

July 2023



Notifications / Indirect Tax updates

The 50th Goods and Services Tax (“GST”) Council meeting held on 11 July 2023 has recommended the following:

S.No.	Update	Summary
1.	5% GST on uncooked/ non-fried snack pellets	GST on uncooked/ non-fried snack pellets reduced to 5% from 12% and GST payment for past period regularized on “as is basis”.
2.	5% GST on Imitation Zari Thread	GST reduced on Imitation Zari Thread or yarn from 12% to 5% and GST payment for past period regularized on “as is basis”.
3.	Utility vehicles to attract 22% compensation cess	Compensation cess of 22 percent (on top of the 28 percent GST on all petrol and diesel vehicles) would be applicable to vehicles that meet three criteria: (1) engine capacity exceeding 1500cc; (2) a length exceeding 4000mm; (3) ground clearance exceeding 170mm.
4.	5% GST on LD Slag	GST reduced on LD Slag from 18% to 5% to encourage better utilisation of this product.
5.	5% GST in fish soluble paste	GST on fish soluble paste reduced from 18% to 5% and GST payment for past period regularized on “as is basis”.
6.	Exemption on satellite launch services	GST exemption on satellite launch services to be extended to organizations in the private sector.
7.	No annual declaration for Goods Transport Agency (“GTA”)	GTA will not be required to file annual declaration for paying GST under forward charge. However, if GTA wishes to start paying under forward charge, same must be declared between 1 January to 31 March.
8.	Exemption on services by director of a company in personal capacity	GST Council has clarified that the services supplied by the director of any company in his personal capacity will not be subjected to GST under the Reverse Charge Mechanism (“RCM”).
9.	5% GST on restaurant services in cinemas	GST Council has clarified that supply of food at cinema halls is taxable as “restaurant services” only if they are supplied independently of cinema exhibition. If the cinema ticket and food services are clubbed together then the whole supply qualifying as composite supply will be taxable at the rate of cinema ticket.

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10.	Casino, horse racing, and online gaming to be taxed at of 28% on face value	GST at the rate of 28% will be applicable on the face value of chips purchased at a casino, and on full value of bets placed in case of horse racing and online gaming
11.	Input Service Distributor ("ISD") mechanism not mandatory for distribution of Input Tax Credit ("ITC")	The GST Council has recommended to clarify that ISD mechanism is not mandatory for distribution of ITC of common input services to distinct persons. ISD to be made mandatory prospectively.
12.	Refund of ITC to be restricted to GSTR 2B	Refund of ITC to be restricted to inwards supply reflecting in GSTR 2B of the registered person
13.	New compliances for manufacturers of tobacco, pan masala etc.	Special procedures to be followed by manufactures of tobacco, pan masala and similar items inter alia for registration of machines and filing of monthly returns
14.	Mandatory verification of bank account of registered person	Details of bank account in name and PAN of a registered person to be furnished within 30 days of grant of registration or before filing of GSTR 1
15.	Automatic prompt on mismatch of GSTR 3B and GSTR 2B	The Council has recommended a mechanism for system-based intimation to the taxpayers in respect of the excess availment of ITC in GSTR-3B vis a vis credit made available in GSTR-2B of the registered person
16.	OIDAR service providers to report details of all service recipients in India	OIDAR service providers will now be required to provide the details of supplies made to registered persons in India in the return filed in FORM GSTR-5A
17.	Value of goods from duty free shops to be included in value of exempted supply	Explanation to be added to prescribe that the value of supply of goods from duty free shops at the arrival terminal in international airports to be included in the value of exempt supplies for the purpose of reversal of ITC.
18.	Amnesty Scheme to regularise past GST compliances extended till 31 August 2023	Council has recommended to extend the amnesty scheme till 31 August 2023 for: non-filers of GSTR 4, GSTR 9 and GSTR 10; revocation of cancellation of registration; deemed withdrawal of assessment orders issued basis best judgment on non filing of returns
19.	Exemption on holding of shares by holding company	The Council has clarified that the holding of shares by a holding company of a subsidiary company does not imply a supply of services and hence exempted from levy of GST

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Additional Note on the Recommendation of the 50th GST Council Meeting

GST on Online Gaming imposed at 28% on the full value of stake / fees paid for Online Games

The Goods and Service Tax Council, ["GST Council"] in its meeting held on 11 July 2023, has recommended that online real money gaming be taxed as "taxable actionable claims" under the provisions of the CGST Act.

