45th GST Council Meeting

Key Highlights
Build-Up To The Meeting

First in-person meeting after COVID-19 outbreak in Lucknow

Considerable pressure to mop up revenues and address issues relating to revenue shortfall as well as compensation to states

Deliberation for bringing petrol, diesel within GST net after Kerala HC’s mandate for consideration

Socio-political backlash relating to several agenda items

Consideration of proposals to tweak rates for numerous goods/services, basis Fitment Committee recommendations
KEY DECISIONS & ANNOUNCEMENTS
Petrol & Diesel Under GST: Not Yet

Considerations:
- The proposition will witness several iterations and rounds of discussion, including with various stakeholders, before petrol and diesel being full-fledged plugged into GST regime
- Central government not opposed to the idea
- The depressed financial health of many states may potentially keep the proposal on sidelines for longer than anticipated
- Trade inquisitive to understand whether GST, if collected on petrol & diesel, would also be allowed as set-off. The erstwhile Cenvat regime had restrictions on the same
Compensation Cess – Levy Period

- Per Section 8(1) of Goods and Services Tax (Compensation to States) Act, 2017, the GST Compensation cess was expected to be levied over a period of 5 years from implementation of GST unless extended on recommendation of GST Council.

- No formal decision or recommendation has yet been taken/made regarding extension/sharing.

- However, the presentation on the issue of compensation scenario made to the council indicated that continuation of compensation cess warranted at least until ‘April 2026’. This may pave the way for extension of the levy period of cess. The sharing mechanics with the states may also have a bearing on the structure of rate cess.
Constitution Of Group Of Ministers

- Correction of inverted duty structures for major sectors
- Rationalize rates and review exemptions to mop-up Revenues
- Better use of technology to improve compliance and monitoring
- To examine Revenue neutrality of GST rates
- For strengthening institutional mechanism for intelligence sharing and coordinated enforcement

Vision of simplification & Trade Facilitation
Expectation of higher self-compliance
Empowering field formations, expect more vigilance
TRADE FACILITATION
Facilitation Measures

- Bi-monthly filing of Form ITC-04 vis-à-vis current quarterly obligation for taxpayers with annual turnover > INR 5 Cr

- Interest on availment of ineligible ITC only applicable if the interest has been availed and utilized – retrospective amendment from 1 July 2017

- Unutilized balance in CGST and IGST cash ledger could be transferred between different GST registrations. Potential working capital benefit for inadvertent credit to wrong GSTN linked cash ledger

- Clarification on non-requirement of carrying a physical copy of tax invoice where e-invoice is issued
RATE ACTION & RELATED ASPECTS - GOODS
## Increase In Effective GST Rate

<table>
<thead>
<tr>
<th>5% to 12%</th>
<th>5% to 18%</th>
<th>12% to 18%</th>
</tr>
</thead>
</table>
| Specified Renewable Energy Devices and parts  
(\textit{details awaited, should be clarified once notification issued/made public}) | Ores and concentrates of metals such as iron, copper, aluminum, zinc and few others  
Waste and scrap of polyurethanes and other plastics | Cartons, boxes, bags, packing containers of paper etc.  
All kinds of pens  
Railway parts, locomotives & other goods in Chapter 86  
Miscellaneous goods of paper like cards, catalogue, printed material (Chapter 49 of tariff) |

- **Addressing inverted duty scenarios** - To be effective from 1 October 2021  
  \textit{[PS: Rate changes on footwear and textiles sector to be made effective from 1 Jan 2022. Precise details still to be agreed in upcoming Council meetings]}  
- **Rate Parity Action** – effective from 1 October 2021
**Covid Relief : Certain Medicines At Reduced Rate or Exempted**

**Extension - Exemption**
- Amphotericin B
- Tocilizumab

**Extension 5%**
- Remdesivir
- Anti-coagulants like Heparin

**Exemption over and above 5%**
* (Likely to be with immediate effect – notification to be seen)
- Itolizumab
- Posaconazole
- Infliximab
- Favipiravir
- Casirivimab & Imdevimab
- 2-Deoxy-D-Glucose
- Etesevimab

