

55th GST Council Meeting Recommendations



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Key Highlights of 55th GST Council Meeting

- ✓The GST Council has recommended a retrospective amendment to Section 17(5)(d) of the CGST Act to replace the term “plant or machinery” with “plant and machinery” w.e.f. 01.01.2017.
- ✓The Council recommendation has further stated that the intent of the amendment is that the phrase “plant and machinery” under Section 17(5)(d) may also be interpreted as per the Explanation at the end of Section 17 of the CGST Act.
- ✓In consonance with the arguments made by the Revenue before the Hon’ble Supreme Court, the proposed amendment indicates that the GST Council is also of the view that mentioning of the words “plant or machinery” instead of “plant and machinery” in Section 17(5)(d) was a drafting error. Accordingly, a retrospective amendment has been proposed to rectify the same.

Tattvam Comments:

- The above recommendation has been made in order to overcome the recent decision of the Hon'ble Supreme Court given in the case of ***Safari Retreats Pvt. Ltd. v Chief Commissioner of Central Goods and Services Tax***, wherein while examining Section 17(5)(d) of the CGST Act the, Hon'ble Supreme Court held that the phrase "plant or machinery" is different from "plant and machinery".
- It was held that the definition of "plant and machinery" under Section 17 of the CGST Act will not be applicable to the expression "plant or machinery" used in Section 17(5)(d).
- It was held that the functionality test will have to be applied to determine whether a building qualifies as a 'plant' under Section 17(5)(d) of the CGST Act. Further, it was held that the functionality test has to be applied on case-to-case basis for examining the eligibility of ITC.

Tattvam Comments:

Specific Findings in the judgment regarding the expression 'plant or machinery'

- It was noted that the phrase “plant or machinery” has been used only once in Chapter V of the CGST Act at Section 17(5)(d).
- The Court observed that the Model GST Law in Section 17(5)(c) and 17(5)(d) had used the term “plant and machinery”, the legislature had specifically used the term “plant or machinery” in Section 17(5)(d).
- The Supreme Court had also observed that the decision of the Hon’ble Odisha High Court in ***Safari Retreats Private Limited v Chief Commissioner of Central Goods and Services Tax*** which had also analysed the phrase “plant or machinery” was pronounced 6 years back.

- Thus, the Supreme Court held that if it was the legislative intent to use the phrase “plant and machinery”, corrective measures would have been taken to cure the error.
- The Safari Retreat judgment came as a welcome relief especially for the real estate sector as well as other sectors, after a prolonged litigation, since the ITC on the goods and services used for construction of buildings could have been availed on the basis of the said judgment, subject to the fulfilment of the functionality treat.
- By making the said amendment retrospectively w.e.f. 01.07.2017 in the CGST Act, the judgment of the Supreme Court would be reversed and the definition of ‘plant and machinery’ as provided under the explanation to Section 17 will also be applicable to Section 17(5)(d).

Tattvam Comments:

- In view of the said amendment, the ITC of goods and services used in the construction of buildings will not be available.
- Various companies had availed the ITC for the past period on the basis of the Safari Retreat judgment. The said position will have to be revisited based on the proposed amendment.

Tattvam Comments:

Points to Ponder:

- Whether the Constitutionality of the retrospective amendment can be challenged before the Courts?
- Whether specific findings given on the meaning of the phrase 'on its own account' (In Para 32 of the Safari Retreat Judgment) can still be relied upon and ITC in respect of goods and services used for construction of buildings which are further leased/rented can be availed?

In order to make statutory framework for Invoice Management System (IMS), the GST Council has recommended:

- ✓ To amend Section 38 of CGST Act and Rule 60 of CGST Rules to provide a legal framework for generation of FORM GSTR-2B based on the action taken by the taxpayers on the Invoice Management System (IMS).
- ✓ To amend Section 34(2) of CGST Act to specifically provide for requirement of ITC reversal as is attributable to a credit note, by the recipient, to enable the reduction of output tax liability of the supplier.
- ✓ To insert a new Rule 67B in CGST Rules, to prescribe the manner in which the output tax liability of the supplier shall be adjusted against the credit note issued by him.
- ✓ To amend Section 39(1) of CGST Act and Rule 61 of CGST Rules to provide that FORM GSTR-3B of a tax period shall be allowed to be filed only after FORM GSTR-2B of the said tax period is made available on the portal.

