

## GST Notifications and Recommendations of 52<sup>nd</sup> GST Council Meeting

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# Notifications

## Special procedure to be followed by the electronic commerce operators (ECO) in respect of supplies of goods through them by composition taxpayers

[Notification No. 36/2023- Central Tax dated 04.08.2023](#)

CBIC has notified special procedure as listed below applicable w.e.f. 01.10.2023.

- ECO shall not allow inter-State supply of goods through it by the composition taxpayer.
- ECO shall collect tax at source (TCS) at the time of supply of goods.
- ECO shall mandatorily furnish details of supplies of goods made through it in FORM GSTR-8 on common portal.

## Special procedure to be followed by the ECO in respect of supplies of goods through them by unregistered persons

[Notification No. 37/2023- Central Tax dated 04.08.2023](#)

CBIC has notified special procedure as listed below applicable w.e.f. 01.10.2023.

- ECO shall allow the supply of goods through it by unregistered persons only if enrolment number has been allotted on the common portal to the said person;
- ECO shall not allow any inter-State supply of goods through it by the unregistered person;
- ECO shall not be allowed to collect TCS for such supplies made through it.
- ECO shall furnish details of supplies of goods made through it in FORM GSTR-8 on common portal.
- Where multiple ECO are involved in a single supply of goods, the ECO who finally releases the payment is considered responsible for this process.

## Second Amendment to CGST Rules 2017

[Notification No. 38/2023 - Central Tax dated 04.08.2023](#)

The Central Government vide the said notification has issued CGST (2<sup>nd</sup> Amendment) Rules, 2023 for

implementation of recommendations of GST Council w.e.f. 01.10.2023. The amendments are as under:

- **Rule 9:** Under this amendment, the phrase “in the presence of the said person” has been eliminated from Rule 9 of the CGST Rules. This change affects the procedure for verification of the registration of taxable persons under the Act, making the registration process more efficient and less reliant on physical presence.
- **Rule 10A:** This rule now prescribes a new deadline for submitting information related to bank account details. As per the amendment, this information must be furnished “within a period of 30 days from the date of grant of registration, or before furnishing the details of outward supplies of goods or services or both whichever is earlier”.
- **Rule 21A:** This rule has now undergone substantial modifications primarily designed to deal with violations of the Act or the rules. Such contraventions can lead to the potential cancellation or suspension of the registration of the concerned person.
- **Rule 23:** This rule extends the period permitted for filing an application for the revocation of the cancellation of registration to a total period of 270 days from the date of the service of the order of cancellation of registration.
- **Rule 25:** This amendment substitutes the existing Rule 25, by clearly defining the procedures and timelines for the physical verification of business premises in specific scenarios.
- **Rule 43:** The value of exempt supply has been modified for the purpose of reversal of common ITC.
- **Rule 46:** This rule has been simplified. In clause (f) for the words, “name and address of the recipient along with its PIN code and the name of the State and the said address shall be deemed to be the address on record of the recipient”, the following words “name of the state of the recipient and the same shall be deemed to be the address on record of the recipient” has been substituted.
- **Rule 59:** It contains 2 new clauses related to restrictions on providing the details of outward supplies under certain situations. This amendment

ensures that businesses follow appropriate procedures when declaring outward supplies.

- **Rule 64:** For the words “person in India other than”, the words “non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or to” has been substituted.
- **Rule 67:** This rule has been amended to align it with the GSTN portal.
- **Rule 88D:** This new rule has been introduced to deal with the difference in input tax credit (**ITC**) as per the auto-generated statement and that availed in the return.
- **Rule 89:** The clause (k) to sub-rule (2) has been amended to include interest, if any, or any other amount paid in addition to details of the amount of claim on account of excess payment of tax while submitting the statement along with refund application.
- **Rule 96:** In sub-rule (2) to Rule 96 of the CGST Rules, 2017, both the provisos has been omitted, to align the refund of IGST paid on export with the GSTN portal mechanism.
- **Rule 108:** This rule has been amended to include proviso regarding the manual filing of appeal to the Appellate Authority in FORM GST APL-01, along with the relevant documents only in exceptional situation as mentioned in the rule.
- **Rule 109:** This rule has been amended to include proviso regarding the manual filing of appeal to the Appellate Authority in FORM GST APL-03, along with the relevant documents only in exceptional situation as mentioned in the Rule.
- **Rule 138F:** This new rule has been introduced for information to be furnished in case of intra-State movement of gold, precious stones, etc. and generation of e-way bills thereof.
- **Rule 142B:** This new rule has been introduced to facilitate intimation of certain amounts liable to be recovered under Section 79 of the Act in DRC 01D. This intimation will be considered as notice of recovery and the amount specified in the intimation should be paid within 7 days of the date of the said intimation.
- **Rule 162:** Sub-rule 3A has been inserted specifying the compounding amount specific to each of the

offences under Section 132 as per the table provided in the said sub-rule 3A.

