53Rd GST Council meet update

The most awaited 53rd meet of GST council concluded on 21st June, 2024. As this was the last Council Meeting before the Union Budget, the industry expected announcements revolving around ease of doing business. The major announcements are on GST return compliances, litigations and rate structures on various goods and services. A synopsis of proposals are given below:

A. Rate Changes

a) Changes in GST rates – Goods

1. A uniform rate of 5% IGST will apply to imports of 'Parts, components, testing equipment, tools and tool-kits of aircrafts, irrespective of their HS classification to provide a fillip to MRO activities subject to specified conditions.
2. All milk cans (of steel, iron and aluminium) irrespective of their use will attract 12% GST.
3. GST rate on 'carton, boxes and cases of both corrugated and non-corrugated paper or paper-board' (HS 4819 10; 4819 20) to be reduced from 18% to 12%.
4. All solar cookers whether single or dual energy source, will attract 12% GST.
5. Parts of Poultry keeping Machinery to attract 12% GST
6. Fire water sprinklers will attract 12% GST
7. IGST exemption on imports of specified items for defence forces to be extended till 30th June, 2029.
8. IGST exemption on imports of research equipment/buoys imported under the Research Moored Array for African-Asian-Australian Monsoon Analysis and Prediction (RAMA) programme subject to specified conditions proposed
9. Compensation Cess on the imports in SEZ by SEZ Unit/developers for authorised operations w.e.f. 01.07.2017 exempted.
10. To exempt Compensation cess on supply of aerated beverages and energy drinks to authorised customers by Unit Run Canteens under Ministry of Defence.
11. To provide Adhoc IGST exemption on imports of technical documentation for AK-203 rifle kits imported for Indian Defence forces.
12. No GST on Extra Neutral Alcohol used for manufacture of alcoholic liquor for human consumption.

b) Changes in GST rates – Services

1. GST on platform tickets, facility of retiring rooms/waiting rooms, cloak room services, battery-operated car services and Intra-Railway transactions proposed to be exempted.
2. Services provided by SPV to Indian Railway by way of allowing access to infrastructure owned by SPV are proposed to be exempted during the concession period.
3. Accommodation services provided for continuous period of 90 days is proposed to be exempt subject to rentals of Rs.20,000/- p.m. per person
4. Schedule III of the CGST Act, 2017 to be amended to keep co-insurance premium apportioned by lead insurer. It is further proposed to add same entry for re-insurance commission. Therefore, the same will be outside the scope of GST

c) TCS rates reduction

TCS rates are proposed to be reduced to 0.5 % (0.25% CGST + 0.25% SGST/UTGST, or 0.5% IGST) as against ,1 % (0.5% CGST + 0.5% SGST/ UTGST, or 1% IGST) being charge today. The E-Commerce operator is expected to follow reduced rates from the date to be notified.

d) Introduction of Sectio 11A of the CGST Act,2017 to grant GST exemption in specified cases.

A new section - Section 11A is sought to be inserted to provide an exemption on GST pursuant to common trade practices .

B. GST returns

a) Introduction of Form GSTR 1A

A new form – GSTR 1A is sought to be introduced to capture missing data in GSTR 1/ IFF but the liability for which is required to discharged in GSTR 3B. This step has been taken to reduce litigations on differential liability between GSTR 1 & GSTR 3B.

b) GSTR 4 Due date extension for FY 2024 – 25 onwards

The due date for filing GSTR 4 for composition tax payer has been extended upto to 30th June following a financial year. This amendment will be effective from FY 2024 – 25 onwards.

c) Reporting for B2Cs transactions

Now the tax payer needs to upload inter-state B2C transaction with invoice value up to Rs. 1,00,000/- for each rate of tax separately.

d) Monthly Periodicity prescribed for GSTR 7

A tax is payer liable to deduct tax at source u/s.51 of CGST Act, 2017 have to file GSTR 7 on monthly basis. Further, the invoice level data needs to be reported in the return. A belated GSTR 7 can be filed with nil late fee.