Tattvam Comments:

- The module of IMS had been launched on GST portal w.e.f 01.10.2024 to provide a new communication process between the supplier and the recipient which will be operated through portal. As of now, it is optional to use IMS.
- The objective of IMS is to facilitate the taxpayers in matching of their records/invoices vis-à-vis issued by their suppliers for availing the correct ITC. It is also meant to reduce errors in claiming ITC and improve reconciliation and thereby, reduction in notices issued on account of ITC mismatch in the returns.
- At present, there is no statutory backing to support the IMS being run on GST portal. Now, the GST Council has recommended to provide for a legal framework to support the same by way of necessary changes in CGST Act as well as CGST Rules. Meaning thereby, after the enactment of relevant statutory provisions, it shall be compulsory for taxpayers to manage their ITC by using IMS only.

- ✓ Definition of 'declared tariff' is to be omitted and suitable changes would be brought in the definition of 'specified premises' (in the service rate and exemption notifications).
- ✓ The said change will be done in order to link it with the actual value of supply of any unit of accommodation and to further make the applicable rate of GST on restaurant services in such hotels, for a particular financial year, to be dependent upon the 'value of supply' of units' accommodation as made in the preceding financial year. i.e., 18% with ITC if the 'value of supply' exceeded Rs. 7,500 for any unit of accommodation in the preceding financial year, and 5% without ITC otherwise.
- ✓ Further, the Hotels having 'value of supply' less than Rs. 7,500 for all unit of accommodation in the preceding financial year, shall be given an option to pay tax on restaurant services in hotels at the rate of 18% with ITC, if the hotel so chooses, by giving a declaration to that effect on or before the beginning of the financial year or on obtaining registration.
- ✓ The above changes to be made effective from 01.04.2025 to avoid any transition difficulties.

Tattvam Comments:

- It is to be noted that in the initially, GST on accommodation services was linked with 'declared tariff'. Thereafter, a change was brought vide Notification No. 13/2018 CTR dated 26.07.2018, vide which the rate of GST on accommodation was delinked from 'declared tariff' and was linked with per unit charges of the accommodation provided by Hotels. However, the rate of GST on restaurant services provided on such hotels was still linked with 'declared tariff'.
- 'Declared tariff' was defined in the rate notification as 'charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit'.

Tattvam Comments:

- Therefore, declared tariff meant the published charges for each unit of the hotel without excluding the discount offered for the unit. After the proposed amendment, for determining the GST rate on restaurant services provided in the hotel, the actual value of supply of the units of the hotel in the preceding financial year will be relevant and not the published charges for the unit.
- If the 'value of supply' of any unit of accommodation in the preceding financial year exceeded Rs. 7,500/- , the applicable rate of GST will be 18% with ITC. In other cases, the applicable rate of GST will be 5% without ITC.
- Further, an option will be provided to restaurants in hotels to pay taxes @18% and take ITC of the inputs w.e.f. 01.04.2025.

Tattvam Comments:

- Earlier, the rate of tax on restaurant services provided by hotels was 5% and ITC was blocked on the same (where declared tariff was upto Rs. 7,500/-). These hotels received many inputs/input services which could have been used for both providing the restaurant services as well as the accommodation services.
- These hotels had to reverse ITC on common inputs/input services which were also attributable to restaurant services. Determination of the common inputs/input services as well as reversal of the ITC in relation to restaurant service under Rule 42/43 of the CGST Rules was a tedious and time-consuming activity.
- In case the hotels opt for payment of GST @18% with ITC, there will be no requirement of reversing any common ITC.

✓ Levy of GST on sponsorship services provided by the body corporates will be brought under Forward Charge Mechanism.

Tattvam Comments:

- It is to be noted that presently, GST on sponsorship services, provided by any person to any body corporate, has to be paid under reverse charge under Notification 13/2017-CT(Rate).
- The suppliers of such sponsorship services were liable to reverse ITC as per Rule 42/43 of CGST Rules as the said supplies were included in the value of exempt supplies in terms of Section 17(3) of the CGST Act.
- The amount of ITC so reversed was a cost for these suppliers.

