT
12. Annual Returns
13. Place of Supply
14. TCS & Invoicing
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16. Group Companies holding & Corp. Guarantees
17. TRAN Appeals
18. Amnesty Schemes
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20. Tackling Fake Invoices Menace
21. Form 5A for OIDAR/ Duty free shop sale as exempt/ Compounding
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Director's Services

Director's services: Settling Past disputes

Recommendations of 50th GST Council Meeting –

It has been decided to clarify that 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**. 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.

Sl.6 of N 13/2017 C(R) - Services supplied by a director of a company or a body corporate to the said company or the body corporate – taxable under reverse charge in hands of body corporate

Sl.5AA of N 13/2017 C(R) - Service by way of renting of residential dwelling to a registered person by any person to any 'registered person'

Director's services: Settling Past disputes

Impact of Recommendation –

1. Director's sitting fees is liable to RCM under Sl.6 of 13/2017 C(R). Further, many director's provide their flats/office spaces to the companies. Then RCM would not be applicable under Sl. 6.
2. Still RCM will apply under Sl.5AA of 13/2017 C(R) from 18.7.22 incase director is unregistered, for renting of residential property. Incase he is registered then FCM shall apply.
3. Renting of commercial property would only be on FCM.
4. For the period before 18th July 2022, the notices would be set to rest for renting of residential property and commercial property under Sl. 6
5. It is to be noted that this clarification is ONLY w.r.t. "renting of property" and not for other services like consultancy services provided by director's. However again the same analogy may apply. We need to wait for circular to further analyse the same.

Director's services: Settling Past disputes

Industry readiness required –

1. Residential property provided by directors under RCM under SI 5AA of N 13/2017 C(R)
2. Residential property provided by directors under FCM
3. Consultancy services provided by directors in their personal capacity should ideally be under FCM. However, we need to wait for circular to further analyse the same.
4. Incase Director is an employee and gets salary, then no GST

ISD Vs Cross Charge

ISD or Cross Charge – Both are valid

Recommendations of 50th GST Council Meeting –

The Council has recommended to clarify through a circular that **Input Services Distributor (ISD) mechanism is not mandatory** for distribution of input tax credit of common input services procured from third parties to the distinct persons as per the present provisions of GST law, and also to clarify **issues regarding taxability of internally generated services** provided by one distinct person to another distinct person. The Council has also recommended that amendment may be made in GST law to make **ISD mechanism mandatory prospectively** for distribution of input tax credit of such common input services procured from third parties.

ISD or Cross Charge – Both are valid

Impact of Recommendation –

There were 2 issues under ISD Vs Cross Charge –

1. Whether 3rd Party Services eg. Statutory Auditor's Fees, could be cross charged from HO to other branches (which are distinct persons). Or whether it is mandatory to distribute through ISD mechanism u/s 20(1) read with Rule 39(1) wherein the word 'shall' is used. CBIC's FAQs on Banking, etc have clarified that even cross charge is an alternative to ISD mechanism
2. Whether common 'internally generated services', like say CFO's services, although booked in HO should be cross charged. While on one hand the HO's Jurisdictional GST Dept. used to question why cross charge had not been done, the recipient State's Jurisdictional GST Dept. used to question the ITC taken when the same was cross charged.
3. Further, even after Provisio to Rule 28 stating that the taxable value in the invoice would be regarded as assessable value, the officers used to question the valuation

ISD or Cross Charge – Both are valid

Impact of Recommendation –

The Circular to be issued should clarify the following and provide relief –

1. Input Services Distributor (ISD) mechanism would not be considered mandatory for distribution of input tax credit of common input services procured from third parties to the distinct persons for the past period.
2. Input Services Distributor (ISD) mechanism would be considered mandatory for distribution of input tax credit of common input services procured from third parties to the distinct persons for the future period
3. How 'internally generated services', like say CFO's services, although booked in HO should be cross charged, if at all. What would be the modus operandi.

ISD or Cross Charge – Both are valid

Industry readiness required –

1. All notices for ISD Vs Cross charge for the past period should be resolved after the circular
2. In case ISD mechanism is not followed, Industry should follow ISD for all third party services received
3. Would 'Internally generated services', like say CFO's services, although booked in HO should be cross charged. The modus operandi as suggested by the circular should be followed

Warranties under GST

Impact on Warranty Supply

Recommendations of 50th GST Council Meeting –

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 inter alia that 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.

Impact of Recommendation –

The long standing debate on whether the warranty supply will get over after this Circular. It is clear that 'warranty supply' is not taxable under GST and also no ITC reversal is required, as the cost of warranty supply is included in the cost of the original product.

However, many companies like mobile OEMs provide a Credit Note to Dealers for free supply made by dealers to customers on behalf of manufacturers for warranty replacements. The Supreme Court's judgement in Tata Motors case on 15th May 2023 held that Credit notes issued are 'consideration' and liable to VAT/Sales tax.

Hence the process of Credit Notes needs to be changed and a pure purchase sale mechanism must be implemented by OEMs for warranty supply. On the contrary a Delivery Challan route for warranty supply also seems possible.

The issue of warranty is discussed in next few slides.

Warranties under GST

1. **Industries effected** - mobiles, Televisions, other electronic goods, electrical goods, automobiles, automobiles parts, batteries, machines and other equipment, etc. (almost all white goods/ heavy industries)

2. Kinds of Warranties -

A. Replacement Warranties - A replacement warranty is an assurance provided by the manufacturer supplier at the time of supply to replace the defective product post-supply within a specified time.

