

Ref: Recommendation of 45th GST Council Meeting



Late fee on Delayed Filing of GSTR - 1

Delayed filing of GSTR -1 attracts late fee of Rs. 200 (Rs. 100 CGST + Rs. 100 SGST) per day for the period of delay beyond due date.

However, at present, late fee for GSTR - 1 is not being calculated by system and was consequentially not being paid.

Now, GST council has proposed that the same will now be auto - populated by GST portal in GSTR 3B.



**GST Knowledge Partner: GKP21025
CA GAGAN KEDIA – 9830682188**

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Supply / Export of Mentha Oil

GST Council, in its 45th meeting held on 17.09.2021 has recommended the following in respect of Supply of Mentha oil

1. If it is supplied by an unregistered person, the same has to be taxes under **reverse charge** in the hands of recipient.
2. Exports of Mentha oil should be allowed only against LUT and consequential refund of input tax credit. It means that the exporter of Mentha Oil **shall mandatory** take LUT and **export without payment of taxes**



GST Knowledge Partner: GKP21026
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Ref: Recommendation of 45th GST Council Meeting



Scope of Liability of E – Commerce Operators to be Expanded

GST Council, in its 45th meeting held on 17.09.2021 has recommended that in following cases, E-Commerce Operators are being made liable to pay taxes on services provided through them:

1. Transport of passengers, **by any type of motor vehicle through it.**
2. **Restaurant services** provided through it with some exceptions.

Effective date – 01.01.2022



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45th Meeting of the GST Council, Lucknow
17th September, 2021

PRESS RELEASE

The GST Council's 45th meeting was held today in Lucknow under the chairmanship of the Union Finance & Corporate Affairs Minister Smt. Nirmala Sitharaman. The GST Council has *inter-alia* made the following recommendations relating to changes in GST rates on supply of goods and services and changes related to GST law and procedure:

I. Recommendations relating to GST rates on goods and services

A. COVID-19 relief measure in form of GST rate concessions

1. Extension of existing concessional GST rates (currently valid till 30th September, 2021) on following Covid-19 treatment drugs, up to 31st December, 2021, namely-
 - i. Amphotericin B -nil
 - ii. Remdesivir – 5%
 - iii. Tocilizumab -nil
 - iv. Anti-coagulants like Heparin – 5%

2. Reduction of GST rate to 5% on more Covid-19 treatment drugs, up to 31st December, 2021, namely-
 - i. Itolizumab
 - ii. Posaconazole
 - iii. Infliximab
 - iv. Favipiravir
 - v. Casirivimab & Imdevimab
 - vi. 2-Deoxy-D-Glucose
 - vii. Bamlanivimab & Etesevimab

B. Major recommendations on GST rate changes in relation to Goods [w.e.f 1.10.2021 unless otherwise stated]

S. No.	Description	From	To
GST rate changes			
1.	Retro fitment kits for vehicles used by the disabled	Appl. rate	5%

S. No.	Description	From	To
2.	Fortified Rice Kernels for schemes like ICDS etc.	18%	5%
3.	Medicine Keytruda for treatment of cancer	12%	5%
4.	Biodiesel supplied to OMCs for blending with Diesel	12%	5%
5.	Ores and concentrates of metals such as iron, copper, aluminum, zinc and few others	5%	18%
6.	Specified Renewable Energy Devices and parts	5%	12%
7.	Cartons, boxes, bags, packing containers of paper etc.	12%/18%	18%
8.	Waste and scrap of polyurethanes and other plastics	5%	18%
9.	All kinds of pens	12%/18%	18%
10.	Railway parts, locomotives & other goods in Chapter 86	12%	18%
11.	Miscellaneous goods of paper like cards, catalogue, printed material (Chapter 49 of tariff)	12%	18%
12.	IGST on import of medicines for personal use, namely <ul style="list-style-type: none"> i. <i>Zolgensma</i> for Spinal Muscular Atrophy ii. <i>Viltepso</i> for Duchenne Muscular Dystrophy iii. Other medicines used in treatment of muscular atrophy recommended by Ministry of Health and Family Welfare and Department of Pharmaceuticals. 	12%	Nil
13.	IGST exemption on goods supplied at Indo-Bangladesh Border <i>haats</i>	Appl. rate	Nil
14.	Unintended waste generated during the production of fish meal except for Fish Oil	Nil (for the period 1.7.2017 to 30.9.2019)	

C. Other changes relating to GST rates on goods

1. Supply of mentha oil from unregistered person has been brought under reverse charge. Further, Council has also recommended that exports of Mentha oil should be allowed only against LUT and consequential refund of input tax credit.
2. Brick kilns would be brought under special composition scheme with threshold limit of Rs. 20 lakhs, with effect from 1.4.2022. Bricks would attract GST at the rate of 6% without ITC under the scheme. GST rate of 12% with ITC would otherwise apply to bricks.

