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# INSIDE THIS ISSUE

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**PG. 2**

Decisions impacting pending *GST Litigation*

---

**PG. 8**

Key decisions on *ITC availment*, including ITC for initial years of implementation

---

**PG. 12**

*GSTR 1 amendment*/ rectification

---

**PG.13**

TCS Rate & *Threshold for GSTR 9/9A* for FY 23-24

---

**PG.15**

Adjustment of *DRC 03 against pre-deposit*; GST Rate

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**PG.17**

*Clarifications* on multiple issues



## SNAPSHOT

### OUR TAKE ON THE GUIDING PRINCIPLES OF THE COUNCIL DECISIONS

Recently concluded GST Council meeting appears to be based on the following principles: (i) reduced litigation; (ii) business friendly; (iii) better cash flow management; & (iv) correctional measures. With the above ideologies, the Council decisions have definitely provided much sought after relief on many aspects. We hope that the finer print will be aligned (if not better) with the decisions taken, and shall be implemented with the same spirit.



## ARTHAsashtraM<sup>®</sup> 2024

### 53<sup>rd</sup> GST Council Meeting – Key Updates

Sl. No.	53 <sup>rd</sup> GST Council Decision		Council Decision, and what it means? <i>(Artham's Take)</i>	Ideal Scenario for Notifications'/ Circulars' Wordings to Implement Council Decisions & to Ensure Trade Facilitation.
	Category	Sub-Category		
1.	GST litigation	Waiver from interest & penalty on demands issued u/s 73 for the period Jul 17 till FY 2019-20  <b><u>(Proposed, new Section 128A in the CGST Act)</u></b>	The proposed waiver shall be conditional. Once the taxpayer pays outstanding demand (on or before 31.3.25), interest and penalty shall be waived. Interestingly, the proposed waiver is only for Section 73, i.e. to say that cases involving fraud, suppression, etc <u>(Section 74 demands) are not covered.</u>	Conditions should be business friendly, and should work like a pseudo-amnesty at this stage, primarily for MSME sector.  Most importantly, the waiver should be granted irrespective of the fact whether a taxpayer has filed an appeal or not.

			<p><i>ALC take:</i> Companies (specifically MSME sector) must evaluate this option to close pending litigation, and plan cash flow towards interest and penalty.</p>	<p><i>ALC Wishlist for the next meeting:</i> Waiver should be extended to Section 74 too, since ‘initial years of GST implementation’ were rocky! More so, demands under Section 74 were raised (in many instances) to overcome the limitation period of Section 73. For a win-win situation, Council may consider extending this benefit to all matters except where the tax was not paid at all.</p>
		<p>No interest to be levied if Electronic Cash Balance has sufficient balance on the date of filing of returns</p> <p><b><u>(Proposed amendment in Rule 88B of the CGST Rules)</u></b></p>	<p>No interest (under Section 50) to be levied if the Electronic Cash Balance has sufficient balance on the due date of filing of GSTR 3B, and the returns are filed belatedly.</p>	<p>The proposed amendment should be unconditional, and hence should provide relief to all taxpayers who have sufficient cash balance in Electronic Cash Ledger.</p>

			<p><i>ALC take:</i> The decision seems to be in line with the Hon'ble Madras High Court's ruling in <i>Eicher Motors</i> case wherein the Madras High Court had held that if cash is deposited in the Electronic Cash Balance, no interest can be levied even if GSTR 3B is filed belatedly<sup>1</sup>.</p>	<p>Needless to mention, it is a welcome move for the industry. More importantly, it could be a sigh of relief for many overseas companies providing OIDAR services to India. In the past, many such companies filed returns after a slight delay (due to availability of India specific data) and were advised to discharge interest on such belated returns.</p> <p>This decision settles the dust on this matter, and should provide relief to such companies and others too.</p>
		Reduction in pre-deposit for filing appeals	<p><b><i>Maximum amount of pre-deposit before the first appellant authority:</i></b> Reduced to INR 200 MN for CGST and INR 200 MN for SGST (earlier the cap</p>	<p>The amendment should also put to rest the dispute on utilization of ITC for pre-deposit. In other words, the amendment should allow utilization of ITC towards pre-deposit.</p>

<sup>1</sup> ALC team had always held this view in light of the CGST Act provisions. This decision further vindicates ALC's view.