C. ITC restriction u/s 16 (4) of the CGST Act, 2017

a) Time limit to claim ITC for the FY 2017-18 to FY 2019-20 - upto 30th November, 2021

Numerous notices are issued to tax payers for denial of ITC pertaining to the FY 2017-18 to 2019-20 where the GSTR 3B was filed after the month pf September ending the financial year. In respect of specified years, ITC will be admissible , through any GSTR 3B return filed upto 30.11.2021. It is expected to put an end to litigations running on count of Sectoin 16 (4) of the CGST Act, 2017

In cases where the registration of the tax payer has been revoked, the time limit to claim ITC u/s 16 (4) of the CGST Act, 2017 will be available upto 30 days from the revocation order.

b) Applicability of Section 16 (4) on payment of GST

In cases where the supply is being procured from Unregistered tax payer and GST is discharge under RCM, the Financial year in which the tax payer issues invoice is considered for calculating period of limitation u/s 16 (4) of the CGST Act, 2017

D. Refund relates proposals

a) Refund on goods subject to export duty

It is proposed to introduce amendment to restrict refund on goods which are subject to export duty, irrespective of the facts as to whether the export is executed with or without payment of IGST. Relevant changes will be made u/s 16 of the IGST Act, 2017 and Section 54 CGST Act,2017. This restriction will also prevail for supplies made to developer or unit located in SEZ, for authorised operations.

b) Refund in case of Export with payment of tax

It has been announced that the tax payer will be eligible to claim refund against discharge of IGST pursuant to upward revision in price of goods post export.

E. Changes proposed for valuation under GST:

a) Import of services from related party and valuation mechanism

In case of domestic party receiving services from foreign affiliate, wherein full ITC is available, the value declared on invoice will be deemed to be the transaction value in terms of rule 28 (1) of the CGST

Rules, 2017. In case the invoice is not issued, then the value needs to be determined at 90% of the akin/ similar services being provided to unrelated customer.

b) GST on Corporate Guarantees between related party

A new circular is expected to released to clear ambiguity on valuation and other aspects of GST on Corporate Guarantees between related parties. It is further announced that valuation u/r 28 (2) of the CGST Rules, 2017 – i.e. determining value of services in relation to Corporate Guarantee @1 % of guarantee amount or actual consideration charged, will not apply in case of export of services and the recipient is eligible to claim full ITC.

F. GST Litigations

a) Insertion of Section 128A - Waiver of interest and penalties for notices u/s 73 of the CGST Act, 2017 being issued for FY 2017-18 to 2019-20 subject to payment of taxes by 31.03.2025:

The Council has announced that for the notice being issued u/s 73 of the CGST Act, 2017- i.e. notice towards non / short payment of tax or erroneous refund claim or wrong availment or utilisation of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts, the waiver can be granted towards levy if interest and penalty. The waiver is sought to be granted subject to payment of tax demand by 31st March, 2025. Further, Section 128A is sought to be incorporated in the CGST Act,2017, to give effect to the waiver benefit

b) Insertion of Section 74A to prescribe common timelines for Adjudication proceedings u/s 73 & 74 of the CGST Act, 2017

The Government is planning to introduce common timelines for issue of notices and orders u/s 73 & 74 of the CGST Act, 2017, for the FY 2024 – 25 onwards. This is possibility introduced to cut off litigation on extended due dates being notified (No. 56/2023-CT dated 28.12.2023) for passing orders for the FY 2018-19 and 2019-20.

c) Extension of time limit to avail benefit of reduced penalty u/s 73 & 74 of the CGST Act, 2017

Presently, a tax payer can avail benefit of reduced penalty subject to discharge tax liability alongwith interest within 30 days of issue of order u/s 73 & 74 of the CGST Act, 2017. The said timelines o sought to be extended to 60 days.

d) Monetary limit for filing of appeals by the Department.

