



Key Proposals in the 54th GST Council Meeting

The much anticipated 54th Goods and Services Tax Council meeting was held on 09.09.2024. The meeting addressed key changes in GST tax rates, exemptions, compliance measures, and new initiatives for trade facilitation. The summary of significant decisions and recommendations made during the meeting are provided below:

Changes/Clarifications in Rates of Goods

- The changes in GST rates of goods recommended during the meeting are tabulated below:

Description	HSN	Current Rate	Recommended Rate	Rationale
Extruded or expanded products, savoury or salted (other than un-fried or uncooked snack pellets, by whatever name called, manufactured through process of extrusion)	1905 90 30	18%	12%	This reduction is recommended to bring rate parity between these items and <i>namkeens, bhujia, mixture, chabena</i> (pre-packaged and labelled) and similar edible preparations in ready for consumption form classifiable under HS 2106 90. It is further clarified that the reduced rate would be made applicable prospectively.
Cancer drugs namely, Trastuzumab Deruxtecan, Osimertinib and Durvalumab	3004 90	12%	5%	The rate is sought to be cut down to make the said cancer drugs more accessible and affordable.
Car Seats for Motor Cars	9401	18%	28%	The increase in GST rate has been recommended to align the rate of car seat with motorcycle seats.

- Metal Scrap:** The Council has recommended to make the supply of metal scrap by unregistered persons to registered persons taxable under reverse charge mechanism (RCM). The unregistered suppliers are required to obtain GST registrations once their turnover exceeds the prescribed threshold limit. It is recommended to be clarified that the registered recipient who is liable to pay GST under RCM shall pay tax even if turnover of supplier is within threshold.
- Roof Mounted Package Unit (RMPU) Air Conditioning Machines:** The Council has recommended to clarify that RMPU air conditioning machines for railways would be classified under Chapter Heading 8415 attracting GST rate of 28%.

Changes/Clarifications in Rates of Services

- **Life and Health Insurance:** The Council recommended the formation of a Group of Ministers (GoM) to conduct a comprehensive review of the issues pertaining to GST on life and health insurance services. This GoM shall submit its findings by end of October 2024.



ELP Comments

The GoM is expected to address the issue of high cost of life and health insurance premium inter alia by way of reduction in GST rate.

- **Transport of Passengers by Helicopters:** It is recommended to notify GST rate of 5% for the service of transport of passengers by helicopter on a seat-sharing basis. It is recommended that GST demand on such services for past period shall be regularized on 'as is where is' basis. It is clarified that service by way of charter of helicopter (other than seat sharing) would continue to be taxed at 18%.
- **Flying Training Courses:** It is recommended to clarify that the specified flying training courses conducted by Flying Training Organizations approved by DGCA are exempt from the levy of GST.
- **Research and Development (R&D) Services:** It is recommended to exempt the supply of R&D services by government entities, research associations, universities, and other institutions notified under clauses (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961, whether using government or private grants. It is recommended that GST demand on such services for past period shall be regularized on 'as is where is' basis.
- **Preferential Location Charges (PLC):** It is recommended to clarify that PLC charges paid along with consideration for construction services before issuance of completion certificate shall form part of a composite supply where construction services constitute principal supply. Thus, PLC charges shall be subject to same GST rate as applicable to the principal supply in the nature of construction service.
- **Import of Services by Branch Offices of Foreign Airlines:** It is recommended to exempt import of services by Indian establishment of foreign airline from a related person or any of its establishment outside India without consideration. It is recommended that GST demand on such services for past period shall be regularized on 'as is where is' basis.



ELP Comments

The GST Authorities have proposed demand of GST on branch office of multiple foreign airlines towards import of services from foreign related entities. The clarification on regularization of the past period on 'as is where is' basis is likely to settle the ongoing litigation. While the clarification appears to be applicable to airlines only, it may be noted that identical issue is being faced by other sectors. It may be worthwhile to await the final print of the circular to determine the scope of the recommended exemption/relaxation.