- **Rule 163:** This new rule has been introduced to obtain consent of the registered taxpayer for sharing of the information with respect to his returns as specified which is available on the common portal.
- Additionally, new forms, FORM GST DRC-01C and FORM GST DRC-01D have been introduced. Several existing forms, FORM GSTR-3A, GSTR-5A, GSTR-8, GSTR-9, GSTR-9C, and GST RFD-01, have also been changed substantially.

### **Amendments to territorial jurisdiction and tax implications in specific regions**

[Notification No. 39/2023- Central Tax dated 17.08.2023](#)

CBIC vide the said notification has made amendment to the earlier [Notification No. 02/2017- Central Tax dated 19.06.2017](#). The amendment primarily affects the territorial jurisdiction and tax implications in specific regions. These alterations take effect from 04.04.2022.

### **Third Amendment to CGST Rules 2017**

[Notification No. 45/2023- Central Tax dated 06.09.2023](#).

CBIC has inserted, Rule 31B and 31C in the CGST Rules to provide for value of supply in case of online gaming including online money gaming and actionable claims in case of casinos as follows:

- Value of supplies made in online gaming including supply of actionable claims in online money gaming shall be the total amount paid, payable or deposited with the supplier in money or money's worth, including virtual digital assets, by or on behalf of the player.
- Value of supply of actionable claims in casinos shall be the total amount paid or payable for (i) purchase of tokens, chips, coins or tickets for use in casino, or (ii) participating in any event in casino.
- Any amount returned or refunded by the supplier to the player for any reason, including player not using the amount paid or deposited with the supplier for participating in any event, or towards

return of tokens, coins, chips or tickets in case of casino, shall not be deductible from the value of supply of online money gaming. or of actionable claims in casino.

- An explanation is also being inserted to clarify that for the purpose of Rule 31B and 31C, any amount received by the player on winning any event, which is not withdrawn and is used for playing in a further event, shall not be considered as amount paid or deposited with the supplier by or on behalf of the said player.
- These rules shall come into force on a date as may be notified by the Central Government.

### **Extending the date for following the special procedures required for certain manufacturers**

[Notification No. 47/2023- Central Tax dated 25/9/2023.](#)

CBIC vide the said notification has made amendment to the earlier [Notification No. 30/2023- Central Tax dated 31.07.2023](#) which relates to procedures applicable to registered individuals engaged in the manufacturing of Pan Masala and Tobacco products. Thus, CBIC has now extended date of special procedure to be followed by the said manufacturers to 01.01.2024. This shall be enforced from 31.07.2023.

### **Notifying effective date for implementing the provisions of the CGST (Amendment) Act, 2023 as 01.10.2023**

[Notification No. 48/2023- Central Tax dated 29/9/2023](#)

CBIC vide this notification has appointed the date 01.10.2023 as the date on which the provisions of the CGST (Amendment) Act 2023 shall come into force. Summary of these amendments are as follows:

- Introduction of the new definition of ‘online gaming,’ ‘online money gaming,’ ‘specified actionable claim,’ ‘virtual digital asset’ [Section 2(80A), (80B), (102A), (117A) of the CGST Act respectively.]
- Amendment in Schedule III to the CGST Act to substitute lottery, betting and gambling as ‘specified actionable claim’.

- Amendment by inserting new clause (xia) to Section 24 of the CGST Act pertaining to compulsory registration which provides that every person supplying online money gaming, from a place outside India to a person in India, shall be required to get mandatory registration under GST.

### **Valuation mechanism for online money gaming, online gaming, actionable claims**

[Notification No. 49/2023- Central Tax dated 29.9.2023](#)

CBIC has notified that supply of online money gaming, online gaming, actionable claims in casinos as a separate class of supply for valuation under Section 15(5) of GST Act w.e.f. 01.10.2023.