Tattvam Comments:

- After the proposed amendment, the suppliers would be liable to pay GST under forward charge and there would be no requirement at their end to reverse the ITC under Rule 42/43 of the CGST Rules in respect of the sponsorship services provided by them.

- ✓ Omission of Sections 12(4) and 13(4) from CGST Act, 2017 and Rule 32(6) from CGST Rules, 2017 to resolve ambiguities in the treatment of vouchers.
- ✓ Circular to be issued to clarify that:
 - Transactions in vouchers shall be treated neither as a supply of goods nor as a supply of services;
 - Distribution of vouchers on principal-to-principal basis shall not be subject to GST. However, the commission/fee or any other amount charged by the **agent** for distribution of vouchers is taxable under GST.
 - Additional services such as advertisement, co-branding, marketing and promotion, customization and technology support, customer support etc. related to vouchers would be leviable to GST on the amount paid for these services.
 - Unredeemed vouchers (breakage) would not be considered as supply under GST and no GST is payable on income booked in the accounts in respect of breakage.

Tattvam Comments:

- The above recommendation is in line with judgments of various High Courts wherein it has been held that gift/cash back vouchers are in nature of instruments covered under definition of 'money'. Sale of such vouchers qualify neither as supply of goods nor as supply of services and, hence, GST is not leviable. Further, in the press conference also, Hon'ble Finance Minister has also mentioned that voucher is an 'actionable claim'
- The recommendation to omit Section 12(4) and Section 13(4) will remove ambiguities which existed in relation to determination of 'identifiable' supply of the underlying goods/services as on the date issuance of voucher.
- Now, only on redemption of voucher, tax will be paid on the underlying goods or services and in case of unredeemed voucher where supply was identifiable, no tax will be payable.

- ✓ Further a proviso has been proposed to be inserted to Section 112(8) of the CGST Act providing for payment of pre-deposit at 10% for filing appeals before Appellate Tribunal in cases involving only demand of penalty without involving the demand of tax.
- ✓ Further a proviso has been proposed to be inserted to Section 112(8) of the CGST Act providing for payment of pre-deposit at 10% for filing appeals before Appellate Tribunal in cases involving only demand of penalty without involving the demand of tax.

Tattvam Comments:

- The present proviso to Section 107(6) provided that no appeal shall be filed against an order under Section 129(3) unless an amount equal to 25% of the penalty has been paid by the appellant. The same is proposed to be reduced to 10%.

Tattvam Comments

- The proposed amendment is a welcome step which shall provide relief to taxpayers who wish to file appeals at the adjudicating stage as well as the Tribunal stage in cases where the issue at stake pertains only to demand of penalty

Change in GST Rate on Sale of Old and Used Vehicles

- ✓ It is recommended to increase the GST rate from 12% to 18% on the sale of all old and used vehicles, including electric vehicles (EVs), other than those specifically covered under 18% which includes the sale of old and used petrol vehicles with an engine capacity of 1200 cc or more and a length of 4000 mm or more, diesel vehicles with an engine capacity of 1500 cc or more and a length of 4000 mm or more, and SUVs.
- ✓ Further, it is pertinent to note that GST is only applicable to the margin earned by the supplier, which is the difference between the purchase price and the selling price (or the depreciated value if depreciation is claimed). It does not apply to the overall value of the vehicle. Additionally, GST is not applicable in transactions involving unregistered persons.

Change in GST Rate on Sale of Old and Used Vehicles

Tattvam Comments:

- Presently, the GST rate on used and old motor vehicles is 12% under Notification No. 8/2018 - Central Tax (Rate) dated January 25, 2018 apart from certain categories of used and old motor vehicles wherein the rate of GST has been prescribed as 18%. Under the said Notification, GST is payable on the margin of the supplier.
- In case, where depreciation is claimed by a registered person on goods, the marginal value should be the difference of consideration received for supply of such goods and depreciated value of such goods on the date of supply. However, no tax will be payable if the margin value on the said supply is negative.
- In any other case, the marginal value will be the difference between the purchase and selling price. Further, no tax will be payable if the margin value on the said supply is negative.

Change in GST Rate on Sale of Old and Used Vehicles

Tattvam Comments:

- The aforesaid notification will not apply where ITC/Cenvat Credit/VAT credit on above said motor vehicle has been availed by the registered person.
- Now, the GST Council has recommended imposing a uniform rate of 18% on the sale of above said used and old motor vehicles, including electric vehicles (EVs).