Sometimes pro-rata costs are recovered from the customers incase the warranty supply is provided after a certain period of time. For eg. Incase a product has been sold with a condition that the warranty is for 5 years and incase the product becomes defective after 3 years, then while replacing the defective product, 60% of the cost of the product is charged to the customer and GST paid on the said 60% of the product value.

B. Warranties for Repair - In such a case, the supplier undertakes to repair the defects found in the product. He may or may not charge additional consideration/ payment.

3. Issue - The issue is that Certain field officers are raising doubts regarding treatment of these warranty supplies on the ground that manufacturer supplier is supplying 'warranty products' free of cost to the dealers/customers. Hence among other points, the following are generally raised as implications -

- As per Clause 1 of Schedule I of Central GST Act' 2017, "*Permanent transfer or disposal of business assets where input tax credit has been availed on such assets*" shall be considered as a supply made without consideration and output GST is liable to be paid on such supply. Warranty supplies would fall under this clause

OR

- As the outward supply of goods during the period of warranty is 'Free of Cost', so no output tax liability is devolved on the supplies. Hence the corresponding ITC needs to be reversed on the inward supplies used in the supply of warranty products, as per Rule 42 of The CGST Act 2017.

4. Defenses –

A. In view of the scope of the term "supply" as provided under Section 7 of the CGST Act the activity of initial supply of the 'original product' is taxable. The original supply has an inbuilt obligation of warranty for specified periods depending on type of good. The supply of original product along with inbuilt warranty falls under the scope of supply. The said transaction qualify as composite supply wherein the pre-dominant supply is that of supply of the original product and 'replacement/warranty' supply is the ancillary supply.

Warranties under GST

B. This has also been clarified in FAQ's released by the CBIC on 15.12.2018. The relevant FAQ has been reproduced

"What composite and mixed supply? How are these two different from each other? Ans. Composite supply is supply two or more taxable supplies of goods services or both combination thereof, which are bundled natural course and in conjunction with each other in the ordinary course business and where one of which is a principal supply. For example, consumer buys a television set and he also gets warranty maintenance contract with the TV, this supply is a composite supply. In this example, supply of TV supply is the principal supply, warranty and maintenance service are ancillary."

C. 7(1)(a) is applicable and not 7(1)(c)

D. ITC is available as all conditions u/s 16(2) are satisfied

E. The treatment of GST and eligibility of input tax credit in respect of warranty supplies has been clarified in Sectorial FAQs by CBIC, for IT/ ITES Sectors as under:

"Question 20: *What would be the tax liability on replacement of parts (no consideration is charged from a customer) under a warranty and whether the supplier is required to reverse the input tax credit?*

Answer: *As part are provided to the customer without a consideration under warranty, no GST is chargeable on such replacement. The value of supply made earlier includes the charges to be incurred during the warranty period. Therefore, the supplier who has undertaken the warranty replacement is not required to reverse the input tax credit on the parts/ components replaced."*

F. the GST law has subsumed the erstwhile Central Excise Law. While defining “transaction value”, the Section 4 of The erstwhile Central Excise Act included, amongst other charges, any amount charged for warranty.

The valuation principles as per the GST law are in line with the Central Excise Law in as much as the value shall be the “Transaction value” and the broad inclusion of “any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services.”

5. Practices in Industry –

- A. Dealer issues a Tax invoice for spare parts supplied to Customer
- B. Free replacement of spare parts/ products is made against DCs
- C. Credit Note is issued by OEM to dealer
- D. CN is provided against the part/replacement, but dealer raises a service bill for his services

SC on 15th May 23 Ruled that Credit Note Issued for warranty is a consideration

M/s TATA MOTORS LTD Vs THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (SPL) & ANR. [2023-VIL-57-SC]

1. Interpretation and legal import of expression "Credit Note" and "valuable consideration" - Definition of terms "sale", "Price" and "sale price" – Whether, credit note issued by a manufacturer to a dealer of automobiles in consideration of the replacement of a defective part in the automobile sold pursuant to a warranty agreement being collateral to the sale of the automobile is exigible to sales tax under the sales tax enactments of the respective States. **HELD –**

1. When the dealer uses one of the spare parts from his stock for the replacement of a defective part in an automobile under a warranty, he is given a monetary benefit in the form of a credit note.

2. Credit note issued by a manufacturer in favour of a dealer is a valuable consideration within the meaning of the definition of "sale" under both, CST Act, 1956 as well as the respective State enactments under consideration

3. The object and purpose of including the expression "valuable consideration" within the definition of sale apart from cash and deferred payment is to enlarge the scope of the expression price than what is enunciated under the Sale of Goods Act, 1930.

4. On discharging his obligation under the warranty appended to a sale of an automobile, a dealer receives a credit note. This would be a receipt in the account of the dealer and a liability in the returns of the manufacturer which may ultimately enable the manufacturer to decrease his tax liability.