D. Correction in Inverted Duty structure in Footwear and Textiles sector

GST rate changes in order to correct inverted duty structure, in footwear and textiles sector, as was discussed in earlier GST Council Meeting and was deferred for an appropriate time, will be implemented with effect from 01.01.2022.

E. In terms of the recent directions of the Hon'ble High Court of Kerala, the issue of whether specified petroleum products should be brought within the ambit of GST was placed for consideration before the Council. After due deliberation, the Council was of the view that it is not appropriate to do so at this stage.

F. Major GST changes in relation to rates and scope of exemption on Services [w.e.f 1.10.2021 unless otherwise stated]

No.	Description	From	To
1.	Validity of GST exemption on transport of goods by vessel and air from India to outside India is extended upto 30.9.2022.	-	Nil
2.	Services by way of grant of National Permit to goods carriages on payment of fee	18%	Nil
3.	Skill Training for which Government bears 75% or more of the expenditure [presently exemption applies only if Govt funds 100%].	18%	Nil
4.	Services related to AFC Women's Asia Cup 2022.	18%	Nil
5.	Licensing services/ the right to broadcast and show original films, sound recordings, Radio and Television programmes [to bring parity between distribution and licencing services]	12%	18%
6.	Printing and reproduction services of recorded media where content is supplied by the publisher (to bring it on parity with <i>Colour printing of images from film or digital media</i>)	12%	18%
7.	Exemption on leasing of rolling stock by IRFC to Indian Railways withdrawn.		
8.	E Commerce Operators are being made liable to pay tax on following services provided through them (i) transport of passengers, by any type of motor vehicles through it [w.e.f. 1 st January, 2022] (ii) restaurant services provided through it with some exceptions [w.e.f. 1 st January, 2022]		
9.	Certain relaxations have been made in conditions relating to IGST exemption relating to import of goods on lease, where GST is paid on the lease amount, so as to allow this		

exemption even if (i) such goods are transferred to a new lessee in India upon expiry or termination of lease; and (ii) the lessor located in SEZ pays GST under forward charge.
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G. Clarification in relation to GST rate on Goods

1. Pure henna powder and paste, having no additives, attract 5% GST rate under Chapter 14.
2. Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues, falling under HS code 2303 attract GST at the rate of 5%.
3. All laboratory reagents and other goods falling under heading 3822 attract GST at the rate of 12%.
4. Scented sweet supari and flavored and coated illachi falling under heading 2106 attract GST at the rate of 18%
5. Carbonated Fruit Beverages of Fruit Drink" and "Carbonated Beverages with Fruit Juice" attract GST rate of 28% and Cess of 12%. This is being prescribed specifically in the GST rate schedule.
6. Tamarind seeds fall under heading 1209, and hitherto attracted nil rate irrespective of use. However, henceforth they would attract 5% GST rate (w.e.f. 1.10.2021) for use other than sowing. Seeds for sowing will continue at nil rate.
7. External batteries sold along with UPS Systems/ Inverter attract GST rate applicable to batteries [28% for batteries other than lithium-ion battery] while UPS/inverter would attract 18%.
8. GST on specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, during the period from 1.7.2017 to 31.12.2018, in the same manner as has been prescribed for the period on or after 1st January 2019.
9. Due to ambiguity in the applicable rate of GST on Fibre Drums, the supplies made at 12% GST in the past have been regularised. Henceforth, a uniform GST rate of 18% would apply to all paper and paper board containers, whether corrugated or non-corrugated.
10. Distinction between fresh and dried fruits and nuts is being clarified for application of GST rate of "nil" and 5%/12% respectively;
11. It is being clarified that all pharmaceutical goods falling under heading 3006 attract GST at the rate of 12% [not 18%].
12. Essentiality certificate issued by Directorate General of Hydrocarbons on imports would suffice; no need for taking a certificate every time on inter-state stock transfer.