No GST on 'penal charges' levied and collected by banks and NBFCs



- ✓ GST is not applicable on the 'penal charges' imposed and collected by banks and NBFCs from borrowers for failing to comply with loan terms.

✓ Insertion of Clause (aa) in Paragraph 8 of Schedule III to provide that the supply of goods warehoused in a Special Economic Zone (SEZ) or a Free Trade Warehousing Zone (FTWZ) shall not be treated as supply of goods or supply of services when it is supplied:

- To any person before the clearance of such goods for exports; or
- To the Domestic Tariff Area (DTA)

✓ **This amendment will be made with retrospective effect from 01.07.2017.**

Tattvam Comments:

- ✓ This recommendation is a much-needed clarification to resolve the ambiguity stemming from contradictory rulings by the AAR on the treatment of transactions in Free Trade Warehousing Zones (FTWZ).
- ✓ The recommendation will bring SEZ/FTWZ warehousing transactions at par with transactions conducted in Customs Bonded Warehouses, to ensure uniform treatment under GST and consistency in policy.
- ✓ The change will apply retrospectively from 01.07.2017, potentially providing relief in cases where disputes or ambiguities regarding GST liabilities on such transactions has been raised.
- ✓ It is to be seen whether taxpayer, who has paid GST on such transactions in the past period, will be eligible for refunds due to the retrospective applicability.

Other Measures for Facilitation of Trade

- ✓ The GST Council has proposed to amend clause (c) of Section 2(69) of the CGST Act and insert an Explanation to provide for definitions of the terms 'Local Fund' and 'Municipal Fund' used in the said clause.

Tattvam Comments:

- The expression 'municipal or local fund' has been used in the definition of 'local authority'.
- In the absence of a definition of the terms 'Local Fund' and 'Municipal Fund' there was an ambiguity in respect of which funds would fall under these categories. Insertion of these specific definitions shall erase such doubts.

✓The GST Council has proposed to amend Section 2(61) and Section 20(1) of the CGST Act to explicitly include inter-state RCM transactions under the ISD mechanism by including reference to supplies subject to tax under section 5(3) and 5(4) of IGST Act, 2017 in the said provisions. Further Section 20(2) and Rule 39(1A) shall also be amended.

✓The said amendments shall apply w.e.f. 01.04.2025.

Tattvam Comments:

- In line with the recommendations of the 50th GST Council meeting, changes were made in the CGST Act vide Clause 11 and Clause 12 of the Finance Act, 2024 for making the ISD mechanism mandatory by substituting Section 2(61) of the CGST Act w.e.f. 01.04.2025.

Tattvam Comments:

- As per the new Section, the ISD mechanism has to be followed in respect of those invoices which have been issued for or on behalf of distinct persons. Further the invoices covered under intra state RCM Supplies are specifically included in the ISD mechanism. However, till date invoices of RCM inter-state supplies under Section 5(3) and Section 5(4) of the IGST Act is not covered under the ISD mechanism.
- Vide the recommendations of the 55th GST Council, amendments have been proposed in Section 20(1) and Section 20(2) of the CGST Act as well as Rule 39(1A) of the CGST Rules to provide that ITC in respect of inter-state RCM invoices is also required to be distributed mandatorily through the ISD mechanism.
- As the notified date for mandatory ISD draws nearer, the GST Council is streamlining the provisions of GST Law to make the ISD mechanism comprehensive.

- ✓ The GST Council has recommended for insertion of Rule 16A in the CGST Rules to provide for a separate provision for generation of temporary identification number for persons, who are not liable to be registered under CGST Act, 2017 but are required to make any payment as per rule 87(4) of CGST Rules, 2017. The Council has also recommended amendments to Rule 87(4) and Form REG-12 in this regard.

Tattvam Comments:

- At present, Rule 87(4) of the CGST Rules provides that any payment required to be made by an unregistered person shall be made through a temporary identification number generated through the common portal.
- In order to facilitate such persons, the Council has recommended the insertion of a specific provision for grant of the temporary identification number.

Tattvam Comments:

- This provision will specifically be applicable in E-Way Bill related matters wherein inter-state movement is involved but the person liable to pay the penalty is not registered in the state in which the goods are detained.

