

Key updates from the 48th GST Council Meeting:

In its agenda to 48th GST Council meeting, key items of discussions included setting of GST appellate tribunal, determination of tax treatment for online gaming, casinos and horse races and taxation scheme for *gutkha* and tobacco industry, which however couldn't see light of the day and were put on hold until next meeting of the council, again.

We present our analysis of the decisions undertaken by the GST Council in its 48th Meeting

Relief to tenants and unregistered taxpayers:

- **RCM on renting to a registered person in its personal capacity:**

GST Council has recommended that ***no GST is payable on renting of residential dwelling*** even to a registered person (likes of GST registered-proprietor or partners of a firm) if such dwelling is rented in his/ her personal capacity for use as residence and on his own account and not on account of its business. This clarificatory recommendation should reduce the undue burden on genuine personal consumers and therefore ensure legislative intent of providing exemption to use of residential dwellings.

- **Refunds to Unregistered recipients wherein credit note cannot be issued by the supplier:**

Currently there is no mechanism for unregistered tax payers to apply for refund of GST in case the *supply* does not take place but are to anyway bear the burden of taxes. Cases included here are lapse of time for issue of credit note in cases where agreed *supply* does not happen for e.g. construction of apartments/ flat/ house and long-term insurance policy. GST council has recommended to notify a procedure to enable application of refund in such cases.

- **GST Registration for vendors supplying on E-commerce portals:**

Currently, an unregistered tax payers intending to supply through e-commerce operator has to obtain a compulsory registration. This has been causing undue burden on micro enterprises. To reverse this, GST council has already recommended for allowing unregistered/ composite tax payers to sale through ECOs. Although required amendments to law and rules are approved, considering time required for making changes to portal

Reducing burden on courts:

Number of recommendations are made by GST council with visible intent of reducing the burden on courts:

- Sec 138 of the CGST Act 2017 provides for compounding of offences with compounding range starting from minimum payment of 50% of tax involved to maximum payment of 150%. To make compounding more accessible, this range is reduced to minimum of 25% to maximum of 100%.
- GST council has recommended to raise the minimum threshold of tax involved for launching prosecution from INR 1 crore. To INR 2 crores. However, this raise is not applicable in case of issuance of fake invoices without actual supply of goods or services or both.
- **Decriminalization of certain offences:**
 - Currently, Sec 132 of the CGST Act, 2017 provides for punishable offences with imprisonment of minimum up to 6 months and/ or along with fine.
 - These offences include obstructing the functioning of officers, tampering with evidences and failure to furnish information.
 - GST Council has recommended for decriminalization of such offences.

Relief to registered tax payers:

- **Relief for tax on High Seas, Third Country Exports and Bonded goods :**
High sea sales, Third Country Exports & supply of warehoused goods before home clearance were added to Schedule III of CGST Act, 2017 w.e.f. 01-Feb-2019. However, going with strict interpretation and not the legislative intent, field authorities were considering value of such transactions in demanding GST from tax payers. GST council therefore now recommends to make above applicable change retrospectively from Jul 1, 2017 to stop any undue burden on the tax payers. This relief would reverse judgment of Gujarat Appellate Authority of Advance Ruling in case of Sterlite Technologies Ltd which confirmed the levy of tax on such transaction.
- **Proportionate reversal for partial payments:**
In case of only partial payment to supplier and therefore not complying with condition in Sec 16(2), GST council now recommends in such cases that suitable changes are made to ensure reversal of ITC proportionate to amount not paid and not complete ITC. For e.g. in case of retention of contract value, ITC reversal can be maximum to the extent of such retained amount.

- **Appeal Filing and Withdrawal Documentation:**

Currently applicant filing an appeal is required to submit physically copies of appeal documents including a certified copy of the order within 7 days of making the application. Without this submission, the appeal application would be deemed to have not been made. GST council has recommended to clarify the requirement of submission of such certified copies. This seems to be an important change in appeal filing considering the question of requirement of certified orders where such order are already uploaded in the system.

Recommendation for insertion of Rule 109C and Form GST APL-01/03 to be inserted in the rules to provide the facility of withdrawal of appeals up to a certain specified stage is also a welcome step. It would also be helpful for ease of closure of litigation and also in cases of any tax amnesty provisions.

- **Credit where the tax is paid subsequently by the vendor:**

Mechanism for reversal of input tax credit by a registered person in the event of non-payment of tax by the supplier by a specified date and mechanism for re-availment of such credit if such tax is paid subsequently is recommended by insertion of Rule 37A. It is an important change considering the field authorities are currently demanding reversal of credit for such vendors citing Section 16(2)(c).

- **Procedure of verification of credit mismatch for the period 2017-18 and 2018-19:**

GST council has recommended for issuance of circular to clarify procedure for verification of differences arising between ITC as per GSTR3B and GSTR2A for FY 2017-18 and 2018-19. One may expect a relief similar to the circular issued by Maharashtra GST authorities for allowance of credit on self-certified/ professional certification of ledgers as proof of payment of tax from vendors in case of such differences.

- **ITC on Outbound Ocean Freight:**

Since the sunset clause of exemption on outward ocean freight from 01st October 2022, the taxpayers have been paying IGST on such services on the basis of proviso to sub-section (8) of Section 12. Though not expressly, but dispute has been arose of ITC on such ocean freight to the recipient where the place of supply is "Other territory" instead of the recipient's location. Such anomaly has been sought to be resolved through recommendation of omission of such proviso.



Streamlining Procedures:

- A procedure for clarifying the manner of re-determination of demand in terms of sub-section (2) of Section 75 [where the notice issued under Section 74(1) is not sustainable on the grounds for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax has not been established] will be issued.
- Clarification on applicability of e-invoicing with respect to an entity.
- Form GSTR1 to be suitably amended to allow tax payers to report b2b sales made through ECOs as well as allow such ECOs to report such transactions
- Section 37, 39, 44 and 52 of CGST Act, 2017 to be amended to restrict filing of returns/ statements to a maximum period of three years from the due date of filing of the relevant return / statement

Increase modes for Specific communication between department and taxpayer:

- Rule 88C and Form DRC01-B to be inserted in CGST Rules, 2017 to allow department to communicate differences between GSTR1 and 3B (exceeding a certain decided limit) with facility for tax payer to pay or to clarify. Hereafter Rule 59 is recommended to be updated to restrict filing of GSTR1 by such tax payer if it pays to pay or to clarify.

Note: This alert is prepared on the basis of press release issued by the GST council. The exact implication of the same under the Goods and Services Tax Act, 2017 will be understood only post issuance of the notifications/circulars. Above analysis is presented for easy understanding of the reader. Before business specific application is made on account of above changes, it is advisable to go for legal consultation to ensure all aspects are covered. We are not by means of this material, rendering any professional advice or services or soliciting work.
