

## Key Highlights of the 52<sup>nd</sup> GST<sup>1</sup> Council Meeting

The 52<sup>nd</sup> GST Council meeting, chaired by the Union Minister for Finance and Corporate Affairs, Smt. Nirmala Sitharaman was held on October 7, 2023. The GST Council recommended certain changes in the GST rates, along with various measures towards trade facilitation and streamlining compliances.

The key recommendations of the meeting are summarized below.

### Taxability and valuation of personal and corporate guarantee

1. **Personal Guarantee:** On the issue of taxability of personal guarantees extended by the directors of the companies to the companies, the GST Council has proposed that a circular will be issued clarifying that where there is no consideration paid by the company to the director for personal guarantees, the open market value of the said transaction/ supply can be zero and GST will not be payable on such supply.
2. **Corporate Guarantee:** In relation to the taxability of corporate guarantees extended by related parties (for example, by holding company to its subsidiary), the GST Council has proposed to prescribe a valuation mechanism to tax such transactions. This will be done by incorporating a new provision<sup>2</sup> in the CGST Rules<sup>3</sup>, whereby the taxable value will be 1% of the amount of guarantee offered or the actual consideration, whichever is higher. The proposal also suggests that the said valuation mechanism will be applicable irrespective of whether the recipient is eligible to avail full ITC<sup>4</sup> or not.

**JSA Comment:** The recommendations of the GST Council with respect to the issue of taxability of inter-company corporate guarantees suggests that the government has cleared its intention to tax such transactions. The proposed amendment in our view should have a prospective effect, however, the authorities may insist that a similar valuation mechanism is adopted by the companies to pay tax on transactions for the period prior to the proposed amendment, which may give rise to litigation.

### ISD Mechanism to be mandatory

In the 50th GST Council Meeting held on July 11, 2023, the GST Council recommended that necessary amendments will be made in the CGST Act<sup>5</sup> to make ISD<sup>6</sup> mechanism mandatory. Pursuant to such

<sup>1</sup> Goods and Services Tax

<sup>2</sup> Rule 28(2), Central Goods and Services Tax Rules, 2017.

<sup>3</sup> The Central Goods and Services Tax Rules, 2017.

<sup>4</sup> Input Tax Credit

<sup>5</sup> The Central Goods and Services Tax Act, 2017

<sup>6</sup> Input Service Distributor

recommendations, the GST Council has now proposed amendments to the following provisions of the CGST Act and the rules thereunder:

1. Section 2(61) of CGST Act (i.e., definition of ISD)
2. Section 20 of CGST Act (i.e., Manner of distribution of credit by ISD)
3. Rule 39 of CGST Rules (i.e., Procedure for distribution of ITC by ISD).

### Amnesty Scheme for filing appeal(s) against demand order(s) issued under Sections 73 and 74 of the CGST Act

Section 107 of the CGST Act empowers a taxpayer to file an appeal against a demand raised under Sections 73 and 74 of the CGST Act, provided that the appeal is filed within the prescribed timeframe of 3 (three) months from the date on which the demand order is served.

To facilitate taxpayers who were unable to file an appeal (or where appeal was rejected due to delay) against demand order(s) under Sections 73 and 74 of the CGST Act, issued on or before March 31, 2023, the GST Council has recommended to introduce an Amnesty Scheme for allowing such appeal(s). Such appeal(s) would be allowed to be filed under the Amnesty Scheme, up to January 31, 2024, subject to the following conditions:

1. Payment of pre-deposit of 12.5% of the tax under dispute.
2. 20% of the pre-deposit payable (i.e., 2.5% of the tax under dispute) should be debited from the electronic cash ledger.

### Amendment in provision with respect to appointment of GSTAT members

In order to align the provisions of the CGST Act with the provisions of the Tribunal Reforms Act, 2021, the Council has recommended amendments to Section 110 (President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc.) of the CGST Act, as below:

1. Advocates with 10 (ten) years of substantial experience in litigation under indirect tax laws to be eligible for appointment as a judicial member;
2. Minimum age for eligibility for appointment as President and Member is to be 50 (fifty) years; and,
3. President and members will have tenure up to maximum age of 70 (seventy) years and 67 (sixty seven) years respectively.

**JSA Comment:** This recommendation of the GST Council appears to address some of the concerns raised in the case of *Madras Tax Bar vs. Union of India*<sup>7</sup>, which is pending before the Supreme Court of India. Admission of Advocates to GSTAT and increasing the retirement age for the members would ensure that the tribunal will have fair degree of independence and continuity.

### Supplies to SEZ<sup>8</sup> units/developers for authorized operations, allowed for IGST refund

Notification No. 01/2023 – Integrated Tax dated July 31, 2023, allows goods and services (except commodities specifically restricted) to be exported on payment of integrated tax and allows the supplier to claim a refund thereof. The GST Council has recommended to amend the said Notification to clarify that suppliers supplying

<sup>7</sup> Writ Petition (Civil) No. 900/2023

<sup>8</sup> Special Economic Zone

such goods and/ or services to SEZ units/ developers for authorized operations, can also supply such goods and/ or services on payment of integrated tax and claim refund of tax paid.

## Recommendations relating to supply of goods and services

1. Recommendations relating to goods (including rates of GST)
  - a) Food preparation of millet flour in powder form, containing at least 70% millets by weight (falling under HS Code 5605) to attract (i) nil rate of GST, if sold in other than pre-packaged and labelled form, and (ii) 5% GST, if sold in pre-packaged and labelled form.
  - b) Foreign going vessels will attract 5% IGST on the value of vessel, if it converts into coastal run [provided that the vessel reconverts to a foreign going vessel within 6 (six) months].
  - c) GST on molasses reduced from 28% to 5%.
  - d) ENA<sup>9</sup> used for manufacture of alcoholic liquor for human consumption to be kept outside the ambit of GST. ENA for industrial use to attract GST at 18%.
2. Recommendations relating to services (including rates of GST)
  - a) Services of water supply, public health, sanitation conservancy, solid waste management and slum improvement and upgradation supplied to Governmental Authorities are recommended to be exempt from payment of tax.
  - b) Job work services in relation to processing of barley into malt will attract GST at the rate of 5% (as applicable to job work in relation to food and food products).
  - c) Bus operators (being companies) to be excluded from services notified under Section 9(5) of the CGST Act (i.e., notified services provided by ECO<sup>10</sup>).
  - d) Supply of goods and/ or services by Indian Railways to be taxed under forward charge mechanism, which will enable them to avail the ITC of tax paid thereof.

## Other key changes/clarifications proposed

The GST Council has recommended some of the key changes/ clarifications as below:

1. Amendment in Rule 159(2) of the CGST Rules and FORM GST DRC-22, to facilitate automatic restoration of provisionally attached property after completion of 1 (one) year from the date of attachment/ order (i.e., no specific written order required from the Commissioner).
2. To issue a circular to clarify that the amount received in Special INR Vostro (as permitted by RBI) as export proceeds will qualify as receipt of export provided under Section 2(6)(iv) of the IGST Act.
3. With respect to place of supply issues for the following services:
  - a) Service of transportation of goods, where the location of supplier or recipient is outside India;
  - b) advertising services; and,
  - c) co-location services.

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<sup>9</sup> Extra Neutral Alcohol

<sup>10</sup> Electronic Commerce Operator

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