		<p><b><u>(Proposed amendment in Section 107 and 112 of the CGST Act)</u></b></p>	<p>was INR 250 MN each – for CGST &amp; SGST).</p> <p><b>Maximum amount of pre-deposit before the GSTAT:</b> Reduced to INR 200 MN for CGST and INR 200 MN for SGST (earlier the cap was INR 500 MN each – for CGST &amp; SGST). Further, the %age cap has been reduced to 10% (as against earlier of 20%).</p> <p><b>ALC take:</b> Significant reduction in maximum monetary cap for GSTAT is a welcome move. Now, total monetary cap is same for first appellate authority and the GSTAT.</p>	<p><b>ALC Wishlist for the next meeting:</b> If the amendment is silent on utilization of ITC for pre-deposit, the next meeting must resolve this on-going issue to reduce litigation and to support trade in cash flow management.</p>
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	<p>Time for filing appeals before the GSTAT</p> <p><b><u>(Proposed amendment in Section 112 of the CGST Act)</u></b></p>	<p>Time limit of 3 months shall commence from a date to be notified.</p> <p><i>ALC take:</i> The amendment is a welcome move considering there was a school of thought<sup>2</sup> that the 3 months' period has commenced with the appointment of the President. The proposed amendment shall put to rest the said school of thought.</p>	NA
	<p>Threshold for filing appeals by Revenue authorities</p>	<p>The new threshold for Department appeal is:</p> <ol style="list-style-type: none"><li>1. GSTAT: INR 2 MN</li><li>2. High Court: INR 10 MN</li></ol>	<p>The threshold is similar to what has been prescribed under the Income Tax Act, and erstwhile Central Excise Act, Finance Act for High Court &amp; Supreme Court. This being the case, it will be interesting to note if certain</p>

<sup>2</sup> After the appointment of the President, GSTAT on May 06, 2024.

			<p>3. Supreme Court: INR 20 MN</p> <p><i>ALC take:</i> Providing a threshold is a welcome move, and will reduce unnecessary litigation.</p>	<p>exceptions will be created (similar to exceptions under Income Tax, etc).</p> <p><i>ALC Wishlist for the next meeting:</i> To increase threshold to INR 5 MN for Tribunal appeals. The said limit of INR 5 MN shall be in line with the threshold under the Income Tax Act.</p>
		<p>Regularization of non-levy or short-levy as per the ‘common trade practice’</p> <p><b><u>(Proposed, new Section 11A in the CGST Act)</u></b></p>	<p>Government, upon recommendation by the GST Council, can regularize non-levy or short-levy of GST due to common trade practices.</p> <p><i>ALC take:</i> The proposed Section 11A will be a new approach of its own kind, which will transcend the current practice of exemption. This will</p>	<p>Whilst the proposed Section 11A is a welcome move, the proposed section should be more beneficial and hence should not be extremely restrictive or conditional. At the same time, certain key aspects should be duly clarified, for e.g. meaning of common trade practice; procedure to approach the GST council seeking benefit under Section 11A; time-bound approach of the GST council.</p>



			provide a legal framework wherein the industry can approach the GST Council to discuss industry issue(s) wherein GST is short-paid or not-paid as per the extant industry practice.	
		Common time limit for issuance of notice involving fraud, etc <b>AND</b> not-involving fraud, etc.  <b><u>(Proposed, new Section 74A in the CGST Act)</u></b>	The different limitation period for cases involving fraud and cases not-involving fraud is being proposed. The new Section 74A will bridge the gap between the different limitation period.  <b><i>ALC take:</i></b> While proposed Section 74A is a good initiative to avoid multiple limitation period, the same <i>should not be worded in a manner where the normal limitation period is</i>	The proposed Section 74A should be worded in a manner where taxpayers are not at disadvantageous position. In other words, the new Section 74A should not increase the current normal limitation period for cases not involving fraud, etc.



