



***PRESENTATION
ON
RECOMMENDATIONS
OF
GST COUNCIL'S
45TH MEETING
HELD ON 17TH SEPTEMBER, 2021
IN LUCKNOW UPDATED WITH TILL
DATE NOTIFICATIONS AND
CIRCULARS***

BY CA AMARJEET SINGH

Recommendations relating to GST law and procedure

Part III) Point I. Measures for Trade facilitation:

1. Relaxation in the requirement of filing FORM GST ITC-04 under rule 45(3) of the CGST Rules: **Notf. 35/2021**

Having turnover > Rs. 5 Crore - ITC-04 **once in six months**

Having turnover < Rs. 5 Crore- ITC-04 **annually**

2. Retrospective amendment in section 50 (3) of the CGST Act, w.e.f. 01.07.2017

Earlier, interest is to be charged **only** in respect of net cash liability

Now, as further relaxation interest is to be paid only on **“ineligible ITC availed and utilized”** at **@18%**.

3. Distinct persons (entities having same PAN but registered in different states) can transfer unutilized balance in CGST and IGST cash ledger to one another.

4. Issuance of the following circulars in order to remove ambiguity and legal disputes.

a) Intermediary services **Cir 159**

c) GST Clarification

b) “merely establishment of distinct person” in condition (v) of the S. 2 (6) of the IGST Act 2017 **Cir 159**

A person incorporated in India under the Co. 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 S. 2(6)(v) of the IGST Act 2017 for considering a supply of service as export of services.

5. Rules for procedure and time limit for the refund of tax wrongly paid as S. 77(1) of CGST Act and S. 19(1) of IGST Act. **Cir 162 Notf. 35**

i) W.e.f. 01.01.2021, date of issuance of debit note shall determine relevant FY for claiming ITC u/s 16(4) **Cir 160 issue 1**

ii) If invoice generated as per Rule 48(4) - No need to carry physical invoice **Cir 160 issue 1**

ii) Restriction imposed under S.54(3) (availment of refund of accumulated ITC) will cover only those goods on which export duty paid at the time of export **Cir 160 issue 1**

Recommendations relating to GST law and procedure

Part III Point J. Measures for streamlining compliances in GST: (Notf 35/2021)_Amendment in Rule 10A and New Rule 10B inserted

1. Aadhaar authentication of registration mandatory for being eligible for filing “**refund claim and application for revocation of cancellation of registration**”.

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

3. GST Refund to the bank a/c which is linked with same PAN on which registration has been obtained under GST.

4. Amendment in Rule 59(6) of the CGST Rules w.e.f. 01.01.2022- NO GSTR-1 if preceding month GSTR-3B is not filed.

5. Rule 36(4) of CGST Rules, 2017 to be amended, once the proposed clause (aa) of section 16(2) of CGST Act, in **FORM GSTR-2B**.

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

Recommendations relating to GST rates on goods and services

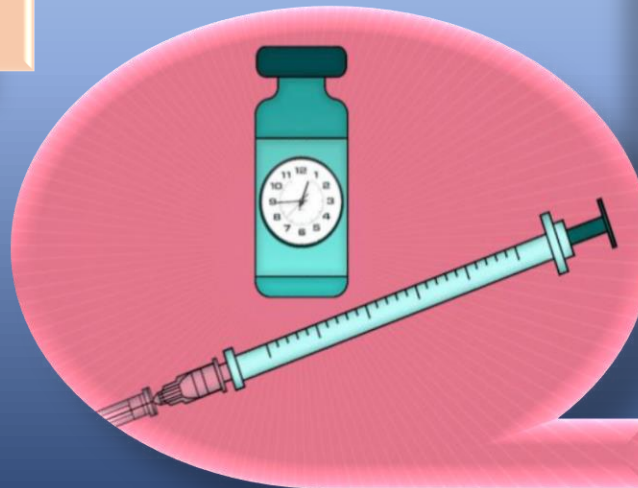
PART I – POINT A. COVID-19 relief measure in form of GST rate concessions (Notf. ® 12/2021)

1. Extension of existing concessional GST rates (valid till 30/09/2021) on following Covid-19 treatment drugs, up to 31st December, 2021, namely-

- i. Amphotericin B -nil
- ii. Remdesivir – 5%
- iii. Tocilizumab -nil
- iv. Anti-coagulants like Heparin – 5%

2. Reduction of GST rate to 5% on more Covid-19 treatment drugs, up to 31/12/2021, namely-

- i. Itolizumab
- ii. Posaconazole
- iii. Infliximab
- iv. Favipiravir
- v. Casirivimab & Imdevimab
- vi. 2-Deoxy-D-Glucose
- vii. Bamlanivimab & Etesevimab



Recommendations relating to GST rates on goods and services

Part I Point B- Major recommendations on GST rate changes in relation to Goods [w.e.f 1.10.2021 unless otherwise stated]