- ✓ **Reversal of ITC by Electronic Commerce Operators (ECOs):** Recommended to issue a circular to clarify that no proportional reversal of ITC under Section 17(1) or Section 17(2) of CGST Act is required to be made by the ECO in respect of supplies on which they are required to pay tax under section 9(5) of CGST Act.
- ✓ **ITC Eligibility for Ex-Works Contracts under GST:** In an Ex-Works contract, the supplier delivers goods to the recipient or a transporter at the supplier's place of business and ownership of the goods (property in goods) is transferred to the recipient at this point. Under Section 16(2)(b), for the recipient to claim ITC, the goods must be received by the recipient.
- ✓ The Council has recommended to issue a circular to clarify that in ex-works contract, goods are deemed to be "received" by the recipient once the supplier delivers them to the recipient or transporter at the supplier's place of business.
- ✓ The recipient may claim Input Tax Credit (ITC) on such goods, subject to the fulfillment of other conditions outlined in Sections 16 and 17 of the CGST Act.

Tattvam Comments:

- This is a welcome clarification to provide a big relief to taxpayers by eliminating doubts regarding ITC eligibility in Ex-Works contracts, ensuring that the actual time of physical delivery will not impact entitlement of ITC to the recipient.
- The clarification underscores that under GST law, physical receipt of the goods is not material, and ITC can be availed once the supply is completed (i.e. received) provided supply document clearly demonstrates it as ex work supply and proof of handover of goods lies with the recipient.
- For example, if goods are procured under an Ex-Works contract wherein ownership of goods is transferred to the recipient on 30th November 2024, but the said goods reach the factory or business premises of the recipient on 3rd December 2024, ITC can still be claimed by the recipient in GSTR-3B filed for the month of November 2024.

Tattvam Comments:

- Before this clarification, there was ambiguity about whether the physical receipt of goods at the recipient's premises was mandatory to claim ITC, especially if the goods were still in transit. To avoid disputes, most of the taxpayers were availing ITC after the physical receipt of goods at their premises.

- ✓ **Applicability of late fee for delay in furnishing of Form GSTR-9C:** Recommended to issue a circular to clarify that the late fee under Section 47(2) of the CGST Act is leviable for the delay in filing the complete annual return under Section 44 of the CGST Act, which includes both FORM GSTR-9 (Annual Return) and FORM GSTR-9C (Reconciliation Statement), where applicable.
- ✓ **Waiver of late fee on delayed furnishing of Form GSTR-9C for the period 2017-18 to 2022-23:** Recommended to issue a circular to clarify that late fee for delayed filing of Form GSTR-9C for the period 2017-18 to 2022-23 will be waived which is in excess of late fee payable till date of filing of GSTR-9 of the said FYs, subject to the condition that the said FORM GSTR-9C is filed on or before 31st March 2025.

Tattvam Comments:

- There was a dispute whether late fee, as applicable on delayed filing of GSTR-9, is also applicable on GSTR-9C. In this regard, many taxpayer had taken a stand that Form GSTR-9C is not a return under GST law and no mechanism is available on the GST portal to compute late fee on account of delayed filing of Form GSTR-9C. Therefore, no late fee is payable for delayed filing of only GSTR-9C.
- However, as per this recommendation, delayed filing of Form GSTR-9C will also be covered for the purpose of levying late fee under Section 47 of the CGST Act.
- 'No' waiver of late fee is on delayed filing of GSTR-9 for the period 2017-18 to 2022-23. Waiver of late fee is only in respect of delayed filing of GSTR-9C of the said period subject to the condition that GSTR-9C of the said period should be filed on or before 31.03.2025.

Insertion of new provision for Track and Trace Mechanism.

- ✓ Insertion of enabling provision in CGST Act, through Section 148A so as to empower the Government to enforce the Track and Trace Mechanism for specified evasion prone commodities.
- ✓ The system shall be based on a Unique Identification Marking which shall be affixed on the said goods or the packages thereof. This will provide a legal framework for developing such a system and will help in implementation of mechanism for tracing specified commodities throughout the supply chain.

Tattvam Comments:

- This mechanism will allow authorities to monitor and track the movement of goods throughout the supply chain. The 'evasion prone commodities' in respect of which the mechanism will be applicable will be specified. This may lead to increase in compliance costs at the end of the manufacturers/importers of these specified commodities.

