

## Recommendations in 47<sup>th</sup> GST Council Meeting

Just before completion of 5 years from the introduction of GST, numerous amendments are recommended by GST Council. 47<sup>th</sup> GST Council Meeting was held on 28<sup>th</sup> and 29<sup>th</sup> June 2022 under the Chairmanship of Smt. Nirmala Sitharaman with a view to address various concerns of revenue authorities, State Governments as well as of trade and industry. An attempt has been made to articulate the key amendments and GST rate changes proposed in the GST Council Meeting.

### **KEY HIGHLIGHTS OF RECOMMENDATIONS MADE BY GST COUNCIL**

- 🕒 *The proposals for making comprehensive changes in monthly GST return (GSTR-3B) to be placed in public domain for seeking inputs from the stakeholders*
- 🕒 *Taxpayers having aggregate annual turnover upto Rs. 2 crores to be exempted from filing annual GST return*
- 🕒 *The time period from 01.03.2020 to 28.02.2022 to be excluded for calculating the time limit for filing refund applications and for issuance of demand notice/order in respect of erroneous refunds*
- 🕒 *For F.Y. 2017-18, GST demand by order consequent to show cause notice in certain bona fide cases can be made till 30.09.2023*
- 🕒 *Sale of land after levelling, laying drainage lines, etc. does not attract GST*
- 🕒 *Preferential location charges to get same treatment of GST as is applicable to long term lease of land*
- 🕒 *Clarifications will be issued for streamlining the issues relating to fake invoices, blocked ITC, deemed exports, electric vehicles, etc.*
- 🕒 *For constituting Group of Ministers to establish GST Appellate Tribunal*
- 🕒 *Certain beneficial amendments already made in GST law to be implemented at the earliest*
- 🕒 *To enable the refund of ITC on input services under inverted rated structure*

- ⌚ *Reversal of common ITC not required for duty credit scrips (even though exempt)*
- ⌚ *To implement a system to transmit the suspended/withheld refund claims by Customs Authorities to GST Authorities for speedy disposal of pending IGST refund claims*
- ⌚ *To continue IGST exemption on import of goods under advance authorisation, EPCG scheme or EOU*
- ⌚ *GST rate changes announced for various goods and services to be made effective from 18.07.2022*
- ⌚ *GST exemption withdrawn on various goods and services like hospital room rent above Rs. 5,000/per patient per day, renting of residential dwelling to business entities, hotel accommodation upto Rs. 1,000/per day, etc.*
- ⌚ *GST rates rationalization to remove the inverted rated structure on specified goods and services*

## **GST COUNCIL'S RECOMMENDATIONS ON AMENDMENTS TO GST LAW**

### ⌚ **Recommendations for trade facilitation:**

#### **1. Mechanism for speedy disposal of certain refund claims with payment of IGST by exporters of goods**

- a. In cases where **exporter of goods** is identified as **risky** or where there is **violation of provisions of Customs Laws**, currently, the **refund claims with payment of IGST** pertaining to such exports are **withheld or suspended**
- b. To smoothen GST refund process and provide speedy refunds, it is recommended to provide a **system for transmission of such IGST refund claims to the jurisdictional GST authorities** in RFD-01 through amendment in CGST Rules<sup>1</sup>.

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<sup>1</sup> Rule 96 of CGST Rules 2017

**2. Re-credit of ITC in electronic credit ledger for certain erroneous refunds granted subject to payment thereof with interest and penalty, as applicable**

- a. Exporters, taking benefit of advance authorization, EPCG or EOU or procuring from deemed exporter or merchant exporter at the time of imports, are allowed GST refund only for export of goods without payment of GST under LUT<sup>2</sup>. There have been various disputes and amendments including retrospective amendments on this matter under GST Law.
- b. It is recommended that **in cases where such zero-rated suppliers of goods or services deposit erroneous refund with interest and applicable penalty, ITC shall be re-credited in electronic credit ledger in FORM GST PMT-03A.**