1. Retro fitment kits for vehicles used by the disabled
From **Appl. rate** To **5%**
(Notf 8/2021)

2. Fortified Rice Kernels for schemes like ICDS etc
From 18% To 5%
(Notf. 11/2021)

3. Medicine Keytruda, Biodiesel supplied to OMCs
From 12% To 5%
(Notf 8/2021)

4. Ores and concentrates of metals such as iron, copper, aluminum, zinc and few others
(Notf. 8/21 S. No 138 to 148 omitted from 5% and shifted to 18% in S. No 26C to 26L)

5. Specified Renewable Energy (Solar Power/Wind Mills) Devices and parts
From 5% To 12% **(Not 8/2021_S. N. 234 omitted from I schedule of 5% rate and shifted in S.No. 201A of Schd II of 12% Rate). However Relating services are taxable @ 18% therefore it is also clarified vide Cir. 163/2021 that 70:30 ratio will be applied as added through explanation vide Notf. 24/2018 dt. 31.12.2018). No Refund if excess paid)**

6. Cartons, boxes, bags, packing containers of paper etc. All kinds of pens
From 12%/18% To 18%

7. Waste and scrap of polyurethanes and other plastics
From 5% To 18%

8. Railway parts, locomotives & other goods in Chapter 86, Miscellaneous goods of paper like cards, catalogue, printed material(Chapter 49 of tariff)
From 12% To 18%

9. IGST on import of medicines for personal use, namely
i. Zolgensma for Spinal Muscular Atrophy ii. Viltepso for Duchenne Muscular Dystrophy iii. Other medicines used in treatment of muscular atrophy recommended by Ministry of Health and Family Welfare and Department of Pharmaceuticals.
From 12% To Nil

10. IGST exemption on goods supplied at Indo-Bangladesh Border haats
From Appl. rate To Nil

11. Unintended waste generated during the production of fish meal except for Fish Oil Nil(For the period 1.7.2017,30.09.2019)

Recommendations relating to GST rates on goods and services

Part I Point C. Other changes relating to GST rates on goods



1. Notf.10/2021_Supply of MENTHA (MINT) oil from **Any unregistered person** (Unlike from agriculturist for Cashew, Bidi/Tobacco Leaves vide Notf. 4/2017 ®) **has been brought under reverse charge.**

Exports of Mentha oil should be allowed only against LUT and consequential refund of ITC



2. Brick kilns would be brought under special composition scheme with threshold limit of Rs. 20 lakhs, with effect from 1.4.2022. Bricks would attract GST at the rate of 6% without ITC under the scheme. GST rate of 12% with ITC would otherwise apply to bricks.

Part I Point D. Correction in Inverted Duty structure in Footwear and Textiles sector



GST rate changes in order to correct inverted duty structure, in footwear and textiles sector, as was discussed in earlier GST Council Meeting and was deferred for an appropriate time, will be implemented with effect from 01.01.2022..

Part I Point E. In terms of the recent directions of the Hon'ble High Court of Kerala, the issue of whether specified petroleum products should be brought within the ambit of GST was placed for consideration before the Council. After due deliberation, the Council was of the view that it is not appropriate to do so at this stage.



Recommendations relating to GST rates on goods and services

Part I Point F. Exemption on Services[w.e.f 1.10.2021 unless otherwise stated]

1. Validity of GST exemption on transport of goods by vessel and air from India to outside India is extended upto 30.9.2022.

From Nil - To Nil extended

(vide Notf 07/2021 substituted for 2020 in S. No 19A and 19B of Exemp Notf 12/2017)

2. Services by way of granting National Permit to a goods carriage to operate through-out India / contiguous States (S. No. 61A inserted in Notf 12/2017 vide Notf 07/2021).

3. Skill Training for which Government bears 75% or more of the expenditure [presently exemption applies only if Govt funds 100%]. (vide Notf 07/2021 in S. No 72 modified accordingly)

4. Services by and to AFC Women's Asia Cup 2022. From 18% To Nil. Certificate from Director Sports Required (S. No. 9AB inserted in Notf 12/2017 vide Notf. 07/2021). Further S. No 61 A inserted to exempt Services by way of right to admission to the events organised under AFC Women's Asia Cup 2022)

5. Licensing services sound recordings, Radio and Television programmes [to bring parity between distribution and licencing services]

6. Printing and reproduction services of recorded media From 12% To 18%. (item (i) of 12% omitted and merged with item (ii) of 18% Notf 6/2021)

7. Exemption on leasing of rolling stock by IRFC to Indian Railways withdrawn. vide Notf 07/2021 2021 S. No 43 Omitted from Exemp Notf 12/2017)

8. E Commerce Operators are being made liable to pay tax on-transport of passengers, by any type of motor vehicles through it [w.e.f. 1st January, 2022] restaurant services provided through it with some exceptions [w.e.f. 1st January, 2022]

9. Certain relaxations have been made in conditions relating to IGST exemption relating to import of goods on lease, where GST is paid on the lease amount, so as to allow this exemption even if-
(i) Such goods are transferred to a new lessee in India upon expiry or termination of lease;
(ii) The lessor located in SEZ pays GST under forward charge.

