

# 53rd GST Council Meeting Decisions & Recent Updates in GST

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Jointly with  
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# Execution of Recommendation of Council

- Law Related Changes – Amendment **by Government** in GST Act can be expected in coming budget
- Rules Related Changes – Notification amending rules u/s 164 **by Government** can be expected soon
- Rate / Exemption Related Changes – Notification u/s 9 & 11 **by Government** Amending 01-2017 CTR, 02-2017 CTR, 11-2017 CTR, 12-2017 CTR Can be expected soon
- Other Changes for which power is already there in the Law – Notification **by Government** can be expected soon
- Clarificatory Changes – Circular / Order / Instruction / Directions u/s 168 **by CBIC – Board** – ISSUED on 26-06-2024
- Removal of Difficulty Orders – Only for Initial 5 years where Law gets ratified later on in parliament

Disclaimer: for the Proposed Changes, the ultimate effect can be assessed only when the amended text of Law / Rules will be published

16(4)  
For ITC of  
RCM  
from URP  
Circular 211-2024

- Clarified that, ITC is eligible in the year of issuance of Self Invoice - Incase of RCM payment made even after the due date as per 16(4) – incase of Supplies received from Unregistered person.!!
- Eg. FY 18-19's RCM liability missed in that year, SO now Prepare self Invoice, Pay it and Take ITC!
- ISSUES:
  - Incase of Supplier is registered and he issued Tax Invoice with RCM mark? – No relief
  - How to Pay such amount? – Pay in 3B, take ITC in 3B
  - What if already paid via DRC-03? – Claim it now!
  - Incase SCN issued u/s 74, still relief available? – NO, see section 17(5)(i)
  - Interest? – Of course required to be payable!
  - Penalty? – Yes, Proper office may levy u/s 122

# 16(4) Relief For ITC claimed in 3B lately till 30-11-2021

## 7. Relaxation in condition of section 16(4) of the CGST Act:

### a) In respect of initial years of implementation of GST, i.e., financial years 2017-18, 2018-19, 2019-20 and 2020-21:

The GST Council recommended that the time limit to avail input tax credit in respect of any invoice or debit note under Section 16(4) of CGST Act, through any return in FORM GSTR 3B filed upto 30.11.2021 for the financial years 2017-18, 2018-19, 2019-20 and 2020-21, may be deemed to be 30.11.2021. For the same, requisite amendment in section 16(4) of CGST Act, retrospectively, w.e.f. 01.07.2017, has been recommended by the Council.

- Amendment in law is awaited
- Incase of FY 17-18, 18-19, 19-20 & 20-21, if 3B Filled belatedly Till 30-11-2021, then 16(4) Restriction is relaxed
- 16(4) Never applies to Import of Goods where in BoE is the document based on which ITC is taken, and BoE is never the part of 16(4)
- ISSUES:
  - What if amount already reversed / paid? Refund possible?
  - Incase of SCN issued currently for FY 19-20 & 20-21 – Hang On till Budget
  - Incase Order already passed, Revision or rectification possible? – No, Appeal seems to be the only remedy

16(4) Relief  
For ITC  
claimed in 3B  
lately due to  
Revocation of  
Cancellation  
of Reg.

**b) with respect to cases where returns have been filed after revocation:**

The GST Council recommended retrospective amendment in Section 16(4) of CGST Act, to be made effective from July 1<sup>st</sup>, 2017, to conditionally relax the provisions of section 16(4) of CGST Act in cases where returns for the period from the date of cancellation of registration/ effective date of cancellation of registration till the date of revocation of cancellation of the registration, are filed by the registered person within thirty days of the order of revocation.

- Amendment in law is awaited
- In case GST Registration has been cancelled, and later on Revocation of cancellation is made, ITC for such cancelled period will not be restricted u/s 16(4), if 3Bs filled within 30 days of revocation.
- It's applicable beyond initial 4 years, will be there perpetual
- 03-2023 CT – Revocation Amnesty cases will also get relief

16(4)  
 Other Issues-  
 STATE  
 Authorities  
 applying 16(4)  
 when Supplier  
 filled GSTR-1  
 after the due  
 date of 16(4)