- **Renting of commercial property:** Renting of commercial property by unregistered person to a registered person is recommended to be made taxable under RCM to prevent revenue leakage.
- **Ancillary/intermediate services provided by Goods Transport Agency (GTA):** It is recommended to clarify that ancillary or intermediary services such as loading, unloading, packing, unpacking, transshipment, or temporary warehousing provided during the transportation of goods by a GTA, who issues a consignment note, would be treated as part of the composite supply of transportation services.
- **Affiliation Services:** It is recommended to clarify that affiliation services provided by educational boards, like CBSE, are taxable. However, affiliation services provided by State/Central educational boards, educational councils and other similarly placed bodies to Government Schools would be exempt prospectively. The issue for the past period, from 01.07.2017 to 17.06.2021, would be regularized on 'as is where is' basis. Further, the Council recommended

to clarify by way of circular that the affiliation services provided by universities to their constituent colleges are not covered within the ambit of exemptions provided to educational institutions in the notification No. 12/2017-CT(R) dated 28.06.2017 and GST at the rate of 18% is applicable on the affiliation services provided by the universities.

- **Film Distribution:** It is recommended to regularise the GST liability for the past period prior to 01.10.2021 on 'as is where is' basis, where the film distributor or sub-distributor acts on a principal basis to acquire and distribute films.



ELP Comments

The services of entry of 'temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of goods other than IT software' were liable to GST rate of 12% up to 30.09.2021. The GST Authorities have disputed classification of temporary or permanent transfer of cinematographic films under the said service entry up to period 30.09.2021 inter alia on the ground that cinematographic films do not classify as goods. The recommended clarification would put a rest to the said controversy.

- **Transmission and Distribution of Electricity:** It is recommended to exempt the provision of services that are incidental, ancillary, or integral to the transmission and distribution of electricity by transmission and distribution utilities to their customers, when provided as a composite supply. It is recommended that GST demand on such services for past period shall be regularized on 'as is where is' basis.



ELP Comments

The CBIC vide Circular No. 34/8/2018-GST dated 01.03.2018 had clarified that the services ancillary to transmission or distribution of electricity would be taxable to GST. The said circular was struck down by the Hon'ble Gujarat High Court in the case of Torrent Power Limited vs. Union of India [[2019] 61 G S.T.R. 454 (Guj)]. This recommended clarification would be in line with the aforesaid decision of the Hon'ble Gujarat High Court.

Measures for facilitation of trade

- **Waiver of interest or penalty:**
 - The GST Council recommended providing the procedure and conditions in terms of the powers bestowed under Rule 164 of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') for availment of benefit of waiver of interest or penalty or both in terms of section 128A of CGST Act.
 - Section 128A provides for a conditional waiver of interest and penalties related to demands raised under Section 73 of the CGST Act for FY 2017-18, 2018-19, and 2019-20 on payment of demand of GST dues before a specified date. The Council recommended to notify 31.03.2025, as the date to make payment to avail the benefit under Section 128A.
- **Implementing amendments to Section 16 of the Central Goods and Services Tax Act, 2017 ('CGST Act'):**
 - The Council recommended that the insertions of sub-section (5) and (6) in Section 16 vide the Finance Act, 2024 may be notified at the earliest.
 - Sub-section (5) of Section 16 was inserted retrospectively from 01.07.2017 vide the Finance Act, 2024 to allow a registered person to claim Input tax credit with respect to invoices issued during FY 2017-18, 2018-19, 2019-20 and 2020-21 in any return under Section 39 which is filed up to 30.09.2021.
 - In terms of sub-section (6) of Section 16 inserted retrospectively from 01.07.2017 vide the Finance Act, 2024, on revocation of cancellation of registration, a registered person shall be allowed to claim Input tax credit in respect of specified invoices or debit note up to a specified time limit prescribed therein.
 - The Council also recommended that a special procedure for rectification of orders may be notified under Section 148 of the CGST Act, in cases where any order under section 73 or section 74 or section 107 or section 108 of the CGST Act has been issued confirming demand for wrong availment of input tax credit on account of

contravention of Section 16(4) of the CGST Act, but where such input tax credit is now available as per the provisions of sub-section (5) or subsection (6) of section 16, and where appeal against the said order has not been filed.

