



45TH GST COUNCIL MEETING

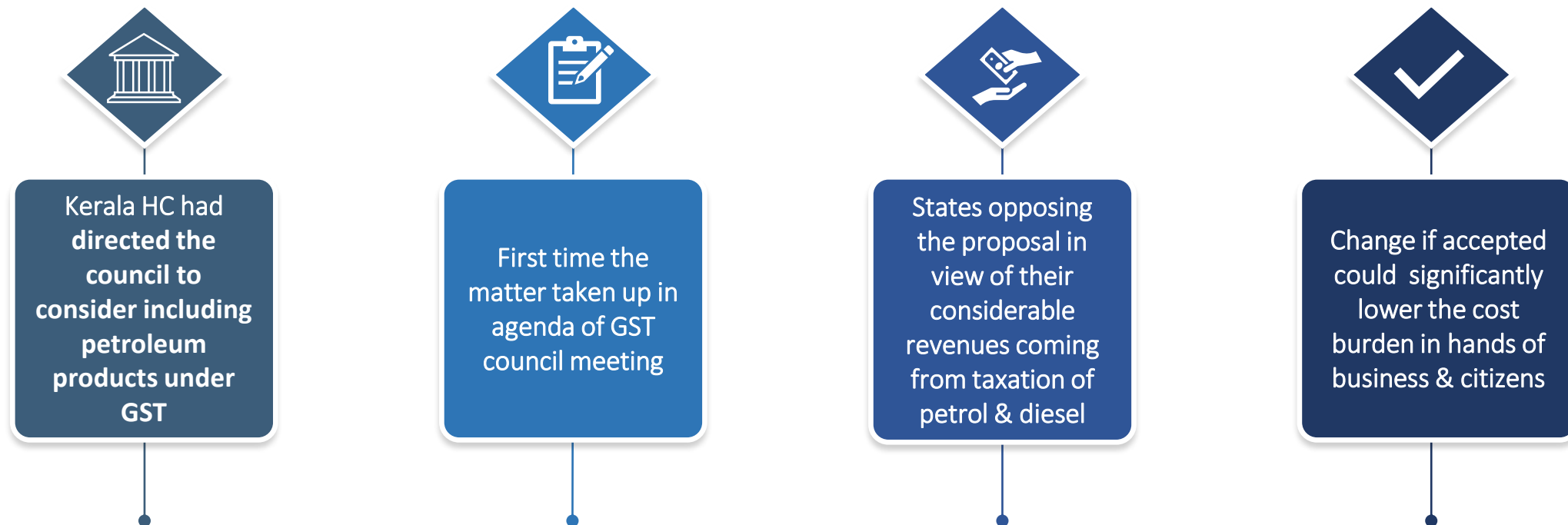
KEY HIGHLIGHTS

Build-Up To The Meeting



KEY DECISIONS & ANNOUNCEMENTS

Petrol & Diesel Under GST : Not Yet



Considerations:

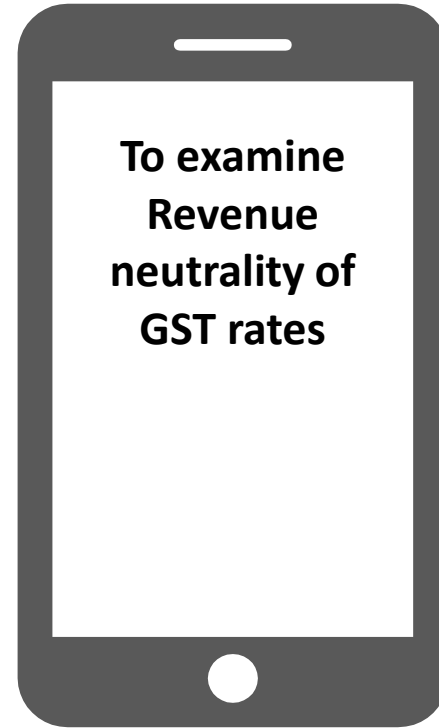
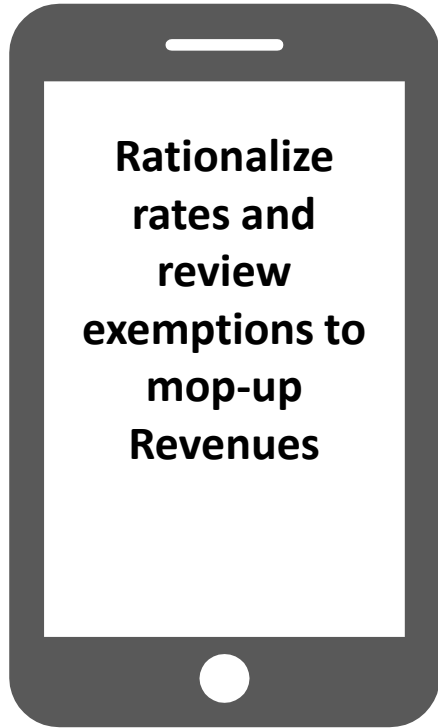
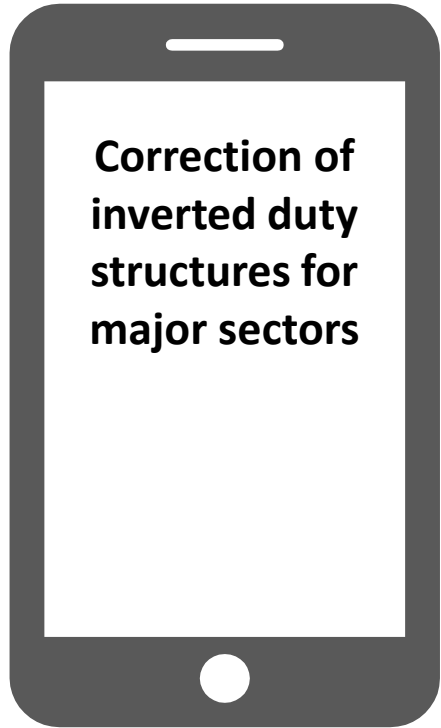
- The proposition will witness several iterations and rounds of discussion, including with various stakeholders, before petrol and diesel being full-fledged plugged into GST regime
- Central government not opposed to the idea
- The depressed financial health of many states may potentially keep the proposal 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





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 avilment of ineligible ITC only applicable of 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 diff 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

5% to 12%

- Specified Renewable Energy Devices and parts
(details awaited, should be clarified once notification issued/ made public)

5% to 18%

- Ores and concentrates of metals such as iron, copper, aluminum, zinc and few others
- Waste and scrap of polyurethanes and other plastics

12% to 18%

- 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

[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% <i>(Likely to be with immediate effect – notification to be seen)</i>
Itolizumab
Posaconazole
Infliximab
Favipiravir
Casirivimab & Imdevimab
2-Deoxy-D-Glucose
Etesevimab



- | ELP Comments/Points to Consider |
|---|
| <ul style="list-style-type: none"> Similar relief available on equipment until September 30, 2021 not further extended No clarity on applicability of anti-profiteering provisions to these cases |

Reduction in Effective GST Rate

18% to 5%

Fortified Rice
Kernels for
schemes like ICDS
etc.

**Brought down to
5%**

Retro fitment kits
for vehicles used by
the disabled

12% to 5%

Medicine Keytruda
for treatment of
cancer

Biodiesel supplied
to OMCs for
blending with
Diesel

Brought down to NIL/ Exempted

Certain medicines used in treatment
of Spinal/ Duchenne Muscular
Atrophy

Goods supplied at Indo-Bangladesh
Border *haats* (IGST)

Unintended waste generated during
the production of fish
meal except for Fish Oil
*(for the period July 1, 2017 to September 30,
2019)*



**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

5%	12%	18%	Miscellaneous
Pure henna powder and paste, having no additives (HS Chapter 14)	All laboratory reagents and other goods (HS Code 3822)	Scented sweet supari and flavored and coated elaichi (HS Code 2106)	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 (aligned to position w.e.f. January 1, 2019)
Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such Residues (HS Code 2303)	pharmaceutical goods (HS Code 3006)		12% GST paid on Fibre Drums regularized, henceforth rate shall be 18%
Tamarind seeds other than for sowing (w.e.f. October 1, 2021)			Distinction between fresh and dried fruits and nuts to be clarified (attracts different rates)
			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.