2.1 Excess ITC availed /utilised on B2B supplies: (All Other ITC)

S.No	Particulars	SGST	CGST	IGST	CESS	Total
1	2	3	4	5	6	7
1	ITC as per GSTR-2A (B2B +/- B2B CN/DN +/- Differential effect of B2B amendments but exclude RCM & POS ITC)	4598247	4598247	4751	0	9201245
2	ITC brought forward from previous FY to current FY. Table 8C of previous FY GSTR-09	0	0	0	0	0
3	ITC carried forward from present FY to subsequent FY Table 8C of GSTR-09	0	0	0	0	0
4	Ineligible ITC as per 4(D) of GSTR-3B	0	0	0	0	0
5	Ineligible ITC u/s 16(4): the supplier has filed returns after the cut-off date 2020-10-22 (Excluding RCM & POS ITC)	343833	343833	0	0	687666
6	ITC Available for use in the same year (S.No.1+2-3-4-5)	4254414	4254414	4751	0	8513579
7	ITC used in same year as per 4A (5) of GSTR-3B	4675991	4675991	162	0	9352144
8	Excess ITC Availed/ utilized:(S.No 7-6)	421577	421577	0	0	843154

- The said section is applicable Qua the recipient. When recipient has taken the ITC timely, 16(4) can't be invoked.
- Totally illegal use of 16(4)
- when supplier has not at all uploaded the invoice, circular 183-2022 & 193-2023 is there, whereas supplier merely uploaded belatedly, then No relief? In fact there is no breach of law in such cases.

# Amnesty for Waiving Interest and Penalties [Insertion of Section 128A]

- Section 128A will be added in GST Act in the coming Budget – It'll be interesting to see the Drafting of the section – Power for perpetuity?
- Proposed to waive Interest and Penalty for the Sec 73 Cases [Other than due to Fraud, Willful misstatement, Suppression of fact]
- Proposed for the FY 17-18, 18-19 & 19-20
- Conditional waiver if Full Tax is paid till 31-03-2025
- Demand of Erroneous Refund is not Covered, Eway bill Cases not covered
- ISSUES:
  - What if the demand is only relating to Interest or Penalty?
  - What if the demand is only relating to Interest or Penalty, when basic Tax has already been discharged?
  - What if Demand is not raised, but only ASMT-10 is issued?
  - SCNs issued currently for FY 19-20, wait till budget?
  - What if Tax Payer wants to pay it voluntarily? – irrational as otherwise time limit to issue SCN u/s 73 has been gone for the said Years
  - What if appeal filled having ground of Conversion of Sec 74 cases to Sec 73?
  - Special Procedure or Appeal is the only recourse?

# Amnesty for Waiving Interest and Penalties [Insertion of Section 128A]

## 1. Input tax credit wrongly availed or utilised:

### 1.1 Ineligible ITC as per section 16(2) claimed from cancelled taxpayers, non-genuine and non-existent Taxpayers and return/ tax defaulters

S.No	Particulars	SGST	CGST	IGST	CESS	Total
1	2	4	5	6	7	8
1	Suppliers' registration cancelled before date of invoice	129825	129825	0	0	259650
2	Non-genuine Taxpayers / Non-existent Taxpayers	0	0	0	0	0
3	Supplier failed to file GSTR-3B and did not pay tax on the invoices declared in GSTR-01	2178780	2178780	420493	0	4778053
4	Supplier filed GSTR-3B with Nil turnover and did not declare or pay tax corresponding to the invoices declared in GSTR-01	0	0	0	0	0
5	Total (S.No.1 + S.No.2 +S.No.3+ S.No.4)	2308605	2308605	420493	0	5037703

- SUPPLIER failed to file 3B / Filled NIL 3B / Reg Cancelled of Supplier and SCNs issued by SGST Authorities to RECIPIENT u/s 74!
- Can such cases pleaded for conversion from 74 to 73 and then waiver of Interest and penalties?



# Post Sale Discount – Evidence

Circular 212-2024

- Clarified that, When Post sale discount is given & Section 34 compliant CN is given duly reversing proportionate GST, a CA Certificate (Above 5L) / Vendor Certificate (below 5L) confirming reversal of such ITC mentioned in CN, is required as evidence for section 15(3)(b)(ii) [Format]
- Certificate should Include:
  - Details of CN
  - Details of Original Invoice against which such CN Issued
  - Details of Returns / DRC-03 in which such ITC has been reversed

# Post Sale Discount – Evidence

Circular 212-2024

- ISSUES:
    - Does such CN with GST is compulsory? – No. Instead issue Trade Credit Notes / Financial Credit Notes without reversing GST.
    - Is it applicable to full CN passed against the invoice for Cancellation of service / Return of Goods?
    - Merely Vendor Certificate / CA Certificate wont be suffice, a pre-agreement is also needed between two parties regarding such post sale discount
    - Also for past periods?
    - How to determine at the start of the year if 5L will cross or not?
- Vendor Certificate vs CA Certificate