- ✓ Clarification to be issued in respect of supply of 'Online Services' such as online money gaming, OIDAR services, and other digital services, when provided to unregistered recipients.
- ✓ The suppliers will have to mandatorily record the name of the State of the unregistered recipients on the tax invoice and such name of the State of recipient shall be deemed to be the location of the recipient in order to determine place of supply for online services under Section 12(2)(b) of the IGST Act, 2017 read with proviso to rule 46(f) of CGST Rules, 2017.

Tattvam Comments:

- The instant recommendation will require suppliers of online services (e.g. online money gaming, OIDAR services) to mandatorily record the name of the State of the recipient on the tax invoice.
- Section 12(2)(b) of the IGST Act provides that for unregistered recipients, place of supply of services, except the services specified in sub-sections (3) to (14) shall be:
 - (i) the location of the recipient where the address on record exists; and
 - (ii) the location of the supplier of services in other cases.
- By mandating the recording of the State of the recipient in the tax invoice, the 'place of supply' will have to be determined as per the location of the recipient in all cases.

CHANGE IN RATE OF TAX

Exemption and Concessional Rate of Tax on Certain Goods

- ✓ It has been recommended to reduce the GST rate to 5% on Fortified Rice Kernel (FRK) which is classifiable under HSN 1904.
- ✓ Recommendation to exempt GST on gene therapy (This recommendation has been made under the head of 'Goods'. It seems that exemption may be extended to goods used in gene therapy).
- ✓ It is recommended to extend the IGST exemption to systems, sub-systems, equipment, parts, sub-parts, tools, test equipment, and software intended for the assembly or manufacture of Long-Range Surface to Air Missile System (LRSAM system), which is exempt under the Customs Act as per Notification 19/2019-Custom.

Exemption and Concessional Rate of Tax on Certain Goods

- ✓ Exemption from IGST has been recommended on import of all equipment and consumable samples by Inspection Team of the International Atomic Energy Agency (IAEA) subject to specified conditions.
- ✓ Extension of the concessional 5% GST rate for food inputs related to food preparations classified under HSN 19 or 21 that are supplied for free distribution to economically weaker sections under a government program, subject to the existing conditions.

Reduction in Rate of Compensation Cess on Supplies made by Merchant Exporters

✓ Reduction has been proposed in rate of Compensation Cess to 0.1% on supplies made to merchant exporters at par with GST rate on such supplies.

Tattvam Comments:

- Notifications had been earlier issued for concessional rate of IGST, CGST, SGST and UTGST on goods supplied to merchant exporters, subject to certain conditions. However, no such notification was issued in relation to compensation cess.
- Though refund of the compensation cess could have been claimed by the merchant exporter after the export of goods, as higher rate of compensation cess was being paid initially at the time of purchase of goods by such merchant exporters, the same led to blockage of working capital. The proposed amendment will ease the working capital constraints of the merchant exporters.

- ✓ The Contribution made by general insurance companies to the Motor Vehicle Accident Fund (constituted under section 164B of the Motor Vehicles Act) will be exempt from the levy of GST. The said contribution is made from third-party motor vehicle premiums collected by the general insurance companies. Further, the Motor Vehicle Accident Fund is constituted for providing compensation/ cashless treatment to the victims of road accidents including hit and run cases.

- The taxpayers registered under composition levy scheme will be excluded from the entry at Sr. No. 5AB introduced vide Notification No. 09/2024-CTR dated 08.10.2024
- Period from the date when the notification No. 09/2024-CTR dated 08.10.2024, became effective i.e., from 10.10.2024 till the date of issuance of the proposed notification will be regularized on “as is where is” basis.

Tattvam Comments:

- That renting of any commercial/ immovable property (other than residential dwelling) from unregistered person to registered person was made taxable under reverse charge mechanism vide the proposed amendment.
- Now, vide the proposed amendment, the taxpayers registered under the composition scheme shall not be liable to pay GST under RCM on renting of any commercial immovable property (other than residential dwelling) from unregistered person.