			<i>extended</i> further in cases not involving fraud, misrepresentation, etc.	
		Sunset clause for anti-profiteering provisions.  <b><u>(Proposed amendment in section 171 and section 109 of the CGST Act)</u></b>	Sunset clause for anti-profiteering to be effective from 01 <sup>st</sup> April 2025. Further, all pending matters shall be handled by the Principal Bench of the GSTAT.  <b><i>ALC take:</i></b> The long-awaited sunset clause for anti-profiteering is being introduced w.e.f. 01 <sup>st</sup> April 2025. While anti-profiteering was an interim measure, however the same has continued for almost 8 years since its implementation.	NA
2.	ITC	Due date to avail ITC for the period upto FY 20-21 is now 30/11/21	ITC on invoices/ debit notes for the period 01 <sup>st</sup> July 2017 till 31 <sup>st</sup> March 2021 will be allowed if such ITC is	The amendment should, ideally, be unconditional and should also provide one-time relief to avail ITC for the past period.

		<p><b><u>(Proposed retrospective amendment in Section 16(4) of the CGST Act)</u></b></p>	<p>availed through any return filed on or before 30<sup>th</sup> November 2021.</p> <p><b>ALC take:</b> The taxpayers should evaluate the pending disputes/ litigation where ITC was availed after the original limitation period. Upon evaluation, appropriate measures should be taken to get closure on any pending dispute/ litigation.</p>	<p>Such amendment will serve the larger interest of the industry, and will also be aligned with the fact that the initial years of GST implementation had many challenges, and appropriate relief should be granted to taxpayers.</p>
		<p>Returns filed after revocation of GSTIN suspension</p> <p><b><u>(Proposed retrospective amendment in Section 16(4) of the CGST Act)</u></b></p>	<p>Retrospective amendment to Section 16(4) allowing taxpayers to file pending returns due to cancellation of GSTIN.</p> <p>Returns need to be filed within 30 days of the revocation of the cancellation.</p>	<p>The amendment should specifically allow the customers of such taxpayers to avail ITC basis the returns so filed. If not, the amendment may not serve its full objective.</p>



			<p><i>ALC take:</i> Taxpayers whose GSTIN was cancelled must avail this amendment, and ensure that pending returns (if any) are filed on time. This may also assist the customers to avail ITC post filing of returns by such taxpayers.</p>	
		<p>Transitional ITC by ISD</p> <p><b><u>(Proposed retrospective amendment in Section 140(7) of the CGST Act)</u></b></p>	<p>Retrospective amendment to allow ITC on the common invoices received by an ISD prior to the effective date, for the services received prior to the effective date.</p> <p><i>ALC take:</i> In many instances, the availment of ITC by ISD has been under scrutiny/ investigation due to lack of appropriate legal provisions.</p>	NA

			The proposed amendment shall put such enquiry/ investigation to rest.	
3.	Refund on export of goods	New mechanism to allow refund of IGST paid on upward revision in price of goods	Government to notify mechanism which will allow exporter of goods to claim refund of IGST paid on account of upward revision of value of exported goods. This will permit exporters to claim refund of IGST already paid, and regularize the cash flow.  <i>ALC take:</i> The proposed mechanism will assist the trade & industry to claim refund of excess IGST already paid.	The proposed mechanism should be implemented expeditiously on the GSTN too, including any current restrictions (like same invoice number for different refund applications). Further, detailed instructions should be issued to the officials to ensure that there is no unnecessary delay in sanctioning such refunds.
		Refund restricted in cases exported goods are subject to export duty.	Refund under Section 16 and Section 54 shall be restricted in cases involving goods which are subject to export duty; restriction to apply irrespective of the	The proposed amendment should clarify the extent of this restriction, since there could be different scenarios wherein the goods may or

