

Tax Flash News

9 October 2023

Key recommendations of the 52nd GST Council meeting

The 52nd GST Council meeting was held on 7 October 2023 in New Delhi. At this meeting, the GST Council made certain recommendations relating to changes in tax rates for a few goods and services, amnesty scheme for filing of appeals, taxability of personal guarantee and corporate guarantee, automatic restoration of provisional attachment of property, allowing supplies to SEZ unit or developer for authorized operations on payment of integrated tax and other trade facilitation measures¹.

Gist of key recommendations

1. Amendment to GST law

a. Extra Neutral Alcohol (ENA) to be outside of GST

The GST Council has recommended to keep ENA used for the manufacture of alcoholic liquor for human consumption out of the ambit of GST. Suitable amendment to the GST law would be made.

b. Bus operators organised as companies would be excluded from the coverage of electronic commerce operator (ECO)

- With effect from 1 January 2022, the liability to pay GST on bus transportation services supplied through ECOs was on such ECOs in terms of section 9(5) of the CGST Act. This was done to help small bus operators who found it difficult to comply with the GST law.

- The GST Council has recommended that bus operators organised as companies may now be excluded from the purview of section 9(5) to enable them to pay GST on their supplies using their input tax credit.

c. Input Service Distributor

- An amendment would be made to the definition of 'Input Service Distributor' prescribed in section 2(61) and to section 20 prescribing the manner of distribution of credit by Input Service Distributor.
- Rule 39 which prescribes the procedure for distribution of input tax credit by Input Service Distributor would also be amended.

d. Appointment of President and Members of Appellate Tribunal

Section 110 would be amended to:

- Enhance the tenure of the President and Members to a maximum age of 70 years and 67 years respectively;
- Prescribe the minimum age of 50 years for eligibility for appointment as President and Member of the Appellate Tribunal;
- Allow an advocate with over 10 years of experience in litigation in indirect tax to be eligible for appointment as a Judicial Member

¹ Press Release dated 7 October 2023, Ministry of Finance

2. Amendment to CGST Rules

a. *Corporate guarantee between related parties*

- Rule 28 of the CGST Rules, 2017 prescribes the value of supply between distinct and related persons.
- A sub-rule is proposed to be inserted to provide for taxable value of supply of corporate guarantee provided between related parties as one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher. The value of corporate guarantee would be governed by this rule irrespective of whether any input tax credit is available to the recipient or not.

b. *Automatic restoration of provisional attachment of property*

Rule 159(2) would be amended to provide that the order of provisional attachment would not be valid after the expiry of one year from the date of the order.

3. Clarifications

a. *Personal guarantee offered by a director to a bank*

In cases where no consideration is paid by a company to its director for providing a personal guarantee to a bank or a financial institution, the open market value of such a transaction will be considered as zero. Therefore, no GST would be payable in respect of such service.

b. *Export remittances received in Special INR Vostro account*

Export remittances received in Special INR Vostro account, as permitted by RBI, would be eligible for claiming export of services.

4. Amnesty scheme for filing of appeals to Appellate Authority

- The GST Council has recommended an amnesty scheme to allow the filing of appeals before the Appellate Authority by 31 January 2024. Amnesty would be for all demand orders under section 73 or 74 of the CGST Act issued on or before 31 March 2023 where appeals were either not filed or were rejected as they were filed late.
- The filing of appeals would be subject to payment of a pre-deposit of 12.5% of the tax under dispute. Out of the 12.5%, at least 2.5% of the tax under dispute will be required to be paid through electronic cash ledger.

5. Measures for trade facilitation

a. *All supplies by Indian Railways would be taxable under the forward charge mechanism*

To enable Indian Railways to avail input tax credit, all supplies by Indian Railways would be taxable under the forward charge mechanism.

b. *Supplies to SEZ on payment of integrated tax*

Suppliers would be allowed to claim refund of integrated tax paid on supply to an SEZ developer/ unit for authorized operations. Suitable amendment would be made to Notification No. 01/2023-Integrated Tax.

c. *Services supplied to Government Authorities would be exempt*

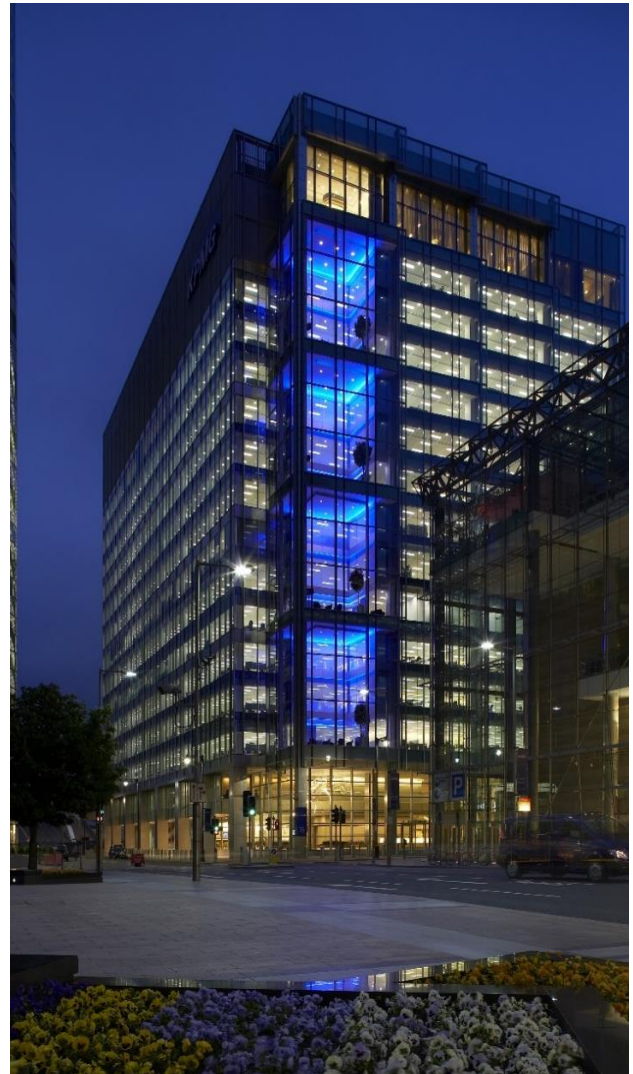
Services of water supply, public health, sanitation conservancy, solid waste management and slum improvement and upgradation supplied to Governmental Authorities would be exempt.

d. Exemption to foreign going vessel

Foreign flag foreign going vessel would be exempt from IGST even when this vessel is converted to coastal run provided it is reconverted to foreign going vessel in six months.

Our comments

The GST Council in its 52nd meeting has taken important trade facilitation measures like allowing refund of IGST paid on supplies to SEZ or not to tax personal guarantee provided by directors when no consideration is involved. Amnesty scheme could provide a good respite to many businesses. There was an expectation from the gaming industry that the GST Council may reconsider its decision to levy GST at the rate of 28 per cent on online gaming, horse racing and casinos. However, no such decision has been made. Several notifications and circulars will be issued in the forthcoming days to give effect to these recommendations.



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