Consequently, the dealer of the automobile in whose account a credit is shown would be ultimately a recipient of a valuable consideration on account of a transfer of goods, namely, spare part by a dealer to a customer while discharging his obligation under a warranty and thereby receiving a valuable consideration for the spare part used by the dealer from his stock from the manufacturer in the form of a credit note

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SC on 15th May 23 Ruled that Credit Note Issued for warranty is a consideration

5. When the entire transaction is viewed in the aforesaid perspective and in juxtaposition with the expression “sale” under the CST Act as well as the respective State enactments under consideration which is of a wider connotation than the definition of sale under the Sale of Goods Act, the amount shown in the account of the dealer in the form of a credit note is nothing but a “price” received for a sale of a spare part by the dealer which is from his stock and which belongs to him

6. The aforesaid transaction may be juxtaposed with the transaction of sale which the customer who would buy a spare part de hors a warranty.

7. In such an event, the dealer would have collected the sales tax along with the price of the spare part and would have remitted the same to the revenue

8. Merely because the dealer is acting as an intermediary or on behalf of the manufacturer pursuant to a warranty and receives a recompense in the form of a credit note, the same cannot escape liability of tax under the Sales Tax Acts under consideration

9. However, all the credit notes received by the dealer are not indicative of the value of the spare part supplied by the dealer from his own stock or when he buys it from the open market, to the customer under a warranty. It could be for rendering a service under a dealership agreement which can cover a situation when the manufacturer sends the spare part to the dealer to replace a defective part and receives a consideration for the said service.

10 .In such a case, there is no recompense for spare part - It is only when a credit note is issued for a spare part used by a dealer from his own stock or when he has purchased it from the open market or from another manufacturer of a spare part that it becomes a sale within the meaning of the sales tax enactments under consideration

11. In the result, dealer/assessee are liable to pay sales tax under the respective State enactments under consideration - the appeals filed by the dealers are dismissed. The appeals filed by the revenue are allowed

Post SC AAR Rules – No GST on Warranty

UP AAR - M/s PRAG INDUSTRIES (INDIA) PVT LTD – JUNE 2023

Ruling –

1. Warranty replacement or warranty repair cost is included in cost of original supply
2. No GST on warranty supply
3. No requirement of ITC as the warranty supply is not a free supply

Interest

ISD or Cross Charge – Both are valid

Recommendations of 50th GST Council Meeting –

Clarification regarding the manner of calculation of interest amount liable to be paid under section 50(3) of CGST Act, 2017 in respect of wrongly availed and utilized IGST credit, clarifying inter alia that in cases of wrong availment of IGST credit,

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.

Impact of Recommendations of 50th GST Council Meeting –

Very welcome step. It as seen that IGST ITC taken and utilized as the same is set off first and CGST/SGST ITC remains and then the officers are demanding interest. The same is actually not in control of the taxpayer but is the modus operandi as prescribed.

Gaming/Casinos/Horse-racing

Recommendations of 50th GST Council Meeting –

A Group of Ministers (GoM) was constituted to look into the issues related to taxation on casinos, horse racing and online gaming. The GoM submitted its first report in June, 2022 and it was placed before the GST Council in its 47th GST Council meeting wherein, it was decided that the GoM may relook into all the issues once again. The GoM submitted its report and it was placed before the 50th GST Council meeting. The GoM, in its second report has recommended that since no consensus could be reached on whether the activities of online gaming, horse racing and casinos should be taxed at 28% on the full-face value of bets placed or on the GGR, the GST Council may decide. The GST Council has deliberated on the issues and has recommended the following:

- o Suitable amendments to be made to law to include online gaming and horse racing in **schedule III** as taxable actionable claims.
- o All three namely **Casino, Horse Racing and Online gaming** to be taxed at the uniform rate of 28%.
- o **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.

Gaming/Casinos/Horse-racing

Impact of Recommendation –

1. As per the Revenue Secretary's and FM's press conference, Schedule III may be amended retrospectively tax actionable claims pertaining to **Casino, Horse Racing and Online gaming** too in addition to lottery, betting and gambling.
2. No more questioning whether **Casino, Horse Racing and Online gaming** is a **game of skill/ chance**. The Govt. would appeal against the Karnataka High Court's judgement in the case of Gameskraft.
3. Most Critical is that Value of taxable supply to be taxed @28% would be FV of Chips/ Full Bet Value – Hence the taxability may be as follows –
 - A. Say a 3 betters bet Rs.100 each in a game of horse racing, then Rs.300 would be taxed @28% and tax amt. would be Rs.84.
 - B. Further say 15% Service charges of the service provider would be charged – Rs. 45/-
 - C. Balance Rs.171/- would be the prize money

Gaming/Casinos/Horse-racing

Industry readiness required –

1. Casino, Horse Racing and Online gaming Industry should prepare to tax accordingly
2. For past period they should be prepared for further litigation.

Karnataka High Court's Decision

GAMESKRAFT TECHNOLOGIES PRIVATE LIMITED Vs DIRECTORATE GENERAL OF GOODS SERVICES TAX INTELLIGENCE (HEADQUARTERS), DELHI [2023-VIL-291-KAR]

GST - **Whether offline/online games such as Rummy which are mainly or preponderantly based on skill and not on chance**, whether played with/without stakes tantamount to 'gambling or betting' as contemplated in Entry 6 of Schedule III of the Central Goods and Services Act, 2017 –

Analysis of definition of 'Supply' in terms of Section 7 of the CGST Act – Analysis of definition of "Business" in terms of Section 2(17) of CGST Act, 2017

