

# EY Tax Alert

**GST Council adopts report of GoM on GST Tribunal and recommends various trade facilitation measures**

Tax Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

## Executive summary

This Tax Alert summarizes the recent press release<sup>1</sup> issued by the Ministry of Finance on various recommendations made by the Goods and Services Tax (GST) Council in its 49<sup>th</sup> meeting held on 18 February 2023.

The key recommendations are as follows:

- ▶ Adoption of report of Group of Ministers (GoM) on GST Appellate Tribunal (GSTAT) with certain modifications.
- ▶ Taxable services provided by courts and tribunals is proposed to be covered under reverse charge mechanism (RCM).
- ▶ Extension in time limit to apply for revocation of cancellation of registration and filing of relevant return pursuant to best judgement assessment order. One time amnesty scheme has also been proposed for past cases.
- ▶ Rationalization of late fees in case of delayed filings of GSTR-9 from financial year 2022-23 onwards.
- ▶ Amnesty scheme in respect of pending returns in GSTR-4, GSTR-9 and GSTR-10 by way of conditional waiver/ reduction of late fee.
- ▶ Place of supply of services of transportation of goods (other than by way of mail or courier), in cases where location of either the supplier or the recipient is outside India, shall be location of the recipient.

<sup>1</sup> Press release dated 18 February 2023

# Background

- The Goods and Services Tax (GST) Council held its 49<sup>th</sup> meeting in New Delhi on 18 February 2023.
- The Council has *inter alia* made recommendations relating to GST Appellate Tribunal (GSTAT), changes in tax rates of certain goods and services, and other trade facilitation measures. It has also approved the report of Group of Ministers (GoM) on capacity-based taxation and special composition scheme in certain sectors.

# Key Decisions

## **GST Appellate Tribunal**

- The Council has adopted the report of GoM on GSTAT with certain modifications. The final draft amendments to be carried out in GST laws shall be circulated to Members for their comments. The Chairperson has been authorized to finalize the same.

## **Capacity-based taxation and special composition scheme**

- The Council has approved the report of GoM recommending measures to plug leakages and improve revenue collection from the commodities like pan masala, gutkha, chewing tobacco. The same *inter-alia* includes:
  - the capacity-based levy not to be prescribed;
  - compliance and tracking measures shall be taken to plug leakages and evasions;
  - export of such commodities shall be allowed only against Letter of Undertaking (LUT);
  - compensation cess levied on such commodities to be changed from *ad valorem* to specific tax-based levy.

## **Rate changes and clarifications**

- The tax rate on "Rab" to be reduced from 18% to:
  - 5% - if sold packaged and labelled
  - Nil - if sold otherwise
- Further, it has also been decided to regularize payment of GST on "Rab" during the past period on "as is basis" on account of genuine doubts over its classification and applicable tax rate.
- GST rate on "Pencil Sharpener" also to be reduced to 12% from the current rate of 18%.
- Presently, "nil" integrated tax (IGST) treatment is available for containers imported into India, as per Notification No. 104/94 - Customs dated 16 March 1994, subject to conditions.

Amendment is proposed in the above Notification to extend such benefit to devices like tag-tracking or data logger already affixed on a container.

- As per Notification No. 1/2017 - Compensation Cess (Rate), exemption is available on coal rejects supplied by a coal washery, arising out of coal on which compensation cess has been paid and no input tax credit (ITC) has been availed by any person.

Amendment is proposed in the above entry so that exemption benefit covers both, coal rejects supplied to and by a coal washery.

- Exemption available to educational institutions and Central and State educational boards for conduct of entrance examination to any authority, board or a body set up by any Government is to be extended.

- Taxable services provided by courts and tribunals such as renting of premises to telecommunication companies for installation of towers, renting of chamber to lawyers, etc., is proposed to be covered under reverse charge mechanism (RCM).

## **Trade facilitation measures**

- Amendment is proposed in Section 30 of the Central Goods and Services Tax Act, 2017 (CGST Act) and Rule 23 of the Central Goods and Services Tax Rules, 2017 (CGST Rules) to extend the time limit to apply for revocation of cancellation of registration from 30 days to 90 days.

Such period may further be extended by the Commissioner, or an officer authorized by him for a further period not exceeding 180 days.

Further, an amnesty scheme may be provided for past cases of registration cancellation on account of non-filing of returns, where application for revocation could not be filed within the time specified, subject to certain conditions.

- As per Section 62, the best judgement assessment order is deemed to be withdrawn if the relevant return is filed within 30 days of services of the said order.

Amendment is proposed in the above provisions to increase the said time period to 60 days, extendable by another 60 days, subject to certain conditions.

It is also recommended to provide an amnesty scheme for past cases where the relevant return could not be filed within the specified time but has been filed along with due interest and late fee upto a specified date. The same would be irrespective of whether an appeal has been filed/ decided or not against the assessment order.

- Presently, late fee of INR200, subject to a maximum of 0.5% of the turnover is payable in case of delayed filing of GSTR-9. It is recommended to rationalize the said fees from financial year (FY) 2022-23 onwards, for registered persons having aggregate turnover in a financial year upto INR20 crores, in following manner:

<b>SI. No.</b>	<b>Aggregate Turnover</b>	<b>Late fees</b>
1.	Up to INR5 crores	INR50/ day, subject to a maximum of 0.04 % of the turnover

2.	More than INR5 crores and up to INR20 crores	INR100/ day, subject to a maximum of 0.04% of the turnover
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- Amnesty schemes in respect of pending returns in GSTR-4, GSTR-9 and GSTR-10 has also been proposed by way of conditional waiver/ reduction of late fee.
- As per Section 13(9) of the Integrated Goods and Services Tax Act, 2017 (IGST Act), the place of supply of services of transportation of goods (other than by way of mail or courier), in cases where location of either the supplier or the recipient is outside India, is the place of destination of such goods.

It is proposed to delete the above provision to provide that the place of supply in such cases shall be location of the recipient.

## Comments

- a. Ensuring expeditious setting up of GSTAT may aid in clearing the piled-up litigations and also reduce the workload of writ courts.
- b. Services provided by courts and tribunals under any law is outside the purview of GST. The proposed services to be covered under RCM appears to be such services which are not required to be provided by courts or tribunals under any law.
- c. Legal services provided by advocates to business entities is covered under RCM. Hence, many lawyers and law firms have not opted for GST registration. If the services provided by courts and tribunals by way of renting of chamber to lawyers is covered under RCM, GST registration requirement in such cases may have to be evaluated.
- d. Various trade facilitation measures like extension of time limit to apply for revocation of registration and filing of relevant return pursuant to best judgement assessment order, rationalization of late fee for filing GSTR-9 and various amnesties provided are likely to benefit the businesses.
- e. *Vide* Finance Bill, 2023, amendment was proposed in Section 12(8) of the IGST Act which provides for place of supply of transportation of goods where the supplier as well as the recipient are located in India. The proposed deletion of Section 13(9) appears to be on similar lines.

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