# GST Liability & ITC availability on Warranty / Extended Warranty Circular 216-2024

- Circular 195-2023 already clarifies that In case of replacement of “any parts” during warranty period, without consideration : There is no GST liability on such “free part replacement” & Also, there is no requirement of reversal of ITC of such “Part” replaced in warranty
- Now, this circular extend the clarification when the goods as such replaced, then also, same position is to be taken
- When distributor replaces any “Part” or “Goods” from his own stock, on behalf of manufacturer, and then later on gets such part on Delivery Challan, No GST Payable by manufacturer. No ITC Reversal required by manufacturer as well.
- Extended Warranty
  - When Manufacturer Gives Extended Warranty at the time of Supply – It’s composite Supply
  - When Third party Gives Extended Warranty at the time of Supply – It’s supply of Service
  - When Manufacturer Gives Extended Warranty later on after original supply - It’s supply of Service

# Clarification on ITC of Ducts and Manholes used in Optical Fiber Cable Network

Circular 219-2024

**Explanation.-** For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes-

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises.

- Clarified that, ITC of ducts and Manholes in OFC Network is part of the "Plant And Machinery", ITC of which is eligible
- Interesting to see how restriction of definition interpreted so narrowly!

# Common Time limit for Section 73 & 74

- Amendment in Section 73 & 74 – Insertion of Section 74A
- Common time limit to issue SCN and to pass Order – irrespective of whether case involves fraud, suppression or willful misstatement etc!
- Will such time limit be higher than what currently is for section 73?
- The only difference will be between 73 & 74 - the Quantum of Penalty
- Is it welcome move??! When adjudication is done, its done Once and for all
- Applicable from FY 24-25
- Time Limit to pay reduced penalty to be increased from 30 days to 60 days

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# Appeal Related Proposed Amendments

- Pre Deposit for 1<sup>st</sup> appeal – Percentage 10% - No change
- Pre Deposit for 1<sup>st</sup> appeal – Max amount reduced from 25+25 Crore to 20+20 Crore
- Pre Deposit for 2<sup>nd</sup> appeal to Tribunal – Additional pre-deposit reduced from 20% to 10%
- Pre Deposit for 2<sup>nd</sup> appeal to Tribunal - Max amount reduced from 50+50 Crore to 20+20 Crore
- Rule 142 will be amended for adjustment of already paid DRC-03 against the amount to be paid as pre-deposit
- Time limit to file appeal to Appellate Tribunal of 3 months to be counted from “a date to be notified” – to give sufficient time to Tax payer to file appeal

# Reduction of Government Litigation – fixing monetary limits

Circular 207-2024

Appellate Forum	Monetary Limit of TAX (amount involved in Rs.)
GSTAT	20,00,000/-
High Courts	1,00,00,000/-
Supreme Court	2,00,00,000/-

- When the dispute of Tax along with Interest & Penalty – Tax Amount to be summed up to apply above limit
- When the dispute is only for **Interest** AND / OR **Penalty** AND / OR **Late Fee**, (other than Tax), the sum of these things to be considered to apply above limit
- In case Dispute of Refund, the amount of erroneous refund to be considered to apply above limit

#### EXCEPTIONS:

- Any Provision of Act, Rule, Order, Notification, Instruction or Circular held ultra vires to the constitution of India
- Matter of Valuation / Classification / Refund / POS / etc which is **RECURRING in Nature**
- Where adverse comment has been passed on board OR Cost imposed

# Other Proposed Amendments

- Non levy of Interest on delayed filling of Returns, on the amount which is available in Electronic Cash Ledger on the due date of filling of return [Rule 88B].
  - What if paid on very next day of due date, and Return filled after a month?
- Accommodation / Hostel / PG Services
  - When accommodation is services is provided minimum for 90 days
  - 20000/- per month per person will be exempted
- Rate of TCS will be reduced from "1%" to "0.5%" when TCS to be collected by ECO for supplies being made through them



# Other Proposed Amendments

- Insertion of Section 11A in CGST Act for granting power not to recover duties not levied or short-levied as a result of general practice under GST Acts – “As is Basis” amendments
- Refund of additional IGST paid on upward revision in price due to Debit Notes – Mechanism will be prescribed – Probably in manual mode
- Corporate Guarantee 1% Valuation Rule 28(2) – Not required when:
  - Recipient is eligible for full ITC or
  - In case of Export of such services of CG
- “Refund under LUT” was restricted when Export Duty was payable on such Goods. Now “With Payment of IGST” will also be restricted for Refund