In order to avoid litigation the council has announced following monetary limits for appeal filing by the Department.

Forum	Monetary Limit
GST Appellate Tribunal	20 lakhs
High Court	1 Crore
Supreme Court	2 Crore

A clarification from the CBIC is expected to understand if the monetary limit is inclusive of tax, interest and penalty implications or otherwise.

e) Reduction in pre-deposit mandated for filing the Appeal

An amendment u/s 107 and 112 of the CGST Act, 2017 is sought to be made for reduction in pre - deposit limit. This is one of the big relief given by the authorities.

Maximum Pre-deposit:

Existing	Proposed
Rs.25 Crore under CGST & SGST each	Rs.20 crores under CGST & SGST each

f) Maximum pre-deposit & time limit for appeal before the GST Tribunal:

Existing	Proposed
Rs.50 Crore under CGST & SGST each with cap of 20% of tax demand	Rs.20 Crore under CGST & SGST each with cap of 10% of tax demand

The time limit of 3 months for filing Appeal before the Tribunal is proposed to be implemented from a date to be notified by the Government.

g) Adjustments of DRC 03 against pre-deposit for filing the Appeal

A circular is expected to provide for mechanism towards adjustment of amount being paid through DRC 03, while calculating quantum of pre-deposit.

G. Interest liability on delayed payment to be reckoned basis Net balance in Electronic Cash Ledger

Amendment to the CGST Rules, 2017 is expected for exclusion of the balance in the Electronic Cash Ledger on due date of filing of GSTR 3B while calculating interest liability on delayed filing of return.

H. Place of supply for services provided by India Custodian Bank to Foreign Portfolio investor

The provisions prescribed for determining the place of supply u/s 13 of the CGST Act, 2017 will be applicable to determine the place of supply for Foreign Portfolio investor. This will form crucial part is examining export of services between Indian Custodian Bank to Foreign Portfolio investor

I. Sunset clause for anti-profiteering cases

The council has announced that w.e.f 01st April, 2025 new applications regarding anti-profiteering has to be filed before the GST Appellate Tribunal (GSTAT) instead of by Competition Commission of India (CCI). However, the hearing for ongoing cases will continue with CCI until the functioning of GSTAT.

J. GST registration

Biometric-based Aadhaar authentication of registration applicants is sought to be introduce on pan-India basis in a phased manner. It is aimed to battling fraudulent ITC claims made through fake invoices.

K. Clarification sought to be provided on multiple industry matters for reducing the litigation

a) Taxability of re-imbursement of securities/shares as ESOP/ESPP/RSU provided by a company to its employees;
b) Requirement of reversal of input tax credit in respect of amount of premium in Life Insurance services, which is not included in the taxable value as per Rule 32(4) of CGST Rules.
c) taxability of wreck and salvage values in motor insurance claims
d) Warranty/ Extended Warranty provided by Manufacturers to the end customers
e) Availability of input tax credit on repair expenses incurred by the insurance companies in case of reimbursement mode of settlement of motor vehicle insurance claims.
f) Taxability of loans granted between related person or between group companies.
g) Time of supply on Annuity Payments under HAM Projects.
h) Time of supply in respect of allotment of Spectrum to Telecom companies in cases where payment of licence fee and Spectrum usage charges is to be made in instalments.
i) Place of supply of goods supplied to unregistered persons, where delivery address is different from the billing address
j) Mechanism for providing evidence by the suppliers for compliance of the conditions of Section 15(3)(b)(ii) of CGST Act, 2017 in respect of post-sale discounts, to the effect that input tax credit has been reversed by the recipient on the said amount.

k) Issues pertaining to special procedure for the manufacturers of the specified commodities, like pan masala, tobacco etc.

Needless to say, these announcement are soon expected to be formalized with the issue of notification and circulars. Untill then these announcement will just be just an illusionary portrait. One may also note that the referred benefits may be coupled with specified conditions to meet.