**3. Certain GST amendments enacted through Finance Act, 2022 recommended to be made effective at the earliest**

- a. Retrospective amendment<sup>3</sup> with effect from 01.07.2017, to **levy interest only if there is wrong availment as well as utilization of ITC**, is recommended to be made effective at the earliest. In other words, interest is not payable if there is only wrong availment of ITC without utilisation.
- b. **To provide more liquidity to registered taxpayers having multiple GSTIN, transfer of balance in electronic cash ledger from one GST registration to another GST registration having same PAN** is enabled provided the transferor GST registration doesn't have any unpaid GST liability<sup>4</sup>.

**4. Recommendation to enable the refund of ITC on input services in the cases of inverted rated structure**

The formula to compute refund of unutilised ITC under **inverted rated structure** (where rate of GST on inputs is higher than the rate of GST on output) is

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<sup>2</sup> Rule 96 (10) of CGST Rules 2017

<sup>3</sup> Section 50 (3) of CGST Act amended vide Finance Act, 2022 but yet to be made effective

<sup>4</sup> Section 49 (10) of CGST Act

recommended to be amended so as **to enable refund of ITC of input services** in addition to the refund of ITC of inputs available at present.

***GSC Comment:***

*This is a welcome recommendation which will overturn the long burning issue for taxpayers to claim refund of ITC of input services under inverted-rated structure. Reconsideration of the formula to provide ITC of input services in such cases was strongly urged by Hon'ble Supreme Court in the case of **Union of India vs. VKC Footsteps India Pvt. Ltd. 2021 (52) GSTL 513 (SC).***

**5. Exemption of IGST on import of goods under advance authorisation, EPCG scheme or EOU recommended to be continued and E-wallet scheme to be scrapped**

- a. Present **exemption of IGST** on import of goods under AA/EPCG/EOU scheme is recommended **to be continued**
- b. E-wallet scheme is recommended not to be pursued further.

**6. In-principal approval for recommending some relaxations to suppliers making supplies through E-Commerce Operators (ECOs)**

- a. **Mandatory registration requirement for the suppliers supplying goods through ECOs is recommended to be waived subject to certain conditions** such as:
  - (i) the annual aggregate turnover of supplier on all India basis shall be less than the general threshold limit required to obtain GST registration (currently, the general threshold limit of annual aggregate turnover is Rs. 20 lakhs/Rs. 40 lakhs depending on the State where supplier is located)
  - (ii) the supplier shall not make inter-State taxable supply
- b. **Composition taxpayers will be allowed to make intra-State supply through ECOs subject to certain conditions**

The mechanism of Scheme is recommended to be developed by Law Committee of GST Council. Further, such Scheme is recommended to be implemented from 01.01.2023 if GSTN portal and ECOs get ready.

## 7. Recommendations relating to composition dealers

- a. Late filing fees for annual return for composition dealers in FORM GSTR-4 is recommended to be waived till 28.07.2022 as against current waiver till 30.06.2022
- b. Due date for making GST payment by composition dealers via FORM GST CMP-08 for the 1<sup>st</sup> quarter of FY 2022-23 has been extended from 18.07.2022 to 31.07.2022
- c. There is a long pending issue of negative balance appearing in electronic cash ledger for various composition dealers for which one e-mail was also sent by GSTN to pay GST and later on claim refund. Now, it is recommended that GSTN shall expeditiously resolve such issue.