### **Exclusion of specified actionable claims**

[Notification No. 50/2023- Central Tax dated 29.9.2023](#)

CBIC vide the said notification has made amendment to the earlier [Notification No. 66/2017- Central Tax dated 15.11.2017](#). Through this amendment registered persons involved in the supply of specified actionable claims by way of betting, casinos, gambling, horse racing, lottery or online money gaming have been excluded from the composition levy benefits and this amendment will be effective from 01.10.2023.

### **Amendments (Third Amendment, 2023) to the CGST Rules, 2017 in supersession of Notification No. 45/2023 dated 06.09.2023**

[Notification No. 51/2023- Central Tax dated 29.9.2023](#)

CBIC has amended CGST Rules relating to registration processes, valuation and forms relating to online money gaming and casinos. This notification will be effective from 01.10.2023.

### **28% GST on Specified Actionable Claims**

[Notification No. 11/2023- Central Tax \(Rate\) dated 29.9.2023](#)

CBIC has inserted entry No. 227A to Schedule IV of Notification no.1/2017-Central Tax (Rate), dated 28.6.2017, relating Specified Actionable Claims as

defined in Section 2(102A) of the CGST Act, 2017 and omitted Entry No. 228 relating to lottery and entry No. 229 relating to betting, gambling, horse racing. The rate notified is 28%. This notification will be effective from 01.10.2023.

### Notifying effective date for implementing the provisions of the IGST (Amendment) Act, 2023 as 01.10.2023

[Notification No. 02/2023 – Integrated Tax dated 29.9.2023](#)

CBIC vide this notification has appointed the date 01.10.2023 as the date on which the provisions of the IGST(Amendment) Act 2023 shall come into force.

Summary of these amendments are as follows:

- Amendment in provisions related to the place of supply in respect of the supply of goods to unregistered persons [clause (ca) of Section 10 of the IGST Act].
- A new section has been introduced to prescribe a special provision for specified actionable claims supplied by a person located outside India [Section 14A of the IGST Act].

### IGST on import of online money gaming

[Notification No. 03/2023 – Integrated Tax dated 29.9.2023](#)

CBIC has notified that w.e.f. 01.10.2023 the supply of online money gaming as the goods on import of which the proviso under Section 5(1) shall not apply, but on which integrated tax shall be levied and collected under Section 5(1) of the said Act. Thus, supplying online money gaming from outside India to individuals in India are now covered under IGST.

### No GST under reverse charge mechanism (RCM) on ocean freight

[Notification No.11/2023, 12/2023, 13/2023– Integrated Tax \(rate\) dated 29.09.2023](#)

Vide these 3 notifications which are effective from 01.10.2023, CBIC has now amended the rate, exemption and RCM notifications. This is in consequent to the decision of the Supreme Court in Union of India vs. M/s Mohit Minerals Pvt. Ltd. Accordingly, GST will not be leviable under reverse charge basis (RCM) on ocean freight in case of imports on CIF basis.

### Recommendations relating to GST on goods and services

- Millet flour in powder form if blended with any other atta with 70% composition of millets under (HS1901) should attract 0% GST if sold in loose and 5% GST if sold in pre-packaged and labelled form.
- GST on molasses to be reduced from 28% to 5%.
- Extra Neutral Alcohol (**ENA**) used for manufacture of alcoholic liquor for human consumption should be kept outside GST.
- ENA for industrial use should attract 18% GST.
- To charge 5% GST on imitation zari thread or yarn made out of metallised polyester film or plastic film falling under HS 5605. However, no refund on account of inversion.
- To insert separate tariff HS code in the Customs Tariff Act to cover rectified spirit for industrial use.
- To exempt services of water supply, public health, sanitation conservancy, solid waste management and slum improvement and upgradation supplied to Governmental Authorities.
- To retain the existing exemption to pure and composite services provided to Central/State/UT governments and local authorities in relation to any function entrusted to Panchayat/ Municipality under Article 243G and 243W of the Constitution of India.
- Job work services to process barley into malt should attract GST @ 5% GST instead of GST @18%, as "job work in relation to food and food products".
- To arrive at a balance between the need of small bus operators for ease of doing business and the need of large, organized players to take ITC, GST Council has recommended that bus operators organised as companies may be excluded from the purview of Section 9(5) of CGST Act, 2017. This would enable them to pay GST on their supplies using their ITC. Thus, bus operators organised as

companies and supplying services through ECO would be liable to pay GST. Earlier, the liability to pay GST was on ECO.