		<b><u>(Amendment in Section 16 of IGST Act and section 54 of CGST Act)</u></b>	<p>fact as to whether such goods were exported with payment of GST or without payment of GST. Further, the refund shall be restricted where such goods are supplied to SEZ developer or SEZ unit.</p> <p><i>ALC take:</i> The proposed amendment is to provide clarity on refund eligibility in cases where job work activity is undertaken on goods which are exported and are subject to export duty.</p>	not be subject to export duty, i.e. export duty is NIL; export duty is EXEMPT; etc.
4.	GSTR 1 amendment/rectification	New optional facility to file new GSTR 1A to amend/rectify GSTR of a tax period.	Taxpayers have been facing issues on account of lack of provision for amending GSTR 1. The new optional facility will allow taxpayers to amend/add new details by filing GSTR 1A. The optional GSTR 1A to be exercised	The proposed GSTR 1A should not be subject to any conditions, and can be used by all taxpayers.

			<p>before filing of GSTR 3B for the same tax period.</p> <p><i>ALC take:</i> The proposed amendment is a correct step towards trade facilitation. This will allow rectification/ amendment in the same tax period.</p>	<p><i>ALC Wishlist for the next meeting:</i> To extend this facility to subsequent months, and not restrict it to the same tax period.</p>
5.	TCS Rate	TCS rate for Electronic Commerce Operators <sup>3</sup> (ECOs)	<p>TCS rate is reduced to 0.5% (0.25% - CGST &amp; 0.25% - SGST) as against the earlier rate of 1%.</p> <p><i>ALC take:</i> The reduced TCS rate will provide impetus to the ECOs in their cash flow management.</p>	NA
6.	GSTR 9/9A threshold	Threshold for GSTR 9/9A for FY 23-24 will be INR 2 crores.	In line with the previous years' approach, GSTR 9/9A is not applicable	NA

<sup>3</sup> ECO means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.



			<p>to taxpayers with turnover of upto INR 2 cr.</p> <p><i>ALC take:</i> The Council may decide to introduce this threshold by way of a notification in perpetuity.</p>	
7.	Penalty on ECOs under Section 122(1B)	<p>Penalty under Section 122(1B) is applicable only on ECOMs which are required to undertake TCS obligations.</p> <p><b><u>(Proposed retrospective amendment in Section 122(1B) w.e.f. 01<sup>st</sup> October 2023)</u></b></p>	<p>Penalty provided for in Section 122(1B) will trigger only on those e-com operators who are required to undertake TCS obligations under Section 52 of the CGST Act.</p> <p><i>ALC take:</i> The amendment will provide clarity on the applicability of penal provisions, and will restrict the penal provisions on certain ECOs.</p>	



8.	Adjustment of DRC 03 against pre-deposit	Payment made under DRC 03 can be adjusted against pre-deposit to be paid towards filing of an appeal.  <b><u>(Proposed amendment in Rule 142 of the CGST Rules)</u></b>	Payment made by a taxpayer through DRC 03 (during audit/ investigation) can be considered towards payment of pre-deposit for filing of appeal.  <b><i>ALC take:</i></b> The proposed amendment and expected clarification will ensure that taxpayers are not asked to make additional payment of pre-deposit towards filing of appeal. Any payment made through DRC 03 is not being considered towards pre-deposit in various jurisdictions.	The proposed clarification should either provide for strict adherence by the GST officials, or alternatively should provide mechanism under which DRC 03 payment may be deemed to be payment towards pre-deposit of appeal. The appellate authorities or the investigating authorities should not have discretionary powers to consider such DRC 03 payment towards pre-deposit; the rule must be absolute!
9.	Rate Change	Goods	Kindly refer to Annexure A.	
10.	Rate Change	Services (Generic)	Kindly refer to Annexure B.	
		Services (Insurance/ co-insurance)	- Apportionment of premium in coinsurance arrangement shall be	