Accordingly, online real money gaming would be subject to a tax of 28% on the full value of stake / the total consideration paid by a user. This recommendation, which would be brought into effect through an amendment to the CGST Act, would blur the distinction between "games of skill" and "game of chance" by treating online real money games of skill (like rummy, fantasy sports, etc.), on the same pedestal as games / activities of chance such as lotteries, betting and gambling.



SAMCO Comment:

This recommendation may be subject to legal scrutiny and challenged in writ jurisdiction given: (i) the lack of nexus between supply of service and the valuation, since it seeks to extend the tax liability on the amount *wagered* by a user (which is not retained by the online gaming platform), instead of limiting it to the consideration *paid* by the user to the online gaming platform, for the supply of services (which is retained by the online gaming platform); and (ii) the blurring of the difference between '*games of skill*' and '*games of chance*', which contravenes the principles laid down by the Hon'ble Supreme Court and various High Courts in a number of judicial precedents.

We are keeping track of further developments in this regard and will keep you posted. Please feel free to reach out to us if you require any clarification in this regard.

Notification Number 39/2023-Customs dated 14 June 2023 has been issued to reduce Basic Custom Duty ("**BCD**") on Refined Soya Bean Oil and Refined Sunflower oil to 12.5%

Notification Number 40-41-42/2023 Customs dated 30 June 2023 has been issued to prescribe custom duty of 5% for LPG. The standard tariff rate in first schedule of Customs Tariff Act has been increased to 15%. Further Agriculture Infrastructure and Development Cess ("**AIDC**") on LPG has been prescribed at 15%.

Notification Number 43-44-45/2023 Customs dated 1 July 2023 has been issued to impose import duty of 15% on liquefied propane and liquefied butane. However, the product will enjoy concessional Basic Custom Duty of 2.5%. Further AIDC will be levied at 15%.

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Penuel Nexus Pvt. Ltd. v. the Additional Commissioner and Anr. (Kerala High Court in WP 15574 / 2023 judgment dated 13.06.2023)
The Assessee / Petitioner is a firm engaged in direct marketing. Due to the COVID-19 pandemic, the Petitioner's business got affected and was

prevented from filing the returns on time. Consequently, the Respondents cancelled the GST registration. Even though the Petitioner preferred an appeal before the Additional Commissioner Headquarters (Appeals). The appeal was rejected on the ground of delay. The Petitioner argued that it was only due to the COVID-19 pandemic that he was prevented from filing the return on time. The Petitioner's appeal was briefly rejected by the Respondent.

However, the Department argued that by virtue of Section 29(2)(c) of the Central Goods and Services Tax Act, 2007, the Proper Officer has the power to cancel the GST registration if the Registered Person does not file the returns for such continuous period as may be prescribed, which at that point of time was six months. If the person is aggrieved by the cancellation, his remedy is to file an appeal under Section 107. However, the appeal has to be filed within the time frame prescribed under Section 107(4), that is, three or six months with a further period of one month. An appeal filed beyond the permitted time can only be dismissed as time-barred.

The Hon'ble High Court held that Section 107 of the CGST Act is an inbuilt mechanism and has impliedly excluded the application of the Limitation Act. It was further held that the Central Goods and Services Tax Act is a special statute and a self-contained code by itself and there is no illegality in the action of the respondent in rejecting the appeal as time-barred. Thus, it was observed that the Limitation Act will apply only if it is extended to the special statute.

Ohmi Industries Asia Pvt. Ltd. v. Assistant Commissioner, CGST (Delhi High Court in Writ Petitioner No. 6856 / 2022 judgment dated 29.03.2023)

The Petitioner/Assessee filed an application seeking a refund of an amount of Rs. 3,99,187/- being the Integrated Tax paid on the export of services (zero-rated supply), in respect of the invoices raised in the month of October 2018.

The Petitioner received the Foreign Inward

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Remittance against the invoices in November 2018. The Adjudicating Authority issued a Deficiency Memo calling upon the Petitioner to furnish the Foreign Inward Remittance Certificate. The Petitioner complied with it. However, the Adjudicating Authority issued a Show Cause Notice setting out certain queries with regard to the difference in the payment of tax. The Adjudicating Authority also raised a query on the ground that the Input Tax Credit shown in respect of four invoices was not reflected in the corresponding GSTR 2A filed by the Petitioner.