## 8. Other miscellaneous recommendations:

- a. Taxpayers having **aggregate annual turnover upto Rs. 2 crores** are recommended to be **exempt from filing GST annual return in GSTR-9/9A for FY 2021-22**
- b. **GST payments** are recommended to be allowed through **UPI and IMPS mechanisms** as well<sup>5</sup>
- c. The **manner of calculating interest** is recommended **to be provided** in CGST Rules for clarity
- d. To the extent of **supply of duty credit scrips** (though exempt under GST), exporters would **not be required to reverse common ITC**<sup>6</sup>
- e. **Refund of unutilized ITC** on account of **export of electricity** is recommended **to be granted to exporters**
- f. Supplies by **Duty Free Shops to outgoing international passengers at international terminals** are recommended to be treated as exports. Consequentially, **refund** shall be available **on such exports**
- g. For supplies to SEZ developer or unit, there is a requirement that goods or services shall be used for authorized operations as endorsed by SEZ authorities. It is

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<sup>5</sup> Rule 87 (3) of CGST Rules 2017

<sup>6</sup> Explanation 1 recommended to be introduced after Rule 43 of CGST Rules 2017

recommended to **clarify that endorsement shall be done by SEZ authorities as are defined under SEZ Rules 2006<sup>7</sup>**.

🕒 **Recommendations to streamline certain GST compliances:**

1. Proposal for **comprehensive changes in GSTR-3B** to be placed in public domain for seeking inputs from stakeholders
2. **Automatic revocation if suspension of GST registration** is done automatically where default is on account of continuous non-filing of returns for a specified period, once all the pending returns are filed by the taxpayer
3. **The time period from 01.03.2020 to 28.02.2022 to be excluded for calculating the limitation period** in filing refund claim as well as for issuance of demand notice/order in respect of erroneous refunds<sup>8</sup>
4. **The time limit for issuance of order** consequent to show cause notice, in respect of demands pertaining to FY 2017-18, where time limit is linked to the due date of annual return, is **extended till 30.09.2023**
5. Group of Ministers will be constituted to address concerns of States in relation to **establishment of GST Tribunal** and make recommendation for appropriate amendments in GST Law
6. Group of Ministers on IT reforms recommended to develop a mechanism using **Artificial Intelligence and Machine Learning**, to **verify the antecedents of registration applicants** and **improved risk-based monitoring of non-compliances**.

🕒 **Other GST recommendations:**

1. Goods Transport Agencies (GTA) to avail the option to pay GST at 5% without ITC or 12% with ITC at the beginning of every Financial Year
2. Hitherto, few services of Postal Department are covered under reverse charge mechanism. It is recommended that Department of Posts shall discharge GST on all supplies of taxable services under forward charge mechanism

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<sup>7</sup> Rule 89 (1) of CGST Rules 2017

<sup>8</sup> S. 73 of CGST Act

 **Beneficial circulars**

Clarifications are recommended to be issued to either clarify ambiguity or reduce legal disputes on typical issues like:

1. **Mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked ITC and reversal of ITC in return in FORM GSTR-3B**
2. Interpretational issues relating to **blocked ITC**<sup>9</sup>
3. **Utilization** of the amounts available in the electronic credit ledger and the electronic cash ledger **for payment of tax and other liabilities**
4. **Applicability of demand and penalty** provisions under GST Law in respect of transactions involving **fake invoices**
5. **Perquisites** provided by employer to the employees as per contractual agreement
6. **Refund claimed by the recipients** of supplies regarded as **deemed export**
7. Issue of claiming **refund under inverted duty structure** where the supplier is **supplying goods under some concessional notification**

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<sup>9</sup> Section 17 (5) of CGST Act