- The Council also recommended issuance of a circular to clarify the procedure and various issues related to implementation of the newly inserted provisions.

▪ **Refund on account of exports under Rule 89 and Rule 96**

- It is recommended to clarify that payment of IGST and GST Compensation Cess, along with interest, on imports subsequent to availment of benefits under Notification No. 78/2017-Customs dated 13.10.2017 or Notification No. 79/2017-Customs dated 13.10.2017 and reassessment of Bills of Entry shall not be treated as contravention of Rule 96(10) of the CGST Rules.
- Furthermore, in light of the difficulties faced by exporters as a result of refund restrictions imposed by Rules 96(10), 89(4A), and 89(4B) of the CGST Rules, in cases where the benefit of the specified concessional or exemption notifications is availed on the inputs, the Council recommended that Rule 96(10), 89(4A), and 89(4B) be prospectively omitted from the CGST Rules to simplify and expedite the refund procedure.
- The CBIC has issued Circular No. 233/27/2024-GST dated 10.09.2024 in line with the recommendation of the Council.



ELP Comments

Rule 96(10) and Rule 89(4B) placed restrictions on refund on account of exports in cases where the inputs are procured on availment of benefit under specified notifications such as Notification No. 78/2017-Customs dated 13.10.2017 (exemption of IGST on procurement of goods by EOU) or Notification No. 79/2017-Customs dated 13.10.2017 (exemption of IGST on imports under Advance Authorisation or Export Promotion Capital Goods Schemes).

Rule 96(10) has been subject to challenge before various high courts in the country on the ground that the restrictions in the said provisions are ultra vires to the parent statute and the Constitution of India for placing unwarranted restrictions on refund of tax paid by exporters.

The removal of these restrictions would provide significant respite to exporters who encounter challenges in obtaining refunds on account of restrictions specified in Rule 89(4A), 89(4B) and 96(10).

▪ **Removal of ambiguity and legal disputes in certain issues:**

The Council recommended issuing circulars to provide clarity and remove doubts and ambiguities arising in the following issues:

- Place of Supply of advertising services provided by Indian advertising companies to foreign entities.
 - In accordance with the Council's recommendation, the CBIC issued Circular No. 230/24/2024-GST dated 10.09.2024, clarifying that the place of supply for advertising services provided by Indian advertising companies to foreign entities will be the location of the foreign entity as per the default provision under Section 13(2) of the Integrated Goods and Services Tax Act, 2017 ('IGST Act'). Hence, these services would qualify as exports on fulfilment of specified conditions.
- Availability of Input Tax Credit on demo vehicles by the dealers of the vehicle manufacturers.
 - In this regard, the CBIC issued Circular No. 231/25/2024-GST dated 10.09.2024 to clarify that demo vehicles used by dealers for trial runs and demonstrations would be considered as being used for making "further supply of such motor vehicles" by the dealers. Therefore, Input tax credit on demo vehicles would not be blocked under Section 17(5)(a) of the CGST Act and shall be available even if such vehicles are capitalized in the books of account.
- Place of Supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India.

- Circular No. 232/26/2024-GST dated 10.09.2024 clarifies that in terms of the default provision under Section 13(2) of the IGST Act, the place of supply for data hosting services provided by Indian service providers to overseas cloud computing service providers shall be the location of the recipient of the services outside India.

Other Measures

- **B2C E-Invoicing:** The Council recommended the rollout of a pilot program for B2C e-invoicing in sectors and states to be selected. This initiative follows the successful implementation of B2B e-invoicing and aims to improve business efficiency, cost reduction, and transparency for consumers. It will allow customers to verify invoices reported in GST returns.
- **New Ledgers for Tax Management:** The Council took note of the introduction of RCM ledger, Input Tax Credit Reclaim ledgers and Invoice Management System (IMS). Taxpayers would be given opportunity to declare opening balances for these ledgers by 31.10.2024.

We hope you have found this information useful. For any queries/clarifications please write to us at insights@elp-in.com or write to our authors:

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