- **HELD** -

1. There is a distinct difference between games of skill and games of chance;
2. Games such as rummy, etc. as was discussed in several decisions and particularized in the Division Bench decision of this Court in **All India Gaming Federation's case**, whether played online or physical, with or without stakes would be games of skill and **test of predominance would apply**; the said judgment is a total and complete answer not only to the various contentions urged by the respondents but also covers the issues / questions that arise for consideration in the instant petitions –

Karnataka High Court's Decision

2. Though Section 2(17) of the CGST Act recognises even wagering contracts as included in the term business, but that in itself would not mean that lottery, betting and gambling are the same as games of skill
3. The meaning of the terms "lottery, betting and gambling" as contemplated in Entry 6 of Schedule III of the CGST Act should be construed nomen juris in the light of the decisions of the Hon'ble Supreme Court, this Court and other High Courts supra which do not include games of skill
4. **Entry 6 in Schedule III to the CGST Act taking actionable claims out of the purview of supply of goods or services would clearly apply to games of skill and only games of chance such as lottery, betting and gambling would be taxable**
5. **Taxation of games of skill is outside the scope of the term "supply" in view of Section 7(2) of the CGST Act, 2017 read with Schedule III of the Act**
6. A game of chance whether played with stakes is gambling; A game of skill whether played with stakes or without stakes is not gambling;
7. **A game of mixed chance and skill is gambling, if it is substantially and preponderantly a game of chance and not of skill**; A game of mixed chance and skill is not gambling, if it is substantially and preponderantly a game of skill and not of chance

Karnataka High Court's Decision

8. Rummy is substantially and preponderantly a game of skill and not of chance; Rummy whether played with stakes or without stakes is not gambling –

9. There is no difference between offline/physical Rummy and Online/Electronic/Digital Rummy and both are substantially and preponderantly games of skill and not of chance – Online / Electronic / Digital Rummy whether played with stakes or without stakes is not gambling; Other Online/Electronic/Digital games which are also substantially and preponderantly games of skill and not of chance are also not gambling

10. The expressions, 'Betting' and 'Gambling' having become nomen juris, the same are applicable for the purpose of GST also and consequently, the said words, 'Betting' and 'Gambling' contained in Entry 6 of Schedule III to the CGST Act are not applicable to Online/Electronic/Digital Rummy, whether played with stakes or without stakes as well as to any other Online / Electronic / Digital games which are also substantially and preponderantly games of skill

11. The subject Online / Electronic / Digital Rummy game and other Online / Electronic / Digital games played on the Petitioners' platforms are not taxable as 'Betting' and 'Gambling' as contended by the respondents under the CGST Act and Rules or under the impugned show cause notice issued by the respondents -Consequently, the impugned Show Cause Notice issued by the respondents to the petitioners is illegal, arbitrary and without jurisdiction or authority of law and deserves to be quashed – the writ petitions are allowed

ITC & Mismatches

Circular 183 from 1.7.2017 to 31.12.21

Recommendations of 50th GST Council Meeting –

As per the recommendations of the Council in its 48th meeting, Circular No. 183/15/2022-GST dated 27th December, 2022 was issued to provide for the procedure for verification of input tax credit in cases involving difference in Input Tax Credit availed in FORM GSTR-3B vis a vis that available as per FORM GSTR- 2A during FY 2017-18 and 2018-19. To provide further relief to the taxpayers, the Council recommended for further issuance of a circular to provide for similar procedure for verification of input tax credit in cases involving difference in Input Tax Credit availed in FORM GSTR-3B vis a vis that available as per FORM GSTR- 2A during the period 01.04.2019 to 31.12.2021.

Impact of Recommendations of 50th GST Council Meeting –

As decided in Wipro Case by Bangalore HC. The same was expected. Taxpayers should start taking declarations to get relief from 2A/3B mismatch notices

1 Vs 3B Mismatches

Recommendations of 50th GST Council Meeting –

Procedure for Recovery of Tax and Interest in terms of Rule 88C(3): On the recommendations of the GST Council in its 48th meeting held on 17.12.2022, rule 88C was inserted in the CGST Rules, 2017 with effect from 26.12.2022 for system based intimation to the registered person in cases where the output tax liability in terms of FORM GSTR-1 of a registered person for any particular month exceeds the output tax liability disclosed by the said person in the return in FORM GSTR-3B for the said month by a specified threshold.

The Council has now 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.

Impact of Recommendations of 50th GST Council Meeting –

1 Vs 3B mismatch notices to increase. Clarifications to be kept ready after filing 3B

2B Vs 3B Mismatches

Recommendations of 50th GST Council Meeting –

Mechanism to deal with differences in ITC between FORM GSTR-2B and FORM GSTR-3B:

The Council has recommended a mechanism for system-based intimation to the taxpayers in respect of the excess availment of ITC in FORM GSTR-3B vis a vis that made available in FORM GSTR-2B above a certain threshold, along with the procedure of auto-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, rule 88D and FORM DRC-01C to be inserted in CGST Rules, 2017, along with an amendment in rule 59(6) of CGST Rules, 2017. This will help in reducing ITC mismatches and misuse of ITC facility in GST.

