

Ministry of Finance

Summary of 45th GST Council Meeting

Relevant to All Mahindra Businesses

17th September 2021

Context

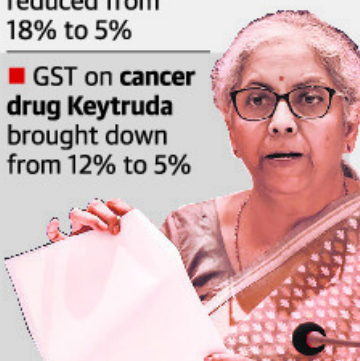
The GST Council's 45th meeting was held at Lucknow on 17th September 2021 under the chairmanship of the Union Finance & Corporate Affairs Minister Smt. Nirmala Sitharaman. The government has witnessed increasing cases of tax evasion. There is a sudden spike in fake ITC claims across India. Therefore, the GST Council announced fresh measures to tighten its anti-evasion policies in place.

Council has deliberated and taken decisions around following issues:

- 1. Recommendations relating to GST rates on goods and services**
 - a. COVID-19 relief measure in form of GST rate concessions
 - b. recommendations on GST rate changes in relation to Goods
 - c. Correction in Inverted Duty structure in Footwear and Textiles sector
 - d. GST changes in relation to rates and scope of exemption on Services
 - e. Clarification in relation to GST rate on Goods
 - f. Clarification in relation to GST rate on services
- 2. Deliberations on the issue of compensation scenario**
- 3. Recommendations relating to GST law and procedure**
 - a. Measures for Trade facilitation
 - b. Measures for streamlining compliances in GST
 - c. Recommendations for amendments in certain provisions of the Act and Rules.

Highlights

What's in store | The 45th GST Council meeting was chaired by Finance Minister Nirmala Sitharaman in Lucknow on Friday. Among the key decisions are:

■ Concessional tax rates on COVID-19 essential medicines like Tocilizumab extended till December 31	■ Tax on fortified rice kernels for ICDS scheme reduced from 18% to 5%
■ Muscular atrophy drugs such as Zolgensma and Vilepso that cost around ₹16 cr. exempted from GST	■ GST on cancer drug Keytruda brought down from 12% to 5%
■ Import of leased aircraft exempted from I-GST	
■ Food delivery apps to collect GST instead of restaurants	

Clarification on the scope of “Intermediary Services”

- ✓ The GST Council has approved issuance of a Circular to clarify the scope of **‘intermediary’ services** and thus, also address ambiguities around classification of export services which are disputed as ‘intermediary’. Indian IT/ITES companies had been pursuing this issue for nearly 3 years now with various government departments and made several submissions. The Circular is expected to provide clarification on the principles for services to be considered as ‘intermediary’.
- ✓ It is expected that with the issue of the Circular, services provided by Information Technology enabled Services (ITeS)/ Business Process Management (BPM) companies would be excluded from the scope of Intermediary, since these services are provided on a **principal-to-principal basis**. This will put an end to litigation on taxation of exports done by such companies, thereby resolving issues relating to denial of refunds and pending litigation.

Clarification relating to interpretation of “merely establishment of distinct person” to qualify as exports

- ✓ A person incorporated in India under the Companies Act, 2013 and a person incorporated under the laws of any other country shall be treated as separate legal entities and will not be barred from exports benefits. This will also help in resolving refund issues and clearing litigations pending before the appellate and judicial authorities, thereby aiding growth of GCCs in India and facilitating ease of doing business.

Applicability of interest only on Input Tax Credit (ITC) availed and utilised

- ✓ The GST council has proposed to levy interest under section 50(3) of Central Goods and Services Tax Act, 2017 (CGST Act) on ‘ineligible ITC availed and utilised’ and not on “ineligible ITC availed”. Further, the rate of interest has also been reduced from 24% to 18% w.e.f. July 1, 2017. This will provide much needed relief to taxpayers where any contentious ITC has been availed but remains unutilised. This is aligned to the tax position under service tax as well as with the decisions of the courts.
- ✓ Effectively, interest would need to be paid only in cases where ITC determined to be ineligible is availed and utilised. With this amendment, it is expected that pending litigation before judicial and appellate authorities would get resolved. These changes are proposed to be effective **retrospectively from 1st July 2017**.

Eligibility to transfer unutilised balance in CGST and IGST cash ledger between distinct persons

- ✓ The GST council has approved transfer of unutilised balance in CGST and IGST cash ledger between distinct person (entities having same PAN but registered in

different states). Presently, if a taxpayer has any cash balance unutilised due to any reason (TCS, TDS or excess deposit), they are forced to claim refund even if there is liability in different state of same legal person. This recommendation will relax working capital requirements for the entities operating from multiple states and having unutilised cash balances.

Extension of Concessional GST Rates:

- ✓ The Council decided to **extend the GST relief on several drugs related to Covid-19 treatment till December 2021.**

Food Delivery Apps to Collect GST:

- ✓ Online food delivery aggregator firms such as Swiggy and Zomato **will now be liable to pay GST** and not the restaurant partners.
- ✓ Currently, online bills generated by food aggregators **already have a tax component in it.**
- ✓ The taxed amount is **paid back to the restaurant partners who are then expected to pay** this amount to the government.

Petrol and Diesel will not come under GST Regime:

- ✓ The council has decided **not to bring petrol and diesel under** the GST regime. **States vehemently opposed the inclusion** of the fuels while raising concerns on revenue buoyancy during the meet.