**ELP Comments/Points to Consider**
- Similar relief available on equipment until September 30, 2021 not further extended
- No clarity on applicability of anti-profiteering provisions to these cases

*Mentioned rates effective up to December 31, 2021*
# Reduction in Effective GST Rate

<table>
<thead>
<tr>
<th><strong>18% to 5%</strong></th>
<th><strong>12% to 5%</strong></th>
<th><strong>Brought down to NIL/ Exempted</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Fortified Rice Kernels for schemes like ICDS etc.</td>
<td>Medicine Keytruda for treatment of cancer</td>
<td>Certain medicines used in treatment of Spinal/ Duchenne Muscular Atrophy</td>
</tr>
<tr>
<td>Brought down to 5%</td>
<td>Biodiesel supplied to OMCs for blending with Diesel</td>
<td>Goods supplied at Indo-Bangladesh Border <em>haats</em> (IGST)</td>
</tr>
<tr>
<td>Retro fitment kits for vehicles used by the disabled</td>
<td></td>
<td>Unintended waste generated during the production of fish meal except for Fish Oil <em>(for the period July 1, 2017 to September 30, 2019)</em></td>
</tr>
</tbody>
</table>

## ELP Comments/Points to Consider

- Legal Meteorology aspects (if price is to be reduced on label)
- Anti-profiteering considerations
- Inverted duty aspects to be identified
- Impact on ITC to be tested
Carbonated Fruit Beverages of Fruit Drink & Carbonated Beverages with Fruit Juice

Clarified that applicable rate of tax shall be 28% GST + 12% Compensation Cess

Definition under FSSAI Act stipulates that beverages with fruit juice quantity below 10% but not less than 5%, and 2.5% in case of lime or lemon, should be called carbonated beverage with fruit juice.

Whether trade would look at transferring the burden of inflationary impact of the clarification?

Clarification implies field formation likely to test the rate aspect retrospectively.

Whether product level identification and alignment of legal & GST considerations imperative?

May present legal meteorology challenges amongst others.
# GST Rate Clarifications

<table>
<thead>
<tr>
<th>5%</th>
<th>12%</th>
<th>18%</th>
<th>Miscellaneous</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pure henna powder and paste, having no additives <em>(HS Chapter 14)</em></td>
<td>All laboratory reagents and other goods <em>(HS Code 3822)</em></td>
<td>Scented sweet supari and flavored and coated elai (HS Code 2106)</td>
<td>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 July 1, 2017 to December 31, 2018 <em>(aligned to position w.e.f. January 1, 2019)</em></td>
</tr>
<tr>
<td>Brewers' Spent Grain <em>(BSG)</em>, Dried Distillers' Grains with Soluble [DDGS] and other such Residues <em>(HS Code 2303)</em></td>
<td>pharmaceutical goods <em>(HS Code 3006)</em></td>
<td>12% GST paid on Fibre Drums regularized, henceforth rate shall be 18%</td>
<td></td>
</tr>
<tr>
<td>Tamarind seeds other than for sowing <em>(w.e.f. October 1, 2021)</em></td>
<td></td>
<td>Distinction between fresh and dried fruits and nuts to be clarified <em>(attracts different rates)</em></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>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.</td>
<td></td>
</tr>
</tbody>
</table>
## Other Decisions & Clarifications

### Mentha
- Supplies from unregistered person taxable under reverse charge
- Exports only under LUT + refund of determined ITC amount (against export performance)

**Announcement** comes in the backdrop of numerous fake invoices cases relating to mentha; Is this is setting a new trend to tackle fake invoice cases?