Impact of Recommendations of 50th GST Council Meeting –

2B Vs 3B mismatch notices to increase. Clarifications to be kept ready after filing 3B

Metal Scrap under RCM

Metal Scrap under RCM

Section 9(3) of The CGST Act 2017 read with N No 4/2017 CGST (Rate) dated 28th June 2017:

1. Metal Scrap industry, by large, is an unorganized sector with no proper regulation to administer the generation and distribution of scrap across India.
2. Apart from the scrap generation from organized industry players such as Railways, Automobile OEMs etc a significant amount of metal scrap is generated from households as well. Such sectors are highly unorganized and include several dealers in the scrap collection process till the same reaches the iron and steel product manufacturers.
3. A number of dealers in the value chain are engaged in availment of irregular input tax credits based on fake input credit invoices without any underlying supply of goods or services.
4. In the course of their investigation of scrap dealers, tax authorities frequently issue summons to the manufacturers for producing several documents to evidence the purchases made from such dealers and their reporting in the GST returns by the dealers.

Beware of Section 151.. A la 133(6) of Income Tax Act

Power to call for information.

151. The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein

Notes -

1. No basis in upholding the addition by the AO merely on the basis that only 2 out of 17 parties failed to respond to the notice issued under section 133(6) of the Act. [Sonicwall Technology System India Pvt. Ltd. Vs ACIT (ITAT Mumbai – 2/12/22)]
2. Invocation of Sec 151 cannot be co-ersive so as to destroy business and against Article 14 and 19(1)(g) of Constitution

Metal Scrap under RCM

Suggestion -

1. Supply of metal scrap between various dealer should be exempted or be rated @0.1% at all stages except the manufacturer (ultimate user) stage.
2. As an alternative on each stage there may be a TDS
3. Tax should be imposed on the manufacturer (ultimate user) under reverse charge.
4. Rationalization of GST rate on metal scrap to 5% from 18%. Since the ultimate use of the steel scrap is production of final products after recycling which is subjected to 18%, there will be no loss to govt. revenue.

Impact –

1. No Loss to Govt. Exchequer
2. No disruption in Value Chain
3. No harassment to the manufacturers

Relaxation for GTAs



Relaxation for GTAs

Recommendations of 50th GST Council Meeting –

1. As a trade friendly measure, it has been decided that GTAs will not be required to file declaration for paying GST under forward charge every year. If they have exercised this option for a particular financial year, 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).
2. It has also been decided that 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.



Relaxation for GTAs

Impact of Recommendation –

1. For the current FY even incase a GTA under FCM did not file the declaration, then no problem. He continues to be under FCM
2. Incase GTA wishes to come back under RCM from FY 24-25, then they need to file declaration between 1.1.2024 and 31.3.24

F&B Services in Cinema Halls



F&B Services in Cinema Halls

Recommendations of 50th GST Council Meeting –

It has been decided to clarify that supply of food and beverages in cinema halls is taxable as restaurant service as long as (a) they are supplied by way of or as part of a service and (b) supplied independently of the cinema exhibition service. Where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.



F&B Services in Cinema Halls

Impact of Recommendation –

1. F&B Services purchased with cinema ticket – Cinema Services
2. F&B Services not purchased with cinema ticket –Restaurant Services

GST Refunds

Recommendations of 50th GST Council Meeting –

- a. Consequent to amendment in rule 36(4) of CGST Rules 2017 with effect from 01.01.2022, 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 GSTR-2B of the said tax period or any previous tax period.

- b. Consequent to Explanation having been inserted in rule 89(4) of CGST Rules vide Notification No. 14/2022- CT dated 05.07.2022, the value of export goods, to be included while calculating “adjusted total turnover” in the formula under rule 89(4), will be determined as per the said explanation.

- c. Clarification regarding admissibility of refund in cases where export of goods, or the realization of payment for export of services, as the case may be, is made after the time limit provided under rule 96A of CGST Rules, 2017.

Impact of Recommendation –

1. After 1.1.22, some field officers were taking the view that only ITC available in current GSTR-2B will be available as refunds. Earlier period's ITC reflected in current GSTR-2B will not be available. Now this is clarified.

2. Exp to Rule 89(4) –

Explanation. - For the purposes of this sub-rule, the value of goods exported out of India shall be taken as -

(i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or

(ii) the value declared in tax invoice or bill of supply, whichever is less.

Even “adjusted total turnover” should include the FOB Value and not CIF value of exports

Impact of Recommendation –

Rule 96A (1) Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under sub-section (1) of section 50 within a period of -

- (a) **15 days** after the expiry of **3 months** 1[, or such further period as may be allowed by the Commissioner,] from the date of issue of the invoice for export, if the goods are not exported out of India; or*
- (b) **15 days** after the expiry of **1 year**, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange 4[or in Indian rupees, wherever permitted by the Reserve Bank of India].*

*(3) Where the goods are not exported within the time specified in sub-rule (1) **and the registered person fails to pay the amount mentioned in the said sub-rule, the export as allowed under bond or Letter of Undertaking shall be withdrawn forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of section 79.***

Impact of Recommendation –

The question that whether the refund will be allowed after the violation of time period mentioned u/s 96A will be clarified. Even after violation of time periods, the export will remain and export and refunds should not be denied.

GSTAT

Recommendations of 50th GST Council Meeting –

Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023:

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. 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. Further the council has recommended the Chief Secretary of Maharashtra to be nominated as one of the members of the Search cum selection committee as per Section 110(4)(b)(iii) of CGST Act 2017. Regarding the number of State Benches, it was decided to start them in a phase wise manner.