# Returns Related Amendments

- GSTR-1A
  - Optional Facility of GSTR-1A to amend the GSTR-1
  - Such facility will be available till the time before filling of GSTR-3B
  - Amend or Add new Invoice
  - Amendment will also be possible for Invoices declared in IFF
- GSTR-09/9A
  - Exempted for ATTO upto 2 Crore
  - Various Table exempted earlier for GSTR-9 & 9C is now made mandatory?
- GSTR-4
  - WEF FY 24-25, Due date of GSTR-4 for composition Tax payer will be shifted from 30<sup>th</sup> April to 30<sup>th</sup> June

PoS –  
Supply to URP  
by Ecomm-  
Operator in  
Bill to – Ship  
to Model

Circular 209-2024

- General Provision – as per newly added subsection 10(2)(ca) : Incase Supply to URP, PoS Would be the address recorded on the Invoice.
- Clarification in Circular : Incase of Bill to Ship to Model, Supply to URP by Ecommerce Operator of the Goods, Billed to “X” State, Shipped to “Y” State, the PoS Would be “Y” State

# Valuation of Import of Services from Related Person

Circular 210-2024

- Where in Case
  - Services has been Imported by a person
  - From Related Person
  - Where full ITC is eligible for recipient,

Then, Valuation of such Transaction will be Transaction Value & if No Invoice is prepared, then NIL value will be considered as Open Market Value for such Transaction

ESOP/ESPP/RS  
U of Foreign –  
Holding  
Company the  
employee of  
Domestic Co –  
GST Taxability  
Circular 213-2024

- Clarified that, Such Securities are out of the scope of Definition of “Goods” as well as “Services”
- Also, such ESOPs are part of remuneration to the employee, Schedule III item, So no GST Required on that
- Also, when Domestic Company reimburse the cost of such share to foreign company on cost-to-cost basis, that is also not supply
- Only if any Premium / Markup / Commission is charged by foreign company, then GST will attract

Loan Provided  
by Overseas  
affiliate to  
Indian  
affiliate/  
Related Person  
Circular 218-2024

- Consideration by way of Interest is exempted in GST
- If No other processing fee/ administrative charges/ service fee/ has been charged, No GST is required (Irrespective of the fact that it's "Schedule I" Item)
- If such processing fee/ administrative charges/ service fee/ has been charged for providing the loan, It's Import of Services, GST will be applicable.

# Clarification For Motor Insurance Companies

Circular 215-2024

Circular 217-2024

- WRECK AND SALVAGE [Circular 215-2024]
  - When Insurance companies have insured the Motor vehicle with clause that the Insurance Reimbursement will be done after deducting Salvage Value - Then such wreckage will remain part of the insured person, No GST on sale of such wreckage, even If insurance company sources the customer for such wreckage.
  - In case Insurance Contract is to reimburse full IDV Insurance value, then wreckage will be of Insurance company, GST will required to be discharged on that
- ITC on Repair Expenses incurred by Insurance Companies [Circular 217-2024]
  - Motor Insurance Companies Can take ITC, in both the methods of payment, Cash less or Reimbursement
  - If reimbursement done partially, then ITC is available to that extent
  - Invoice should be in the name of Insurance Company

# Clarification For Life Insurance Companies

Circular 214-2024

- Life Insurance Business's valuation as per Rule 32(4), which excludes some of the portion of the value of supply.
- Such exclusion is neither exempted supply, Wholly exempted Supply , nor non-taxable Supply
- so Reversal of Rule 42 / 43 wont be required
- Other Special Valuations as per Rule 32 will take colour from this circular w.r.t. Rule 42 Reversal



# Certain Clarifications for Time of Supply

Circular 221-2024

Circular 222-2024

- Time of supply on Annuity Payments of Road Construction Project awarded by NHAI [Circular 221-2024]
  - It's Continuous Supply of, ToS will be accordingly
  - In case of Interest component, such interest will also be part of Value of Supply
- Time of supply in respect of supply of allotment of Spectrum to Telecom companies [Circular 222-2024]
  - In case the Telecom Companies opt to pay the spectrum charges in instalments – ToS will be as per Continuous Supply of Service
  - In case Full upfront payment is done, the said date is ToS
- Any Natural Resources allocated by Govt with option to pay in instalments [Circular 222-2024]
  - ToS will be same as explained for Spectrum allocation to Telcos

# Thank You!

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