Part I Point G. Clarification in relation to GST rate on Goods (CIRCULAR 164/2021 dated 06-10-2021)

1. Pure henna powder and paste, having no additives, attract 5% GST rate under Chapter 14. **(Para 6)**

2. BSG, DDGS and other such residues, falling under HS code 2303 attract GST at the rate of 5% **(Para 8)**.

3. All laboratory reagents and other goods falling under heading 3822 attract GST at the rate of 12% **(Para 10)**

4. Scented sweet supari and flavored and coated illachi falling under heading 2106 attract GST at the rate of 18% **(Para 7 Value Added Product)**

5. Carbonated Fruit Beverages of Fruit Drink" and "Carbonated Beverages with Fruit Juice" attract GST rate of 28% and Cess of 12%.

6. Tamarind seeds fall under heading 1209, and hitherto attracted nil rate irrespective of use. **(Notf. 9/2021 substituted S. No 86 of Goods Exemption Notf. 2/2017 by added explanation that This entry does not cover seeds meant for any use other than sowing."** further also clarified in Circular 163/2021) Therefore w.e.f. 1-10-2021:

7. External batteries 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%. **(Para 12 it is observed that even if the UPS/inverter and external battery are sold on the same invoice, their price are separately known, and they are two separately identifiable items. Thus, this constitutes supply of two distinctly identifiable items on one invoice.**

9. Due to ambiguity in the applicable rate of GST on Fibre Drums, the supplies made at 12% **(Vide 8/2021 omitted from 12% and substituted in 18% S. No. 153A)** GST rate of 18% would apply to all paper and paper board containers, whether corrugated or non-corrugated. **(Para 14)**

Tamarind seeds would attract 5% GST rate (w.e.f.1.10.2021) for use other than sowing **(Notf.8/2021)**

Seeds for sowing will continue at nil rate.

10. Distinction between fresh and dried fruits and nuts is being clarified for application of GST rate of "nil" and 5%/12% respectively; **(Para 3)**

8. GST on specified Renewable Energy Projects **REFER Slide 5**

11. It is being clarified that all pharmaceutical goods falling under heading 3006 attract GST at the rate of 12% [not 18%]. **(Para 9)**

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. **(Para 11)**

Recommendations relating to GST rates on goods and services

Part I Point H. Clarification in relation to GST rate on services:



1. Coaching services 'Scholarships for students with Disabilities' is **exempt** from GST. (Clarified in Para 5 of C. 164/21 that already covered under entry 72 of notification No. 12/2017.)



2. kitchens/central kitchens are covered under 'restaurant service **5% GST** [without ITC]. (Para 3 Circular 164/2021)



3. Ice cream parlor sells already manufactured ice-cream **18%** therefore **GST** rates (Para 4 Circular 164/2021)



4. Overloading charges at toll plaza **exempt**. (Para 7 Circular 164/2021)



5. renting of vehicle to State Transport Undertakings and Local Authorities (Para 8 of Cir 164/2021 clarifies that giving on hire" in Sl. No. 22 of the Notification No. 12/2017-CT (Rate) includes renting of vehicles therefore exempt)



6. Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right **@18%** (Notf. 6/2021) (i) item other than IT of 12% rate deleted and merged with new amended entry (ii))



7. Admission to amusement parks having rides **@18%, 28%** applies only to admission to such facilities that have casinos, race clubs or sporting events like IPL (Notf. 6/2021) new (iii) and (iiia) items substituted to differentiate in 18% and 28% rate) (Refer Also Para 10 of Circular 164/2021)



8. Alcoholic liquor for human consumption is not food, **5% GST** rate on job work services in relation to food, (accordingly taxable @ 18% Notf. 6/2021 item (ica) inserted Refer Also Para 11 of Circular 164)



II Compensation Cess

On the issue of compensation scenario, a presentation was made to the Council wherein it was brought out that the revenue collections from Compensation Cess in the period beyond June 2022 till April 2026 would be exhausted in repayment of borrowings and debt servicing made to bridge the gap in 2020-21 and 2021-22.

In this context various options, as have been recommended by various committees/ forums were presented. The Council deliberated at length on the issue. The Council decided to set up a GoM to examine the issue of correction of inverted duty structure for major sectors; rationalize the rates and review exemptions from the point of view of revenue augmentation, from GST.

It was also decided to set up a GoM to discuss ways and means of using technology to further improve compliance including monitoring through improved e-way bill systems, e-invoices, FASTag data and strengthening the institutional mechanism for sharing of intelligence and coordinated enforcement actions by the Centre and the States.



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