Impact of Recommendation –

1. Each State should get atleast that many GSTAT benches as there are benches of High Court to start with.
2. There would be possibly 50 GSTAT benches to start with. Thereafter benches would get added as per the requirements put in by States
3. The Revenue Secretary has re-confirmed the GST Council's resolve to operationalize the GSTAT by 2023

Industry readiness required –

1. The GSTAT would start with a huge backlog of cases. While official figure is not there, yet it could be more than 1 Lakh cases on a reasonable estimate
2. Industry should prepare to file the appeals as soon as possible as there would certainly be a time lag for the hearing date after the filing of the appeal to.

1. The period till GSTAT will be formed shall not be counted in period of Limitation
2. Admitted tax, interest, penalty, etc is required to be deposited
3. Many states are asking for pre-deposit of the '**entire tax in dispute**' and in some cases interest and penalty also. Many High Court's have ruled that '**20% of tax in dispute**' should be deposited in these cases. Many states have agreed to the same also.

Incase recovery of disputed tax is done, the same may be stayed by payment of 20% as predeposit (in addition to 10% paid earlier) - **Surat District Co-operative Milk Producers Union Ltd. V/s. Chief Commissioner of CGST and Central Excise and Ors. (BOM)**

1. New Sec. 109 of CGST Act proposes replacing existing Section 109 dealing with Constitution of Appellate Tribunal and Benches thereof;
2. Proposes amendments to provide that the powers of Appellate Tribunal (AT) shall be exercisable by the Principal Bench and States Benches ((earlier National Bench and Benches)
3. Principal Bench of AT shall be situated at New Delhi and be presided over by the President and shall consist of Judicial Member **(Centre/State not specified)**, one Technical Member (Centre) and one Technical Member (State);
4. Government shall, on the recommendations of the Council, by notification, constitute such number of States Benches as may be required which shall consist of 2 Judicial Members **(Centre/State not specified)**, one Technical Member (Centre) and one Technical Member (State);
5. Cases where one of the issues involved relates to the place of supply (PoS) shall be heard **only** by the Principal Bench;

Other cases can be heard by Principal or state benches

6. President shall distribute business of AT and transfer cases from one bench to another

7. Senior most **Judicial member** within the State benches shall act as Vice President for State Benches and shall exercise powers of the President.. **But shall also act as member**

Hence the VP can transfer cases, choose which case to allot to which bench as well as take up matters himself

109(8). Appeals where tax or ITC or penalty, fees, or involved does not exceed Rs. 50 lacs which does not involve question of law may be heard by single member while in all other cases, may be heard by one Judicial member and one Technical member;

Hence “Interest” matters would be heard by ONLY larger bench. Further as all matters will have interest thus this clause becomes almost defunct. It seems that ‘interest’ has been missed.

9. Incase views differ the matter may be transferred to another bench within the state or another state and majority view will be upheld.

10. Centre Members may be transferred by President In different states but state members may not be transferred outside the state.

11. No Act of GSTAT will be void on vacancy or ‘defect’ in formation of GSTAT

GSTAT Update – Sec 110

Seeks to substitute Section 110 which deals with appointment of President and Members of AT, their qualification, appointment, conditions of service, etc; Interalia proposes that, -

A person shall not be qualified for appointment as (i) President, unless he has been a Judge of Supreme Court or is or has been the Chief Justice of a High Court (ii) a Judicial Member, unless he has been a Judge of the High Court or has been a District Judge for 10 years and (iii) Technical Member (Centre) unless he is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least 25 years of service in Group A.

Annual Returns

Annual Returns

Recommendations of 50th GST Council Meeting –

Annual Returns for FY 2022-23: The Council has recommended that the relaxations provided in FY 2021-22 in respect of various tables of FORM GSTR-9 and FORM GSTR-9C be continued for FY 2022-23. Further, for easing compliance burden on smaller taxpayers, exemption from filing of annual return (in FORM GSTR-9/9A) for taxpayers having aggregate annual turnover upto two crore rupees, to be continued for FY 2022-23 also.

To improve discipline in filing of annual returns, FORM GSTR-3A to be amended to provide for issuance of notice to the registered taxpayers for their failure to furnish Annual Return in FORM GSTR-9 or FORM GSTR-9A by due date.

Impact of Recommendations of 50th GST Council Meeting –

Filing 9/9C is important. Possibly No more Amnesty Schemes will be there and no extension of due dates also will be there.

Place of Supply

Recommendations of 50th GST Council Meeting –

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.

S 10(1)(c) Place of supply of goods other than supply of goods imported into, or exported from India

10. (1) The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,--

(a) where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;

(c) where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient;

Place of Supply

Impact of Recommendations of 50th GST Council Meeting –

Possibly a provision in line of S 10(1)(c) may be inserted under S 10(1)(ca) as for a un-registered persons, it is difficult to track the movement of goods

Tackling Fake Invoices Menace

Tackling Fake Invoices Menace

Recommendations of 50th GST Council Meeting –

...Amendment in CGST Rules, 2017 regarding registration: The Council has recommended the following amendments in CGST Rules, 2017 to strengthen the registration process and to effectively deal with the menace of fake and fraudulent registrations in GST:

- a. Amendment in rule 10A to provide that the details of **bank account**, in name and PAN of the registered person, to be required to be furnished within **30 days of grant of registration** or before filing of statement of outwards supply under section 37 of CGST Act in FORM GSTR-1/ IFF, whichever is earlier.
- b. Amendment in rule 21A(2A) to provide for system-based suspension of the registration in respect of such registered persons who do not furnish the details of valid bank account under rule 10A with the time period prescribed under the said rule.
- c. Insertion of 3rd proviso in rule 21A(4) to provide for automatic revocation of such system-based suspension upon compliance with provisions of rule 10A.