- To clarify that District Mineral Foundations Trusts (DMFT) set up by the State Governments are Governmental Authorities hence exempt from GST.
- To reduce the cost for Indian Railways, it has been recommended that supply of all goods and services by Indian Railways shall be taxed under Forward Charge Mechanism to enable them to avail ITC.
- Foreign going vessels to be taxed at 5% IGST on the value of the vessel if it converts to coastal run.
- Conditional IGST exemption to foreign flag foreign going vessel when it converts to coastal run subject to its reconversion to foreign going vessel in 6 months.

### Recommendations for facilitation of trade

- Council has recommended to introduce Amnesty Scheme for taxpayers who could not file an appeal against demand order under Section 73 or 74 of CGST Act till 31.03 2023. Appeal filling will be allowed up to 31.01 2024 on a conditional pre-deposit of 12.5% of tax under dispute, out of which at least 20% (i.e., 2.5% of the tax under dispute) should be debited from Cash Ledger.
- Council has recommended to issue circular for clarifying that when no consideration is paid by the company to the director for providing personal guarantee to the bank or financial institutes on their behalf, the open market value of the said transaction may be treated as zero and hence, no tax is payable.
- Council has proposed to insert sub-rule (2) in Rule 28 of CGST Rules, 2017, to provide for taxable value of supply of corporate guarantee provided between related parties as 1% of the amount of such guarantee offered, or the actual consideration, whichever is higher.
- Further it has recommended to issue circular to provide that the value of supply corporate guarantee between related parties would be governed by new Rule 28(2) irrespective of

whether full ITC is available to the recipient of services or not.

- It has been recommended to amend Rule 159(2) and FORM DRC-22 to provide that Provisional Attachment Order shall not be valid after 1 year, which will facilitate automatic restoration of provisionally attached property.
- Council has recommended to issue a Circular to clarify the place of supply in respect of
- Supply of service of transportation of goods, including by mail or courier, in cases where the location of supplier or the location of recipient of services is outside India;
- Supply of advertising services;
- Supply of the co-location services.
- Council has recommended to issue a Circular to clarify the admissibility of export remittances received in Special INR Vostro account for consideration of services to qualify as export of service.
- Council has recommended to amend [Notification No. 1/2023 IGST dated 31.07.2023 w.e.f. 01.10.2023](#) so as to allow the supplies to SEZ developer/unit for authorised operations to make supply of goods or services (except the commodities like pan masala, tobacco, gutkha, etc. mentioned in the aforesaid Notification on payment of IGST and claim refund of tax so paid.
- It has been recommended to amend Section 2(61), Section 20 of the CGST Act, and Rule 39 of CGST Rules to make the input service distributor (ISD) procedure mandatory prospectively for distribution of ITC in respect of input services procured by Head Office from a third party but attributable to Branch Office.

## KEY TAKE AWAY

- CBIC has notified the date 01.10.2023 as the date on which the provisions of the CGST/IGST (Amendment) Act 2023 shall come into force and introduced the Central Goods and Services Tax (2<sup>nd</sup> Amendment) Rules, 2023.
- Substantial changes have been introduced to the taxation of online gaming, actionable claims, and advance payments.
- The Council during its 52<sup>nd</sup> meeting has addressed various issues such as supply to SEZ units on payment of IGST and temporary nature of provisional attachment of properties, exclusions of bus operators organised as companies from provision of Section 9(5) of the Act etc, which would help in ease of doing business.
- Another remarkable announcement was of Amnesty Scheme for filing time barred appeals against demand orders issued up to 31.03 2023. This will facilitate a large number of taxpayers, who could not file appeal in the past within the specified time period.
- To promote tourism, GST Council recommends conditional and limited duration IGST exemption to foreign flag foreign going vessel when it converts to coastal run.
- Council has recommended to issue a circular clarifying valuation in respect of personal and corporate guarantees which will resolve a long-standing issue faced by the companies. The clarification is in line with the Supreme Court's decision in the case of Edelweiss Financial Services Limited in respect of Service tax matter, which provides no Service Tax on corporate guarantees provided by parent companies to its subsidiary since there is no consideration involved.



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