			<p>deemed to be NO SUPPLY under Schedule III.</p> <ul style="list-style-type: none"><li>- Ceding commission/ re-insurance commission between insurer and re-insurer may be declared as NO SUPPLY under Schedule III.</li><li>- To clarify that retrocession is 're-insurance of re-insurance' and hence eligible for exemption under Sl. No. 36A.</li></ul>	
11.	Composition return	<p>Due date for filing GSTR 4 is extended to 30<sup>th</sup> June.</p> <p><b><u>(Proposed amendment in Rule 62(1)(ii) of the CGST Rule for</u></b></p>	<p>Due date extended to 30<sup>th</sup> June (from the existing 30<sup>th</sup> April) for Composition Taxpayers. The amendment shall be applicable for FY 2024-25 onwards.</p>	



		<u>the period FY 2024-25 onwards)</u>		
12.	Proposed clarifications	Valuation for import of services by related parties  <u>(Clarification under Rule 28(1) of the CGST Rules)</u>	In a major relief (primarily to foreign airlines and shipping lines), the Council has recommended that in cases where no invoice is issued by foreign affiliate on its domestic affiliate, the value of such shall be deemed to be NIL. Such deeming value shall apply only if the recipient is otherwise eligible to full ITC.  Further, it has been clarified that in cases where the invoice is issued, the invoice value shall be deemed to be the open market value.	The mechanism should not be restrictive in nature. Further, appropriate instructions/ clarification should be issued to drop / terminate on-going disputes/ investigations.

			<p><i>ALC take:</i> The proposed clarification shall bring respite to taxpayers who have been facing multiple investigations/ audit wherein the invoice value has been under challenge under various pretext. Additionally, taxpayers who have been discharging GST on certain FOC services (on a conservative basis) can re-evaluate their tax position in light of this clarification.</p>	
		<p>Valuation for Corporate Guarantee between related parties</p> <p><b><u>(Retrospective amendment in Rule 28(2) of the CGST Rule)</u></b></p>	<p>Rule 28(2) to be amended retrospectively w.e.f. 26<sup>th</sup> October 2023 (i.e. the effective date for coming into force of the said rule) which will make valuation rules not applicable in cases</p>	<p>The amendment and the consequent clarifications should be comprehensive to provide clarifications on different types of corporate guarantee, and should propose applicability of Rule 28(2) where <b><u>service element</u></b> is involved. Further, appropriate</p>



			<p>where the services are exporter and the recipient is entitled to full ITC.</p> <p><i>ALC take:</i> The proposed amendment will reinforce Government's intention to introduce Rule 28(2) in the CGST Rules, i.e. GST to be levied only in specific cases involving corporate guarantee.</p>	<p>instructions should be issued to the GST officials to implement the provisions in its legal sense, and not to issue assumptive demand notices.</p>
		<p>Time limit to avail ITC on self-invoices issued by the recipient where services are received from unregistered suppliers</p>	<p>The time limit to avail ITC shall be calculated from the year in which self-invoice is raised by the recipient of services.</p> <p><i>ALC take:</i> The proposed clarification will support the industry-practice regarding time limit to avail ITC. The</p>	<p>The clarification should categorically provide that the time limit (otherwise applicable) should not apply in the identified transactions.</p>

			GST Council may further extend this facility to all transactions which require self-invoicing, including import of services, etc.	
		ITC eligibility for certain goods used in OFC network	<p>ITC on ducts and manhole is not restricted under Section 17(5)(c) or 17(5)(d) of the CGST Act.</p> <p><i>ALC take:</i> The reasoning behind the proposed clarification may also be considered for other inputs/ goods which are proposed to be restricted under Section 17(5)(c) and 17(5)(d) of the CGST Act.</p>	The proposed clarification will settle the long-drawn dispute between the industry players and the GST officials. The clarification should also be on the larger principle that any goods used in furtherance of business should be allowed.
		Custodial services provided by Indian Banks to FII	Place of supply of services in the nature of custodian services provided by	NA