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

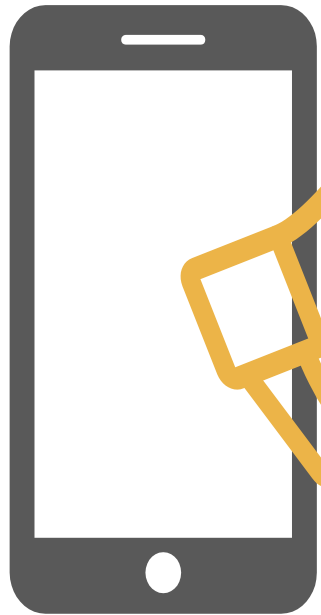
- Clarified that battery expected to trigger tax liability at 28%, while UPS/ inverter at 18%



- 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



Services Exempted from GST from October 1, 2021

Validity of GST exemption on transport of goods by vessel and air from India to outside India is extended up to September 30, 2022

Services by way of grant of National Permit to goods carriages on payment of fee

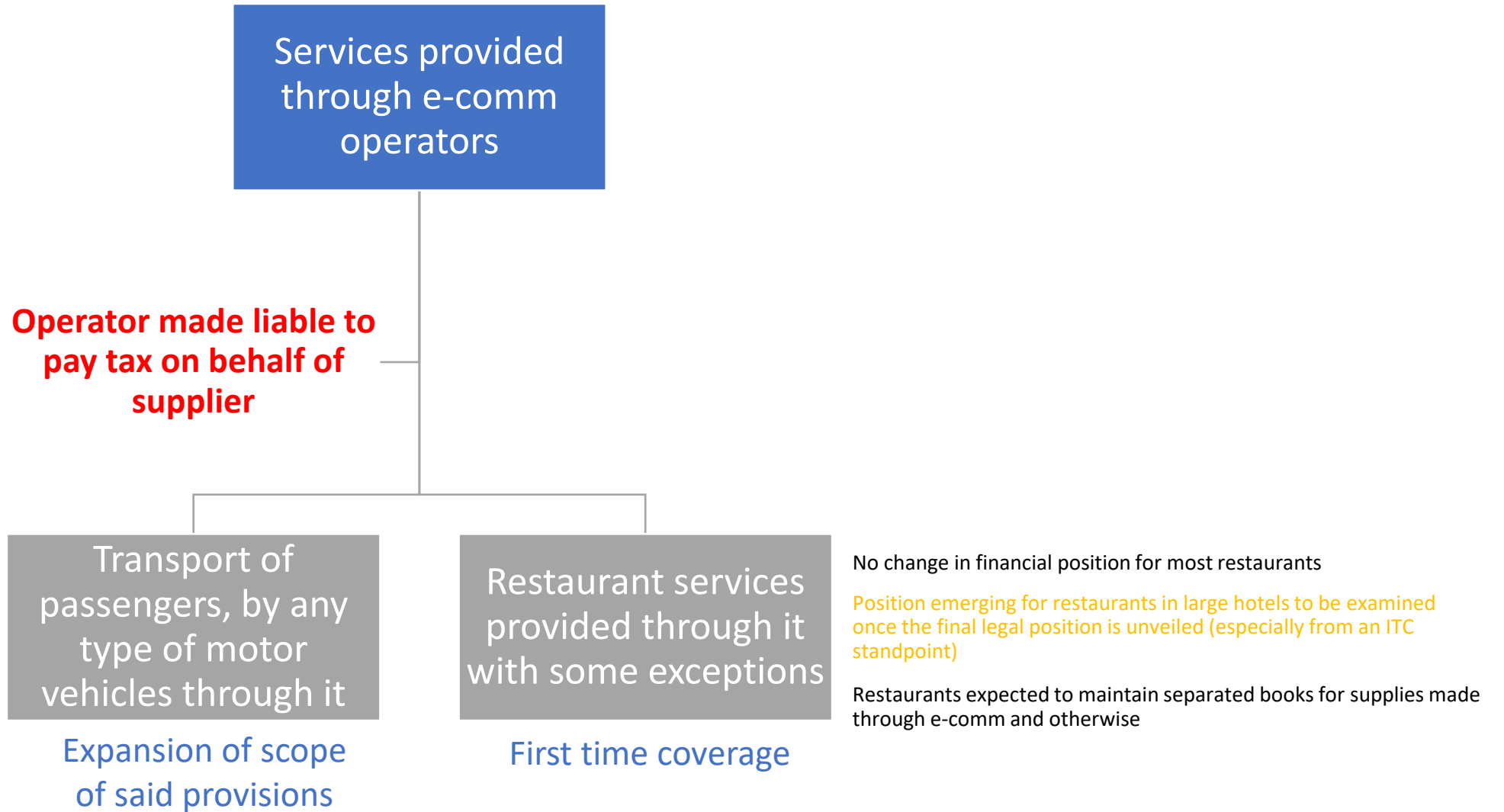
Skill Training for which Government bears 75% or more of the expenditure (presently exemption applies only if Govt funds 100%)