- ✓ Pepper whether green or dried and raisins, when supplied by an agriculturalist, are not liable to GST.
- ✓ Autoclaved Aerated Concrete (ACC) blocks with a fly ash content exceeding 50% are classified under HS Code 6815 and attract 12% GST rate.
- ✓ RBI regulated Payment aggregators handling transactions below Rs 2,000 are eligible for exemptions under entry at Sl. No. 34 of notification No. 12/2017-CT(R) dated 28.06.2017 since they fall within the ambit of 'acquiring bank' as defined in the said entry. It will be further clarified that this does not apply to payment gateways and other fintech services which do not involve settlement of funds.

- ✓ Ready to eat popcorn which is mixed with salt and spices are classifiable under HS 2106 90 99 and attract GST at the rate of:
 - Other than pre-packaged and labelled popcorn: 5%
 - Pre-packaged and labelled popcorn: 12%
 - Popcorn when mixed with sugar thereby changing its character to sugar confectionary (eg: caramel popcorn) will attract 18% GST and will be classifiable under HS 1704 90 90. ■

Tattvam Comments:

- ✓ With respect to popcorn mixed with sugar (eg: caramel pop corn) it may be noted that earlier the said goods were treated as pop corn only and not as sugar confectionary. Further, the said clarification may be disputed as adding sugar does not change the essential character of pop corn. It still be classified as pop corn only and does not becomes a sugar confectionery like toffee.

- ✓ Explanation in Sl. No. 52B in notification No. 1/2017- Compensation Cess (Rate) dated 28.6.2017 regarding ground clearance is applicable with effect from 26.07.2023.

Tattvam Comments:

- That vide Notification No. 3/2023-Compensation Cess (Rate) dated 26.07.2023 the Explanation in Entry No. 52B of Notification No. 1/2017- Compensation Cess (Rate) dated 28.06.2017 was amended from *"For the purposes of this entry, SUV includes a motor vehicle of length exceeding 4000 mm and having ground clearance of 170 mm. and above"* **to** *"For the purpose of this entry, the Ground Clearance means ground clearance in unladen condition"*.
- Thus, a dispute has arisen that whether the said explanation is to be read retrospectively or from the date of its introduction. Now, after the proposed clarification the issue would be settled.

- ✓The definition of 'pre-packaged and labelled' will be amended to cover all commodities that are intended for retail sale and containing not more than 25 kg or 25 litre, which are 'pre-packed' as defined under the Legal Metrology Act, or a label affixed there required to bear the declarations under the provisions of the Act and rules.

Tattvam Comments:

- The scope of this amendment is not very clear as the meaning of "pre-packaged and labelled" had already been clarified in a similar manner vide FAQs released by PIB dated 18.07.2022. Therefore, more clarity will be available once the proposed notification is issued.

MISCELLANEOUS


✓ **Change in category of registered person who opts to pay tax under composition scheme**


- Where a registered taxpayer who intends to pay tax under composition scheme is required to file Form GST CMP-02 prior to commencement of a financial year. Such person is also required to furnish the category of registered person, being a manufacturer, a restaurant or any other vide said Form CMP-02. At present, there was no formal mechanism to change the category of registered person during a financial year.
- Whereas, Rule 19(1) of CGST Rules allows change in particulars furnished for GST registration by normal taxpayer, TDS deductor, non-resident taxable person, OIDAR service provider, UN bodies/embassies. Now, it is recommended to include reference of Form GST CMP-02 in Rule 19(1), so that, composition tax payers can now change their category of registered person by way of Form GST REG-14.


- ✓ **IGST Settlement Measures:** The Council approved recommendations for addressing states' concerns regarding IGST settlement. The changes are to be finalized by March 2025.
- ✓ **GSTAT Operationalization:** Procedural rules for internal functioning of the GSTAT will be notified after review by the Law Committee which will help in its operationalization.
- ✓ **GST Compensation Restructuring:** The Council extended the Group of Ministers' timeline to finalize recommendations on GST Compensation restructuring till June 30, 2025.
- ✓ **Calamity Levy Policy:** On request of State of Andhra Pradesh, a Group of Ministers will study legal and structural aspects to recommend a uniform levy policy in case of natural disasters in the State.
- ✓ **Municipal FSI Charges:** The issue of GST applicability on charges collected by municipalities for granting FSI (including additional FSI) on reverse charge basis was deferred for further examination on behest of the Central Government.

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