- ✓ If petrol and diesel come under the GST regime, **prices will become mostly uniform across all states** as the different excise and VAT rates that the Centre and the states impose would then be done away with.

GST on Fortified Rice Reduced:

- ✓ The GST rate on fortified rice kernels for schemes like **integrated child development schemes** has been recommended to be reduced from 18% to 5%.

Group of Ministers (GoM) to Look After Rate Rationalisation:

- ✓ A Group of state ministers (GoM) will be established to look after the **rate rationalisation** related issues to correct the **inverted duty** structure and to take steps to augment revenues.
- ✓ An inverted duty structure arises when **the taxes on output or final product is lower than the taxes on inputs**, creating an inverse accumulation of input tax credit which in **most cases has to be refunded**.
- ✓ Inverted duty structure **has implied a stream of revenue outflow for the government** prompting the government to relook the duty structure.
- ✓ Other GoMs will be set up in order to look after issues of e-way bills, **FASTAGs**, compliances, technology, plugging of loopholes, composition schemes etc.

Measures for Trade facilitation:

S. No.	Recommendation	Notification/ Circular No.	Date of Applicability	Amendment in
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1	<ul style="list-style-type: none"> ○ Relaxation in filing FORM GST ITC-04: <ul style="list-style-type: none"> a. Taxpayers whose ATO in preceding FY > 5 Crores, shall furnish ITC-04 once in six months b. Taxpayers whose ATO in preceding FY is up to 5 Crores, shall furnish ITC-04 annually 	Notification No. 35/2021 – Central Tax dated 24th Sep, 2021	with effect from the 1st Oct, 2021	Amendment in Rule 45(3)
2	<ul style="list-style-type: none"> ○ Section 50(3) to be amended retrospectively, w.e.f. 01.07.2017, to provide that interest is to be paid by a taxpayer on “ineligible ITC availed and utilized” and not on “ineligible ITC availed” 	NOT YET NOTIFIED		
3	<ul style="list-style-type: none"> ○ Unutilized balance in CGST and IGST cash ledger may be allowed to be transferred between distinct persons 			
4	<ul style="list-style-type: none"> ○ Issuance of Circular on various issues to remove ambiguity and legal disputes: <ul style="list-style-type: none"> a. Clarification on scope of “intermediary services”; 	Circular No. 159/15/2021-GST dated 20th Sep, 2021	NA	NA

	<p>b. Clarification relating to interpretation of the term “merely establishment of distinct person” in condition (v) of the Section 2(6) of the IGST Act 2017 for export of services.</p>	<p>Circular No. 161/17/2021-GST dated 20thSep, 2021</p>		
	<p>○ c. Clarification in respect of GST related issues:</p> <p>i. W.e.f. 01.01.2021, the date of issuance of debit note (and not the date of underlying invoice) shall determine the relevant FY for the purpose of section 16(4)</p>	<p>Circular No. 160/16/2021-GST dated the 20th September, 2021</p>		
	<p>ii. No need to carry the physical copy of tax invoice in case of E-Invoice</p> <p>iii. Only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) from availment of refund of accumulated ITC</p>			
5	<p>○ Provision to be incorporated in CGST Rules for removing ambiguity</p>	<p>Circular No. 162/18/2021-GST dated 25thSep, 2021</p>	NA	NA

	<p>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</p>	<p>Notification No. 35/2021 – Central Tax dated 24th Sep, 2021</p>	<p>24th Sep, 2021</p>	<p>Insertion of Rule 89(1A)</p>
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B. Measures for streamlining compliances in GST

S. No.	Recommendation	Notification/ Circular No.	Date of Applicability	Amendment in
1	<p>○ Aadhaar authentication mandatory for filing refund claim and application for revocation of cancellation of registration.</p>	<p>Notification No. 35/2021 – Central Tax dated 24th Sep, 2021</p>	<p>Notified but effective from a future date</p>	Insertion of Rule 10B: Aadhaar authentication for registered person
				Amendment in Rule 23(1)
				Amendment in Rule 89(1)
				Insertion of clause (c) in Rule 96(1)
		<p>Notification No. 36/2021 – Central Tax dated the 24th Sep, 2021</p>	<p>24th Sep, 2021</p>	<p>Section 25(6A) is inserted in Notification No. 03/2021 -Central Tax for providing exemption to NRTP, Govt. Department, PSU, etc.</p>
2	<p>○ Late fee for GSTR-1 to be auto-populated & collected in next open return in GSTR-3B.</p>	<p>NOT YET NOTIFIED</p>		
3	<p>○ Refund to be disbursed in the bank account, which is linked with same PAN.</p>	<p>Notification No. 35/2021 – Central Tax dated 24th Sep, 2021</p>	<p>Notified but effective from a future date</p>	<p>Amendment in Rule 10A Insertion of Proviso in Rule 10A Insertion of Rule 96C: Bank Account for credit of refund</p>

4	<ul style="list-style-type: none"> ○ Rule 59(6) to be amended w.e.f. 01.01.2022 to provide that a RP shall not be allowed to furnish FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for the preceding month. 	Notification No. 35/2021 – Central Tax dated 24th Sep, 2021	with effect from 1st Jan, 2022	Amendment in Rule 59(6) amendment in clause (a) clause (c) shall be omitted
5	<ul style="list-style-type: none"> ○ Rule 36(4) of to be amended, once the proposed clause(aa) of section16(2) is notified to restrict availment of ITC, to the extent, invoices/debit notes are furnished by the supplier in Form GSTR-1/IFF and are communicated to the RP in Form GSTR-2B. 			