Tackling Fake Invoices Menace

Recommendations of 50th GST Council Meeting –

...d. Amendment in rule 59(6) to provide that where a registered person has not furnished details of a valid bank account under rule 10A, the said registered person may not be allowed to furnish the details of outward supplies in FORM GSTR-1 or using IFF.

e. Amendment in rule 9 and rule 25 to do away with the requirement that the physical verification of business premises is to be conducted in the presence of the applicant and also to provide for physical verification in high risk cases even where Aadhaar has been authenticated.

Pilot to be conducted in U.T. of Puducherry for risk-based biometric-based Aadhaar authentication of registration applicants. The State of Andhra Pradesh also expressed its intent to join this pilot after the system's readiness is tested in the state of Gujarat and U.T. of Puducherry.

The 2nd interim report of the Group of Ministers (GoM) on IT System Reforms was also discussed by the Council. The GoM has recommended various measures to curb frauds in GST through System based measures for strengthening registration process in GST, more use of **third-party data for risk management and controlling flow of fake Input Tax Credit down the supply chain.**

Tackling Fake Invoices Menace

Impact of Recommendations of 50th GST Council Meeting –

1. Update GST Portal with PAN Linked Bank A/c
2. Ensure **person is posted physically** at each place of business. Risk of GSTIN getting cancelled incase GST officers visit the POB/APOB. **This is reverse to what E-Com Operators wanted in demanding for VPOBs.**
3. More linking of 2nd Level/ 3rd Level suppliers and so on in supply chain... Purchasers beware!

TCS & Invoicing

TCS and Invoicing

Recommendations of 50th GST Council Meeting –

Circular to be issued to provide clarification regarding 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.

To ease compliance burden of the taxpayers, clause (f) of rule 46 of CGST Rules, 2017 to be amended to provide for requirement of **only name of the State of the recipient, and not the name and full address of the recipient**, on the tax invoice in cases of supply of taxable services by or through an ECO or by a supplier of OIDAR services to an unregistered recipient

R 46 (f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is less than fifty thousand rupees and the recipient requests that such details be recorded in the tax invoice;
Provided that where any taxable service is supplied by or through an electronic commerce operator or by a supplier of online information and database access or retrieval services to a recipient who is un-registered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name and address of the recipient along with its PIN code and the name of the State and the said address shall be deemed to be the address on record of the recipient.]

TCS and Invoicing

Impact of Recommendation –

1. Possibly the clarification like S 194O of Income Tax Act will be issued to ease the situation of multiple TCS applicability where multiple E-Commerce Operators are involved
2. **Only name of the State of the recipient, and not the name and full address of the recipient,** incase of supply of services through ECO or OIDAR

Invoicing & EWB

Recommendations of 50th GST Council Meeting –

Clarifying that the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, are required to issue invoices under rule 48(4) of CGST Rules. for the supplies made to Government Departments or establishments / Government agencies / local authorities / PSUs, etc., registered solely for the purpose of TDS,

Impact of Recommendations of 50th GST Council Meeting –

Industry to now take the GST-TIN of Departments or establishments / Government agencies / local authorities / PSUs, etc., registered solely for the purpose of TDS. **This might be burdensome**

Recommendations of 50th GST Council Meeting –

In accordance with the recommendations of Group of Ministers (GoM) on implementation of E-way bill requirement for movement of Gold/ Precious stones under chapter 71, the Council has recommended to insert rule 138F in CGST Rules, 2017, as well as in SGST Rules, 2017 of the States, who want to mandate the requirement of generation of e-way bills for intra-State movement of gold and precious stones under Chapter 71 within their States.

Impact of Recommendations of 50th GST Council Meeting –

EWB for intra-state Gold Movement may be introduced soon in many states. Jewellers please take note

Group Companies holding & Corp. Guarantees

Group Companies holding & Corp. Guarantees

Recommendations of 50th GST Council Meeting –

Clarifying that 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.

Impact of Recommendations of 50th GST Council Meeting –

Welcome clarification for baseless dispute as sale/purchase of securities was already outside GST. However, clarification on “Corporate Guarantees” is needed further

TRAN Appeals

Recommendations of 50th GST Council Meeting –

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.

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.

Impact of Recommendations of 50th GST Council Meeting –

After the special dispensation for claiming TRAN-ITC, there are disputes regarding payment of Interest for ITC availed earlier. These appeals need to be filed manually.

Amnesty Schemes

Amnesty Schemes

Recommendations of 50th GST Council Meeting –

...Council recommended to extend the amnesty schemes notified vide notifications dated 31.03.2023 regarding non-filers of FORM GSTR-4, FORM GSTR-9 & FORM GSTR-10 returns, revocation of cancellation of registration and deemed withdrawal of assessment orders issued under Section 62 of CGST Act, 2017, till 31.08.2023.