H. Clarification in relation to GST rate on services

1. Coaching services to students provided by coaching institutions and NGOs under the central sector scheme of ‘Scholarships for students with Disabilities’ is exempt from GST
2. Services by cloud kitchens/central kitchens are covered under ‘restaurant service’, and attract 5% GST [without ITC].
3. Ice cream parlor sells already manufactured ice- cream. Such supply of ice cream by parlors would attract GST at the rate of 18%.
4. Overloading charges at toll plaza are exempt from GST being akin to toll.
5. The renting of vehicle by State Transport Undertakings and Local Authorities is covered by expression ‘giving on hire’ for the purposes of GST exemption
6. The services by way of grant of mineral exploration and mining rights attracted GST rate of 18% w.e.f. 01.07.2017.
7. Admission to amusement parks having rides etc. attracts GST rate of 18%. The GST rate of 28% applies only to admission to such facilities that have casinos etc.
8. Alcoholic liquor for human consumption is not food and food products for the purpose of the entry prescribing 5% GST rate on job work services in relation to food and food products.

II. On the issue of compensation scenario, a presentation was made to the Council wherein it was brought out that the revenue collections from Compensation Cess in the period beyond June 2022 till April 2026 would be exhausted in repayment of borrowings and debt servicing made to bridge the gap in 2020-21 and 2021-22. In this context various options, as have been recommended by various committees/ forums were presented. The Council deliberated at length on the issue. The Council decided to set up a GoM to examine the issue of correction of inverted duty structure for major sectors; rationalize the rates and review exemptions from the point of view of revenue augmentation, from GST. It was also decided to set up a GoM to discuss ways and means of using technology to further improve compliance including monitoring through improved e-way bill systems, e-invoices, FASTag data and strengthening the institutional mechanism for sharing of intelligence and coordinated enforcement actions by the Centre and the States.

III. Recommendations relating to GST law and procedure

I. Measures for Trade facilitation:

1. **Relaxation in the requirement of filing FORM GST ITC-04:**

Requirement of filing **FORM GST ITC-04** under rule 45 (3) of the CGST Rules has been relaxed as under:

- a. Taxpayers whose annual aggregate turnover in preceding financial year is above Rs. 5 crores shall furnish ITC-04 once in six months;
 - b. Taxpayers whose annual aggregate turnover in preceding financial year is upto Rs. 5 crores shall furnish ITC-04 annually.
2. In the spirit of earlier Council decision that interest is to be charged **only** in respect of net cash liability, section 50 (3) of the CGST Act 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”. It has also been decided that interest in such cases should be charged on ineligible ITC **availed and utilized** at 18% w.e.f. 01.07.2017.
 3. Unutilized balance in CGST and IGST cash ledger may be allowed to be transferred between distinct persons (entities having same PAN but registered in different states), without going through the refund procedure, subject to certain safeguards.
 4. Issuance of the following circulars in order to remove ambiguity and legal disputes on various issues, thus benefiting taxpayers at large:
 - a. **Clarification on scope of “intermediary services”;**
 - 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.** A person incorporated in India under the Companies Act, 2013 and a person incorporated under the laws of any other country are to be treated as separate legal entities and would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act 2017 for considering a supply of service as export of services;
 - c. **Clarification in respect of certain GST related issues:**
 - 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 financial year for the purpose of section 16(4) of CGST Act, 2017;

- ii. There is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules, 2017;
- 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) of CGST Act, 2017 from availment of refund of accumulated ITC.

5. Provision to be incorporated in in CGST Rules, 2017 for removing ambiguity 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.

J. Measures for streamlining compliances in GST

1. Aadhaar authentication of registration to be made mandatory for being eligible for filing **refund claim and application for revocation of cancellation of registration.**
2. Late fee for delayed filing of **FORM GSTR-1** to be auto-populated and collected in next open return in **FORM GSTR-3B.**
3. Refund to be disbursed in the bank account, which is linked with same PAN on which registration has been obtained under GST.
4. Rule 59(6) of the CGST Rules to be amended with effect from 01.01.2022 to provide that a registered person shall not be allowed to furnish **FORM GSTR-1**, if he has not furnished the return in **FORM GSTR-3B** for the preceding month.
5. Rule 36(4) of CGST Rules, 2017 to be amended, once the proposed clause (aa) of section 16(2) of CGST Act, 2017 is notified, to restrict availment of ITC in respect of invoices/ debit notes, to the extent the details of such invoices/ debit notes are furnished by the supplier in **FORM GSTR-1/ IFF and are** communicated to the registered person in **FORM GSTR-2B.**

K. GST Council has also recommended amendments in certain provisions of the Act and Rules.

Note: The recommendations of the GST Council have been presented in this release containing major item of decisions in simple language for information of all stakeholders. The same would be given effect through relevant Circulars/ Notifications/ Law amendments which alone shall have the force of law.