

45th GST Council Meeting

September 17, 2021



Presented by: **CA JAY BOHRA**



The 45th GST Council Meeting convened in Lucknow for its first physical meeting in 20 months with a packed agenda. The Council made a plethora of recommendations:

- A. Extended concessions to specified drugs used in COVID treatment
- B. Major GST Rate changes recommendations on Goods w.e.f. Oct 1, 2021
- C. Correction in Inverted Duty structure
- D. Inclusion of Petrol and Diesel under GST discussed & deferred
- E. Other changes relating to GST rates on goods
- F. Major GST Rate changes recommendations on Services w.e.f. Oct 1, 2021
- G. Clarifications in relation to GST rate on Goods and Services
- H. Compensation Cess and Formation of Group of Ministers
- I. Relaxation in the requirement of filing FORM GST ITC-04
- J. Other Measures for Trade Facilitation
- K. Measures for streamlining compliances in GST



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A. Extended concessions to specified drugs used in COVID treatment

- ✓ Concessional GST rates on COVID-19 related medicines including Remdesivir, announced earlier, were applicable till Sep 30. The concessions (only medicines not equipments) have now been extended till December 31, 2021
- ✓ GST rates on 7 other COVID-19 treatment drugs reduced from 12% to 5% till December 31, 2021

B. Major GST Rate changes recommendations on Goods w.e.f. Oct 1, 2021:

- ✓ Life-saving drugs Zolgensma and Viltepsa used in treatment of Spinal-Muscular Atrophy exempted from GST when imported for personal use
- ✓ GST rate on Keytruda medicine for treatment of cancer reduced from 12% to 5%
- ✓ GST rates on Retro fitment kits for vehicles used by persons with special abilities reduced to 5%
- ✓ GST rates on Fortified Rice kernels for schemes like Integrated Child Development Services reduced from 18% to 5%
- ✓ Reduction in GST rate on biodiesel (supplied to oil marketing companies for blending with diesel from 12% to 5%)
- ✓ GST Rate to be 18% on:
 - all kinds of Pens
 - Cartons, boxes, bags, packing containers of paper, etc.
 - Miscellaneous goods of paper like cards, catalogue, printed material [Chapter 49]
 - Waste and scrap of polyurethanes and other plastics
- ✓ GST on Specified Renewable Energy Devices increased to 12% to reduce inversion

Commentary: Specified renewable energy devices attract 5% GST now, however, all their inputs are taxed at 18%. This inversion leads to embedding of ITC on input services and capital goods. This change will help domestic industry and 'Aatmanirbhar Bharat' Initiative, particularly at a time when India is looking at emphasizing Renewable Energy.

- ✓ GST on Railway parts and locomotives and other rail parts under Chapter 86 to be increased from 12% to 18% to correct inverted duty structure
- ✓ IGST exemption on goods supplied at Indo-Bangladesh Border haats

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C. Correction in Inverted Duty structure:

- ✓ GST rate changes will be done to correct Inverted duty structure anomalies in Footwear & Textile sectors to be implemented from Jan 1, 2022
- ✓ Inverted duty structure anomalies for Ores and specified metals were discussed for correction but date has not yet been decided for this

D. Inclusion of Petrol and Diesel under GST discussed & deferred

- ✓ GST Council Members do not want petroleum products to be included under GST

Commentary: The Hon'ble High Court of Kerala, while disposing a Writ Petition in June'21, had directed the GST Council to decide on the inclusion of Petroleum Products under GST. It is pretty evident as to why the Govt does not want to include this under GST since it would lead to a massive hit to the present tax revenue collections on such products and extensively damage the Government exchequer.

E. Other changes relating to GST rates on goods

- ✓ Supply of Mentha oil from unregistered person has been brought under Reverse Charge
- ✓ Exports of Mentha oil should be allowed only against LUT and consequential refund of input tax credit
- ✓ Brick kilns would be brought under Special Composition scheme with threshold limit of ₹20 lakhs w.e.f. April 1, 2022. Bricks would attract GST at the rate of 6% without ITC under the scheme. GST rate of 12% with ITC would otherwise apply.

F. Major GST Rate changes recommendations on Services w.e.f. Oct 1, 2021:

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

Commentary: This exemption was given earlier due to difficulties being faced by exporters for getting ITC refund due to technical issues on GST Portal. Although GST portal is stable now, keeping in view the COVID19 pandemic, this exemption is being extended by one year, so that exporters do not suffer.

- ✓ National Permit Fee charged by states for granting permit to goods vehicles to operate throughout India or in contiguous states is being exempted from GST



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- ✓ Skill Training programmes where Government bears 75% or more of the cost shall now be exempt from GST
- ✓ Import of goods on lease, where GST is paid on the lease amount, to be exempt from GST

Commentary: IGST payable on import of aircraft or other goods imported on lease shall now be exempted from double taxation. This will facilitate domestic industry and aviation sector; It will also allow transfer of goods imported under lease without payment of IGST.