Services related to AFC Women's Asia Cup 2022

Exemption on leasing of rolling stock by IRFC to Indian Railways withdrawn

Relaxations conditions for IGST exemption on import of goods on lease, where GST is paid on the lease amount

Tax On E-Comm Operators



SERVICE KITCHENS

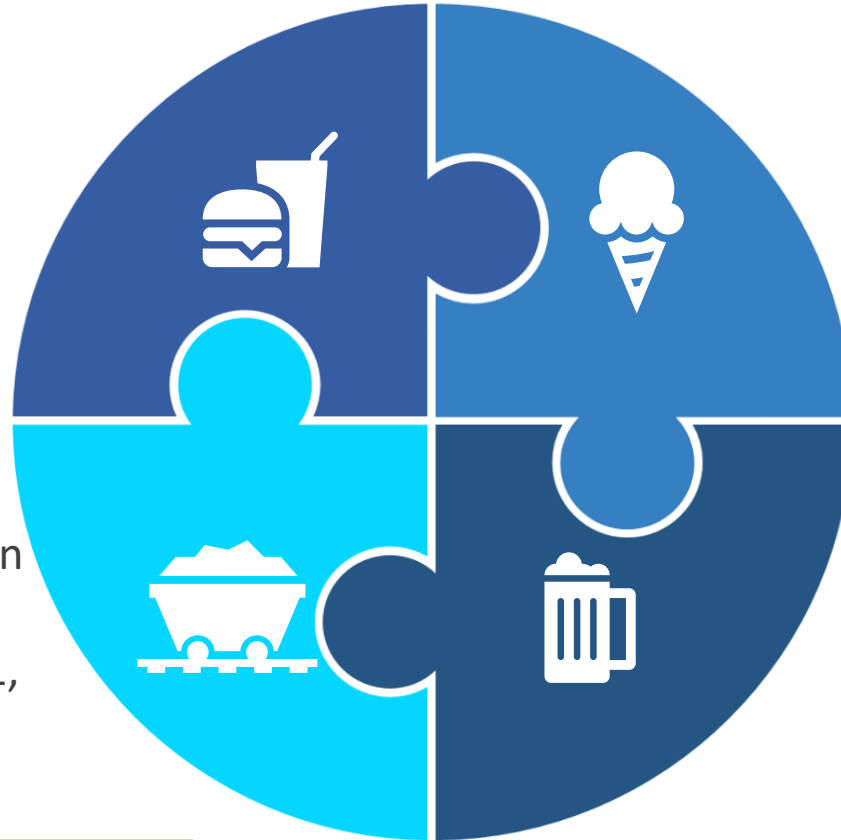
Services by cloud kitchens/central kitchens are covered under 'restaurant service', and attract 5% GST without ITC

MINING RIGHTS

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



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%



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)



MISCELLANEOUS

Deferred/ No Comments



Proposal of 1% COVID cess on pharma supplies (in Sikkim), not accepted



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



No clarification on ITC eligibility on CSR expenses, mandatory or otherwise

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



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