

Summary of Press Release dated 17.09.2021 as per 45th Gst Council Meeting in Lucknow

A. Compliance Related Changes :

1. Relaxation in the requirement of filing FORM GST ITC-04:

Requirement of filing FORM GST ITC-04 under rule 45 (3) of the CGST Rules has been relaxed as under:

a. Taxpayers whose annual aggregate turnover in preceding financial year is above Rs. 5 crores shall furnish ITC-04 once in six months;

b. Taxpayers whose annual aggregate turnover in preceding financial year is upto Rs. 5 crores shall furnish ITC-04 annually.

2. In the spirit of earlier Council decision that interest is to be charged only in respect of net cash liability, section 50 (3) of the CGST Act to be amended retrospectively, w.e.f. 01.07.2017, to provide that interest is to be paid by a taxpayer on “ineligible ITC availed and utilized” and not on “ineligible ITC availed”. It has also been decided that interest in such cases should be charged on ineligible ITC availed and utilized at 18% w.e.f. 01.07.2017.

3. Unutilized balance in CGST and IGST cash ledger may be allowed to be transferred between distinct persons (entities having same PAN but registered in different states), without going through the refund procedure, subject to certain safeguards.

4. Issuance of the following circulars in order to remove ambiguity and legal disputes on various issues, thus benefiting taxpayers at large:

a. Clarification on scope of “intermediary services”;

b. Clarification relating to interpretation of the term “merely establishment of distinct person” in condition (v) of the Section 2 (6) of the IGST Act 2017 for export of services. A person incorporated in India under the Companies Act, 2013 and a person incorporated under the laws of any other country are to be treated as separate legal entities and would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act 2017 for considering a supply of service as export of services;

c. Clarification in respect of certain GST related issues:

i. W.e.f. 01.01.2021, the date of issuance of debit note (and not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of CGST Act, 2017;

ii. There is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules, 2017;

iii. Only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) of CGST Act, 2017 from availment of refund of accumulated ITC.

5. Provision to be incorporated in in CGST Rules, 2017 for removing ambiguity regarding procedure and time limit for filing refund of tax wrongfully paid as specified in section 77(1) of the CGST/SGST Act and section 19(1) of the IGST Act.

B. Procedural Related Changes:

Measures for streamlining compliances in GST:-

1. Aadhaar authentication of registration to be made mandatory for being eligible for filing refund claim and application for revocation of cancellation of registration.

2. Late fee for delayed filing of FORM GSTR-1 to be auto-populated and collected in next open return in FORM GSTR-3B.

3. Refund to be disbursed in the bank account, which is linked with same PAN on which registration has been obtained under GST.

4. Rule 59(6) of the CGST Rules to be amended with effect from 01.01.2022 to provide that a registered person shall not be allowed to furnish FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for the preceding month.

5. Rule 36(4) of CGST Rules, 2017 to be amended, once the proposed clause (aa) of section 16(2) of CGST Act, 2017 is notified, to restrict availment of ITC in respect of invoices/ debit notes, to the extent the details of such invoices/ debit notes are furnished by the supplier in FORM GSTR-1/ IFF and are communicated to the registered person in FORM GSTR-2B.

C. Act and Rules related Changes:

GST Council has also recommended amendments in certain provisions of the Act and Rules.

I. Clarification in relation to GST rate on Goods wef 01.10.2021 :-

1. Pure henna powder and paste, having no additives, attract 5% GST rate under Chapter 14.

2. Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues, falling under HS code 2303 attract GST at the rate of 5%.

3. All laboratory reagents and other goods falling under heading 3822 attract GST at the rate of 12%.

4. Scented sweet supari and flavored and coated illachi falling under heading 2106 attract GST at the rate of 18%

5. Carbonated Fruit Beverages of Fruit Drink" and "Carbonated Beverages with Fruit Juice" attract GST rate of 28% and Cess of 12%. This is being prescribed specifically in the GST rate schedule.

6. Tamarind seeds fall under heading 1209, and hitherto attracted nil rate irrespective of use. However, henceforth they would attract 5% GST rate (w.e.f. 1.10.2021) for use other than sowing. Seeds for sowing will continue at nil rate.

7. External batteries sold along with UPS Systems/ Inverter attract GST rate applicable to batteries [28% for batteries other than lithium-ion battery] while UPS/inverter would attract 18%.

8. GST on specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, during the period from 1.7.2017 to 31.12.2018, in the same manner as has been prescribed for the period on or after 1st January 2019.

9. Due to ambiguity in the applicable rate of GST on Fibre Drums, the supplies made at 12% GST in the past have been regularised. Henceforth, a uniform GST rate of 18% would apply to all paper and paper board containers, whether corrugated or non-corrugated.

10. Distinction between fresh and dried fruits and nuts is being clarified for application of GST rate of "nil" and 5%/12% respectively;

11. It is being clarified that all pharmaceutical goods falling under heading 3006 attract GST at the rate of 12% [not 18%].

12. Essentiality certificate issued by Directorate General of Hydrocarbons on imports would suffice; no need for taking a certificate every time on inter-state stock transfer.

II. Clarification in relation to GST rate on services:-

1. Coaching services to students provided by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities' is exempt from GST.

2. Services by cloud kitchens/central kitchens are covered under 'restaurant service', and attract 5% GST [without ITC].

3. Ice cream parlor sells already manufactured ice- cream. Such supply of ice cream by parlors would attract GST at the rate of 18%.

4. Overloading charges at toll plaza are exempt from GST being akin to toll.

5. The renting of vehicle by State Transport Undertakings and Local Authorities is covered by expression 'giving on hire' for the purposes of GST exemption.

6. The services by way of grant of mineral exploration and mining rights attracted GST rate of 18% w.e.f. 01.07.2017.

7. Admission to amusement parks having rides etc. attracts GST rate of 18%. The GST rate of 28% applies only to admission to such facilities that have casinos etc.

8. Alcoholic liquor for human consumption is not food and food products for the purpose of the entry prescribing 5% GST rate on job work services in relation to food and food products.

III. Changes wef 01.01.2022

E Commerce Operators are being made liable to pay tax on following services provided through them :

(i) transport of passengers, by any type of motor vehicles through it [w.e.f. 1st January, 2022]

(ii) restaurant services provided through it with some exceptions [w.e.f. 1st January, 2022]