## GST COUNIL'S RECOMMENDATIONS ON GST RATES

🕒 **Recommendatory changes in GST rates (effective from 18.07.2022):**

Sr. No.	Description	Current GST Rate	Proposed GST Rate
<b>A. Rate rationalization to remove Inverted Rated Structure</b>			
<b>Goods</b>			
1.	Printing, writing or drawing ink	12%	18%
2.	Knives with cutting blades, paper knives, pencil sharpeners and blades therefor, spoons, forks, ladles, skimmers, cake-servers etc.	12%	18%
3.	Power-driven pumps primarily designed for handling water such as centrifugal pumps, deep tube-well turbine pumps, submersible pumps; Bicycle pumps	12%	18%
4.	Machines for cleaning, sorting or grading, seed, grain pulses; Machinery used in milling industry or for the working of cereals etc; Pawan Chakki that is Air Based Atta Chakki; Wet grinder	5%	18%
5.	Machines for cleaning, sorting or grading eggs, fruit or other agricultural produce and its parts, milking machines and dairy machinery	12%	18%
6.	LED lamps, lights and fixture, their metal printed circuits board	12%	18%
7.	Drawing and marking out instruments	12%	18%
8.	Solar water heater and system	5%	12%
9.	Prepared/finished leather/chamois leather / composition leathers	5%	12%
<b>Services</b>			
10.	Services supplied by foreman to chit fund	12%	18%

Sr. No.	Description	Current GST Rate	Proposed GST Rate
11.	Job work in relation to processing of hides, skins and leather	5%	12%
12.	Job work in relation to manufacture of leather goods and footwear	5%	12%
13.	Job work in relation to manufacture of clay bricks	5%	12%
14.	Works contract for roads, bridges, railways, metro, effluent treatment plant, crematorium etc.	12%	18%
15.	Works contract supplied to Central and State Governments, Local Authorities for historical monuments, canals, dams, pipelines, plants for water supply, educational institutions, hospitals etc. & sub-contractor thereof	12%	18%
16.	Works contract supplied to Central and State Governments, Union Territories and Local Authorities involving predominantly earthwork and sub-contracts thereof	5%	12%
<b>B. Other Rate Changes</b>			
	<b>Goods</b>		
1.	Ostomy Appliances	12%	5%
2.	Orthopedic appliance- Splints and other fracture appliances; artificial parts of the body; other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; intraocular lens	12%	5%
3.	Tetra Pak (Aseptic packaging paper)	12%	18%
4.	Tar (whether from coal, coal gasification plants, producer gas plants and coke oven plants)	5%/18%	18%

Sr. No.	Description	Current GST Rate	Proposed GST Rate
5.	IGST on import of Diethylcarbamazine (DEC) tablets supplied free of cost for National Filariasis Elimination Programme	5%	Nil
6.	Cut and polished diamonds	0.25%	1.5%
7.	IGST on specified defence items imported by private entities/vendors, when end-user is the Defence forces	Applicable rate	Nil
<b>Services</b>			
1.	Transport of goods and passengers by ropeways	18%	5% (with ITC of services)
2.	Renting of truck/goods carriage where cost of fuel is included	18%	12%

**C. Withdrawal of Exemptions:**

Currently, GST is exempted on specified food items, grains etc. provided they are not branded or the right on the brand has been foregone.

It has been recommended to revise the scope of exemption to exclude prepackaged and pre-labelled retail pack in terms of Legal Metrology Act, including pre-packed, pre-labelled curd, lassi and butter milk.

Also, withdrawal of exemptions/concessional rate is proposed for the following goods/services:

<b>Goods</b>			
1.	Cheques, loose or in book form	Nil	18%
2.	Maps and hydrographic or similar charts of all kinds, including atlases, wall maps, topographical plans and globes, printed	Nil	12%
3.	Parts of goods of heading 8801	Nil	18%

Sr. No.	Description	Current GST Rate	Proposed GST Rate
4.	Petroleum/ Coal bed methane	5%	12%
5.	Scientific and technical instruments supplied to public funded research institutes	5%	Applicable rate
6.	E-waste	5%	18%
<b>Services</b>			
1.	Transport of passengers by air to and from Northeastern states and Bagdogra	Nil (irrespective of class)	Nil (only for economy class)
2.	Transportation by rail or a vessel of railway equipment and material	Nil	Applicable rate
3.	storage or warehousing of commodities which attract tax (nuts, spices, copra, jaggery, cotton etc.)	Nil	Applicable rate
4.	Fumigation in a warehouse of agricultural produce	Nil	Applicable rate
5.	Services by RBI, IRDA, SEBI, FSSAI, GSTN	Nil	Applicable rate
6.	Renting of residential dwelling to registered business entities	Nil	Applicable rate
7.	Services provided by the cord blood banks by way of preservation of stem cells	Nil	Applicable rate
8.	Common bio-medical waste treatment facilities for treatment or disposal of biomedical waste	Nil	12% (to enable ITC)
9.	Hotel accommodation priced upto Rs. 1,000/day	Nil	12%
10.	Room rent (excluding ICU) exceeding Rs 5,000 per day per patient charged by a hospital	Nil	5% (No ITC)