			<p>Indian banks to FII shall be determined as per Section 13(2) of the IGST Act.</p> <p><i>ALC take:</i> This clarification will provide a relief to banks providing custodian services, as the same may qualify as export of services.</p>	
		Threshold for reporting B2C transactions	<p>Invoice level reporting of inter-state B2C supplies threshold to be reduced to INR 1 lac from existing INR 2.5 lacs.</p> <p><i>ALC take:</i> Government is moving towards bringing majority of B2C transaction at invoice level.</p>	NA
		TDS return (GSTR 7) to be filed on monthly basis.	<p>Council has recommended that TDS returns should be filed on monthly basis, even if there is NIL liability. In</p>	



			cases of NIL liability, no late fee shall be payable.	
		Miscellaneous	<p>Clarifications to be issued on the following points:</p> <ul style="list-style-type: none"><li>- Taxability on reimbursement of securities issued under ESOP.</li><li>- Reversal of ITC on life insurance services' premium which is not part of taxable value as per Rule 32(4), i.e. deemed value after deductions.</li><li>- Taxability of wreck and salvage values in motor vehicles insurance claims.</li><li>- Warranty/ Extended Warranty provided by Manufacturers to the end customers.</li></ul>	



			<ul style="list-style-type: none"><li>- ITC availability on repair expenses incurred by the insurance companies in case of reimbursement of settlement of motor vehicle insurance claims.</li><li>- Taxability of loans granted between related person or between group companies.</li><li>- Time of supply on Annuity Payments under HAM Projects.</li><li>- Time of supply in respect of allotment of Spectrum to Telecom companies in cases where payment of licence fee and Spectrum usage charges is to be made in instalments.</li><li>- Place of supply of goods supplied to unregistered persons, where</li></ul>	
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			<p>delivery address is different from the billing address.</p> <ul style="list-style-type: none"><li>- Mechanism for providing evidence by the suppliers for compliance of the conditions in respect of post-sale discounts, to the effect that ITC has been reversed by the recipient on the said amount.</li><li>- Various issues pertaining to special procedure for the manufacturers of the specified commodities, like pan masala, tobacco etc.</li></ul>	
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**ANNEXURE A**  
**GST RATE FOR GOODS**

Sl. No.	Product Description	New GST Rate
1.	Parts, components, testing equipment, tools and tool-kits of aircrafts, irrespective of their HS classification.	Uniform rate of 5% Subject to conditions.
2.	Milk cans (of steel, iron and aluminium)	12% Irrespective of the end-use
3.	Carton, boxes and cases of both corrugated and non-corrugated paper or paper-board' (HS 4819 10; 4819 20)	12%
4.	Solar cookers whether single or dual energy source.	12%
5.	Poultry keeping Machinery to specifically incorporate “parts of Poultry keeping Machinery”.  <i>To regularise past practice on ‘as is where is’ basis</i>	12%
6.	all types of sprinklers including fire water sprinklers.  <i>To regularise past practice on ‘as is where is’ basis</i>	12%
7.	IGST exemption on imports of specified items for defence forces till 30 <sup>th</sup> June 2029.	0

8.	Compensation Cess on the imports in SEZ by SEZ Unit/developers for authorised operations w.e.f. 01.07.2017	0
9.	Compensation cess on supply of aerated beverages and energy drinks to authorised customers by Unit Run Canteens under Ministry of Defence	0
10.	Adhoc IGST exemption on imports of technical documentation for AK-203 rifle kits imported for Indian Defence forces.	0
11.	Exemption on imports of research equipment/buoys imported under the Research Moored Array for African-Asian-Australian Monsoon Analysis and Prediction (RAMA) programme	0 Subject to specified conditions.

**ANNEXURE B**  
**GST RATE FOR SERVICES**

Sl. No.	Service Description	New GST Rate
1.	Services provided by Indian Railways to general public, and Intra-Railway transactions.  <i>To regularise past practice w.e.f 20<sup>th</sup> October 2023 on 'as is where is' basis.</i>	Exempt
2.	Accommodation services having value of supply of accommodation up to Rs. 20,000/- per month per person	Exempt  Subject to the condition that the accommodation service is supplied for a minimum continuous period of 90 days.
3.	Services provided by Special Purpose Vehicles (SPV) to Indian Railway by way of allowing Indian Railway to use infrastructure built & owned by SPV during the concession period and maintenance services supplied by Indian Railways to SPV.  <i>To regularise past practice on 'as is where is' basis.</i>	Exempt