The Petitioner provided the necessary clarifications in a letter dated 21.07.2020. The Adjudicating Authority rejected the Petitioner's claim for a refund of Integrated Tax. The Order passed by the Adjudicating Authority indicated that the Adjudicating Authority had verified that the Petitioner had paid Integrated Tax amounting to Rs. 12,02,165/- in respect of invoices raised in the month of October 2018. It was also reflected in GSTR 3B. The Adjudicating Authority, while determining the quantum of the refund, applied the formula under Rule 89(4) of the Central Goods and Services Tax Rules, 2017, and rejected the Petitioner's claim by referring to sub-clause (D) of Rule 89(4) of the CGST Rules. The Adjudicating Authority was of the view that the turnover reflected for the month of October 2018 ought to be considered as the turnover for the month of November 2018 when the remittances were received.

The Hon'ble High Court noted that the Appellate Authority has mechanically rejected the Petitioner's appeal on the *ex facie* erroneous assumption that the Petitioner was seeking a refund of the accumulated ITC. It further held that Rule 89(4) of the CGST Rules is inapplicable to cases of refund of integrated tax paid on zero-rated supply and also noted that the opening sentence of Rule 89(4) makes it amply clear that it applies only in cases of zero-rated supply of goods or services without payment of tax under a bond or letter of undertaking. T

The Hon'ble High court set aside the order of the Adjudicating Authority rejecting the

Petitioner's refund claim regarding zero-rated supply.

State of Karnataka v. M/s Aishwarya Fort (High Court of Karnataka at Bengaluru in STRP No. 45 of 2022 judgment dated 09.06.2023)

The Assessee is a tourism hotel unit that is a registered dealer under the Karnataka Value Added Tax Act, 2003. It is engaged in providing boarding and lodging services to its customers. The Government of Karnataka issued a notification dated 12.11.1999 under Section 8-A(1) of the Karnataka Sales Act, 1957, exempting the sale of food articles and beverages by new tourism units. The Assessee obtained an Exemption Certificate dated 25.03.2003 from the Commissioner of Tourism, Govt. of Karnataka, Bengaluru.

Thereafter, the AO issued a Proposition Notice on the ground that after the enactment of the KVAT Act, the exemption granted under the KST Act would apply only to the new industrial units and not tourism units. Thus, the AO passed a Reassessment Order denying the exemption on the payment of tax on the sale of food and beverages on the ground that there was no exemption notification issued under the KVAT Act.

On appeal, the Ld. JCCT (A) partly allowed the Assessee's appeal and confirmed the denial of exemption from payment under the KVAT Act. On further appeal, the Hon'ble Tribunal allowed the Assessee's appeal and held that the Assessee is eligible for exemption from payment of tax in view of the exemption notification issued under the provisions of the KST Act. The Department filed the present revision petition before the Hon'ble High Court.

The Hon'ble High Court, while dismissing the Revision Petitions, held that the State Government issued a Notification on 07.01.2000, discontinuing sales tax-based incentives which was also clarified via Notification dated 17.07.2007, to the effect that the notification dated 07.01.2000 shall not affect the dealers who have made investments in establishing new tourism units.

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It was also held that the sales tax exemption certificate is valid for 7 years and could not have been rescinded before the period of eligibility expired, as it is a sovereign assurance.

Thus, the bench observed that although the State Government has discontinued the sales tax-based incentives, the incentives already offered and committed were saved. By issuing a subsequent Notification under the Karnataka Sales Act, 1957 (KST Act), it was clarified that the incentives offered earlier would remain unaffected.

M/S Gargo Traders Vs. Joint Commissioner Commercial Taxes (State Taxes) & Ors. (WPA 1009 of 2022) dated 12th June 2023

The Calcutta High Court has set a significant precedent that protects the claimants of GST across India. The crux of this judgment is- An honest taxpayer cannot be held liable for the wrongdoings of the supplier, where there was no collusion exists. In this case, when the GST registration of a supplier was

cancelled retrospectively, the input tax credit of the recipient of goods was blocked by the department.

The Hon'ble High Court held that the tax department cannot refuse input tax credit to a taxpayer solely on the basis of the reason of retrospective cancellation of GST registration of the supplier of the taxpayer, where there is no collusion proved.

Mayel Steels Pvt. Ltd Vs. Union Of India (TS-282-HC (BOM)-2023-GST) dated 27th June 2023

The Bombay High Court observed that the assessing officer's action of issuing a show cause notice to a taxpayer on 1 August 2022 and calling him to represent himself at 2 August 2022 is arbitrary in nature and that such show cause notice must be quashed. The High Court ruled that in addition of uploading the show cause notice on the portal, email delivery or in hand delivery of the notice must be done by the GST Department.

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