Impact of Recommendations of 50th GST Council Meeting –

Taxpayers may take the advantage if not taken already

Tobacco & Pan Masala

Recommendations of 50th GST Council Meeting –

...In accordance with the recommendations of the Group of Ministers (GoM) on Capacity based taxation and Special Composition Scheme approved by the Council in 49th meeting, the Council has made the following recommendations:

- i. issuance of notification under section 148 of CGST Act, 2017 prescribing a **special procedure to be followed** by the manufacturers of tobacco, pan masala & other similar items inter alia for **registration of machines** and for filing of special monthly returns;
- ii. insertion of section 122A in CGST Act, 2017 providing for special penalty for non-registration of machines by such manufacturers;
- iii. provisions of section 123 of Finance Act, 2021, amending section 16 of IGST Act, to be notified with effect from **01.10.2023 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 & other similar items as well as mentha oil.

Other Recommendations

Form 5A for OIDAR/ Duty free shop sale as exempt/ Compounding

Recommendations of 50th GST Council Meeting –

Rule 64 and FORM GSTR-5A of CGST Rules, 2017 to be amended to require OIDAR service providers to provide the details of supplies made to registered persons in India in his return in FORM GSTR-5A. This will help in tracking due payment of tax on reverse charge basis by such registered persons in India in respect of supplies received from OIDAR service providers.

Explanation 3 to be inserted after rule 43 of CGST Rules, 2017 to prescribe that the value of supply of goods from **Duty Free Shops at arrival terminal** in international airports to the incoming passengers to be included in the value of exempt supplies for the purpose of reversal of input tax credit.

Sub-rule (3A) to be inserted in rule 162 of CGST Rules, 2017 to prescribe the compounding amount for various offences under section 132 of CGST Act, 2017.

Information sharing/ State Level GST Committees

Industry readiness required –

The Council has recommended insertion of rule 163 in CGST Rules, 2017 to provide for manner and conditions of consent-based sharing of information of registered persons available on the common portal with other systems. The Council has also recommended issuance of a notification under section 158A of CGST Act, 2017 for notifying “**Account Aggregators**” as the systems with which information is to be shared by the common portal.

The GST Council has recommended to form a **State level coordination Committee** comprising of GST officers from both State and Central GST administrations for knowledge sharing on GST matters and coordinated efforts towards administrative and preventive measures.

Impact of Other Recommendations

Impact of Recommendations of 50th GST Council Meeting –

1. OIDARs to file Form GSTR-5A
2. ITC reversal on Sale by duty free shops – it will be exempt supply and not No supply
3. State Level GST Committees to ensure better co-ordination among SGST & CGST Offices
4. Consent based sharing of information to be formalised further

GST Rates

Recommendations of 50th GST Council Meeting –

Goods –

1. It has been decided to reduce the rate on uncooked/unfried snack pellets, by whatever name called, to 5% and to regularise payment of GST on uncooked /unfried snack pellets during the past period on “as is basis”.

1A. It has been decided to exempt IGST on Dinutuximab (Quarziba) medicine when imported for personal use.

2. It has been decided to exempt IGST on medicines and Food for Special Medical Purposes (FSMP) used in the treatment of rare diseases enlisted under the National Policy for Rare Diseases, 2021 when imported for personal use subject to existing conditions. Similarly, IGST exemption is also being extended to FSMP when imported by Centres of Excellence for Rare Diseases or any person or institution on recommendation of any of the listed Centres of Excellence.

3. It has been decided to clarify that supply of raw cotton, including kala cotton, by agriculturists to cooperatives is taxable under reverse charge mechanism and to regularise issues relating for the past period on "as is basis".
4. It has been decided to reduce GST on imitation zari thread or yarn known by any name in trade parlance from 12% to 5% and to regularize payment of GST related to this matter during the past period on "as is basis".
5. It has been decided to amend the entry 52B in compensation cess notification to include all utility vehicles by whatever name called provided they meet the parameters of Length exceeding 4000 mm, Engine capacity exceeding 1500 cc and having Ground Clearance of 170 mm & above and to clarify by way of explanation that 'Ground clearance' means Ground Clearance in un-laden condition.
6. It has been decided to reduce GST rate on LD slag from 18% to 5% to encourage better utilisation of this product and for protection of environment.

7. It has been decided to regularise the matters relating to trauma, spine and arthroplasty implants for the period prior to 18.07.2022 on "as is basis" in view of genuine interpretational issues.
8. It has been decided to reduce the GST rate on fish soluble paste from 18% to 5% and to regularise payment of GST on fish soluble paste during the past period on "as is basis".
9. It has been decided to regularise the matters relating to dessicated coconut for the period 1.7.2017 to 27.7.2017 on "as is basis" in view of genuine interpretational issues.
10. It has been decided that on pan masala, tobacco products etc, where it is not legally required to declare the retail sale price, the earlier ad valorem rate as was applicable on 31st March 2023 may be notified in order for levy of Compensation Cess.

11. It has been decided to include RBL Bank and ICBC bank in the list of specified banks for which IGST exemption is available on imports of gold, silver or platinum and update the list of banks /entities eligible for such IGST exemption as per Annexure 4B (HBP) of Foreign Trade Policy 2023.

12. Consequential changes in notifications may be carried out in view of new Foreign Trade Policy 2023.

13. It has been decided to regularise the issues relating to GST on plates and cups made of areca leaves prior to 01.10.2019.

14. It has been decided to regularise the issues relating to GST on biomass briquettes for the period 01.7.2017 to 12.10.2017.



GST Rates

Services –

It has been decided that GST exemption on satellite launch services supplied by ISRO, Antrix Corporation Limited and New Space India Limited (NSIL) may be extended to such services supplied by organisations in private sector also to encourage start ups.

THANK YOU



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