### Bricks
- Special composition scheme with threshold limit of INR 20 lakhs, with effect from April 1, 2022
- Rate Option (i) 6% without ITC; and (ii) 12% with ITC

### External Batteries supplied along with UPS or inverter
- Clarified that battery expected to trigger tax liability at 28%, while UPS/ inverter at 18%

**Absent express rationale, unclear whether concepts of Composite or Mixed supply could still prevail in these rate scenarios**
- May also trigger debate of component vs accessory
RATE ACTION & RELATED ASPECTS - SERVICES
Increase In Effective GST Rate from 12% to 18%

- Licensing services/ the right to broadcast and show original films, sound recordings, Radio and Television programmes
- Printing and reproduction services of recorded media where content is supplied by the publisher

ELP Comments/Points to Consider

 Likely to put several investigations for past period to an end

 Though not express, the announcement seems to imply that 12% was indeed the correct rate for past period

Rate Parity Action – effective from 1 October 2021 or date as may be prescribed
## Services Exempted from GST from October 1, 2021

<table>
<thead>
<tr>
<th>Category</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Validity of GST exemption on transport of goods by vessel and air from</td>
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</tr>
<tr>
<td>India to outside India is extended up to September 30, 2022</td>
<td>outside India is extended up to September 30, 2022</td>
</tr>
<tr>
<td>Services by way of grant of National Permit to goods carriages on</td>
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</tr>
<tr>
<td>payment of fee</td>
<td>payment of fee</td>
</tr>
<tr>
<td>Skill Training for which Government bears 75% or more of the expenditure</td>
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</tr>
<tr>
<td>(presently exemption applies only if Govt funds 100%)</td>
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</tr>
<tr>
<td>Services related to AFC Women's Asia Cup 2022</td>
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</tr>
<tr>
<td>Exemption on leasing of rolling stock by IRFC to Indian Railways</td>
<td>Exemption on leasing of rolling stock by IRFC to Indian Railways</td>
</tr>
<tr>
<td>withdrawn</td>
<td>withdrawn</td>
</tr>
<tr>
<td>Relaxations conditions for IGST exemption on import of goods on lease,</td>
<td>Relaxations conditions for IGST exemption on import of goods on lease,</td>
</tr>
<tr>
<td>where GST is paid on the lease amount</td>
<td>where GST is paid on the lease amount</td>
</tr>
</tbody>
</table>
Tax On E-Comm Operators

Services provided through e-comm operators

Operator made liable to pay tax on behalf of supplier

- Transport of passengers, by any type of motor vehicles through it
- Restaurant services provided through it with some exceptions

Expansion of scope of said provisions

First time coverage

No change in financial position for most restaurants

Position emerging for restaurants in large hotels to be examined once the final legal position is unveiled (especially from an ITC standpoint)

Restaurants expected to maintain separated books for supplies made through e-comm and otherwise
Key Rate Clarifications

**SERVICE KITCHENS**
Services by cloud kitchens/central kitchens are covered under ‘restaurant service’, and attract 5% GST without ITC.

**MINING RIGHTS**
The rate on mineral exploration and mining rights have been clarified to be 18% w.e.f. July 1, 2017.

**ICE CREAMS**
Ice cream parlor sells already manufactured ice-cream. Such supply of ice cream would attract GST at the rate of 18% (deals with issues decided by advance ruling appellate authority - Uttarakhand).

**ALCOHOL**
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 product (position vis-à-vis qualification as food or food product aligned to judicial precedents).

*This is likely to result in litigation since pre-2018 amendment, industry is divided on the view of the applicable rate being 5% or 18%*
MISCELLANEOUS
Deferred/ No Comments

- Proposal of 1% COVID cess on pharma supplies (in Sikkim), not accepted
- No clarification on ITC eligibility on CSR expenses, mandatory or otherwise
- Rate increase on certain packed edible oil – deliberations deferred; request made to re-assess socio-economic impact of such proposal
- No decision on capacity-based taxation in certain industries
Other Notable Aspects

- Clarifications soon on “intermediary services” and “mere establishment of distinct person” for export purposes
- Date of issuance of debit note to determine the relevant financial year for computing time period limitation under Section 16(4) – clarification effective from January 2021
- AADHAR authentication mandatory for refund claims
- Late fee for delayed filing of FORM GSTR-1 to be auto-populated and collected in next open return in FORM GSTR-3B
- Rule 36(4) compliance to be linked to communication in Form GSTR-2B
- Potential dispute on past period with the clarification being prospective
Thank you

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