- ✓ E Commerce Operators are being made liable to pay tax on following services provided through them w.e.f. January 1, 2022:
 - transport of passengers, by any type of motor vehicles through it
 - restaurant services provided through it with some exceptions

Commentary: There is no new tax introduced. The Council decided that since the place where food is delivered will be the point where tax is collected, the Swiggy-like operator, who will be collecting tax from customers, will pay up the GST on it. However, clarification needs to be issued on application of TCS provisions in such scenario.

- ✓ GST rate increased from 12% to 18% on:
 - 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

G. Clarifications in relation to GST rate on Goods and Services :

- ✓ "Carbonated Fruit Beverages of Fruit Drink" and "Carbonated Beverages with Fruit Juice" attract 28% GST rate and 12% Cess
- ✓ Distinction between fresh fruits vs dried fruits and nuts is being clarified for application of GST rate of "nil" and 5%/12% respectively
- ✓ Services by cloud kitchens/central kitchens are covered under 'restaurant service', and attract 5% GST without ITC
- ✓ Supply of ice cream by Ice-cream parlors would attract 18% GST
- ✓ Admission to amusement parks having rides etc. attracts 18% GST. GST @28% applies only to admission to such facilities that have casinos.



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H. Compensation Cess and Formation of Group of Ministers:

- ✓ It has been decided that Cess has to be collected beyond July 2022 for the specific purpose of repayment of loans taken in 2020-21 and 2021-22 for payment to States. This cess collection will go on till March 2026
- ✓ The Council decided to form 2 Group of Ministers (GOM):
 - One GOM to look at issues related to **GST rate rationalization** such as anomalies in rate structure. The GoM will come back on this with great clarity on the issue, within 2 months after its formation
 - Another GoM will be formed to look into related issues of **e-way bills, FASTAGs, technology, compliances, plugging of loopholes, composition schemes & so on**. This GoM will help ensure maximum use of tech and to ensure those gaming the system do not succeed

I. Relaxation in the requirement of filing FORM GST ITC-04:

- ✓ Requirement of filing FORM GST ITC-04 under Rule 45(3) of the CGST Rules, 2017 has been relaxed as under:

Annual aggregate turnover in preceding FY	Recurrence
upto ₹5 crores	Annually
above ₹5 crores	Once in 6 months

J. Other Measures for Trade Facilitation:

- ✓ Unutilized CGST and IGST cash ledger balance in may be allowed to be transferred between distinct persons, viz. entities having same PAN but registered in different states.

Commentary: Much-needed relief for taxpayers having registrations in different States. They can now transfer balances in cash ledgers between various registrations directly rather than unnecessarily applying for refund in one State and making Challan payments in the other State.

- ✓ Section 50(3) of the CGST Act, 2017 to be amended retrospectively, w.e.f. July 1, 2017, to provide that interest is to be paid @18% by a taxpayer on “*ineligible ITC availed and utilized*” and not on “*ineligible ITC availed*”



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- ✓ Provision to be incorporated in CGST Rules, 2017 for removing ambiguity regarding **procedure and time limit for filing refund of tax wrongfully paid** as specified in Section 77(1) of the CGST/SGST Act and Section 19(1) of the IGST Act
- ✓ Issuance of **Circulars to remove ambiguity on various issues** like interpretation of 'intermediary services', 'merely establishment of distinct person', debit notes, carrying of physical invoices and certain refund restriction on exports

K. Measures for streamlining compliances in GST:

- ✓ **Aadhaar authentication of registration to be made mandatory** for being eligible for filing refund claim and application for revocation of cancellation of registration
- ✓ **Late fee for delayed filing of FORM GSTR-1** to be auto-populated and collected in next open return in FORM GSTR-3B
- ✓ **Refund to be disbursed in the bank account which is linked with same PAN** on which registration has been obtained under GST
- ✓ **Rule 59(6) of the CGST Rules to be amended** w.e.f. January 1, 2022 to provide that a registered person shall not be allowed to furnish FORM GSTR-1 if he has not furnished FORM GSTR-3B for the preceding month

Commentary: Rule 59(6) was recently implemented on GST portal w.e.f. September 1, 2021. It presently restricts filing GSTR-1 on non-filing of GSTR-3B for past 2 months (monthly filers) / past quarter (QRMP taxpayers).

- ✓ **Rule 36(4) of CGST Rules, 2017 to be amended**, once the proposed Section 16(2)(aa) of CGST Act, 2017 is notified.

Commentary: Section 16(2)(aa), introduced by Finance Act, 2021 and yet to be notified, proposes to restrict availment of ITC in respect of invoices/ debit notes, to the extent the details of such invoices/ debit notes are furnished by the supplier in FORM GSTR-1/ IFF and are communicated to the registered person in FORM GSTR-2B



The above recommendations would be given effect through relevant Circulars/Notifications/ Law amendments which alone shall have the force of law.



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