Sr. No.	Description	Current GST Rate	Proposed GST Rate
11.	Training or coaching in recreational activities relating to arts or culture, or sports	Nil (available to all)	Nil (only when supplied by an individual)

 **Other GST recommendations**

1. Normally, renting of vehicle with operator for transportation of goods on time basis is charged to GST @ 18%. Now, there is a recommendation to reduce GST rate to 12% if cost of fuel cost is included and issue clarification for the same
2. Service provided by an Indian tour operator to a foreign resident for conducting tour partially in India and partially outside India will to be subject to GST proportionate to the tour conducted in India. Such concession would be subject to condition that concession shall not exceed half of tour duration
3. **Refund of accumulated ITC will not be allowed on edible oils and coal**
4. Group of Ministers to **re-examine GST issues on casino, race course and online gaming** based on inputs from States

 **Recommendation to issue clarification on GST Rates**

**A. Goods:**

1. Concessional GST rate of 5% applicable to electric vehicles whether or not fitted with battery pack
2. Irrespective of fly ash content, all fly ash bricks attract concessional rate. The condition of 90% fly ash content is applicable only to fly ash **aggregate** and not to fly ash **bricks**. As a simplification measure, the condition of 90% content is omitted.
3. Stones (such as Napa Stones) even if ready to use and polished in minor ways attract GST @5% (except mirror polished)

4. GST rate of 12% applicable on all forms of mangoes including mango pulp under HSN 0804 (other than sliced or dried mangoes). However, raw or fresh mangoes to continue to be exempt
5. Sewage-treated water exempt from GST as it is different from purified water
6. Nicotine polarilex gum attract GST @ 18%

**B. Services:**

1. Sale of land after levelling, layering laying down of drainage lines etc. is sale of land and thus, does not attract GST
2. Location charge or preferential location charges are part of consideration charged for long term lease of land & thus, to get the same treatment under GST
3. Renting of motor vehicle for transport of passengers to a body corporate for a period of time is taxable in the hands of body corporate under reverse charge mechanism
4. Services associated with transit cargo both to and from Nepal and Bhutan exempted from GST
5. On ice-cream supplied by ice-cream parlours, GST @ 5% without ITC to be regularised for the period from 01.07.2017 to 05.10.2021
6. Ginned or baled fibre exempted as it is covered under raw vegetable fibre
7. GST exemption on application fee charged for entrance or for issuance of eligibility certificate for admission or issuance of migration certificate by universities
8. Selling space for advertisement in souvenirs published in form of books eligible for concessional GST rate of 5%
9. Services of guest anchors to TV channels in lieu of honorarium to attract GST
10. Additional fee collected as higher toll charges from vehicles not having Fastag is essentially payment of toll charges only and therefore, to be given same tax treatment as toll charges
11. Services in the form of Assisted Reproductive Technology/ In vitro fertilization covered under health care services and thus, exempt under GST

12. Transport of passengers by public transport other than predominantly for tourism purpose in vessel between places located in India, is exempt from GST. The term “public transport” shall mean vessels which are open for transportation for point to point transport for general public (Example: Transport in Andaman and Nicobar Islands)

#### Disclaimer

*This document is based on the press release issued pursuant to the 47<sup>th</sup> GST Council Meeting. The press release merely highlights the important recommendations of GST Council. The amendments in GST law, based on the GST Council’s recommendations, is yet to be effectuated. Updates will be provided for any such amendment in the GST law.*

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