# LKS UPDATE

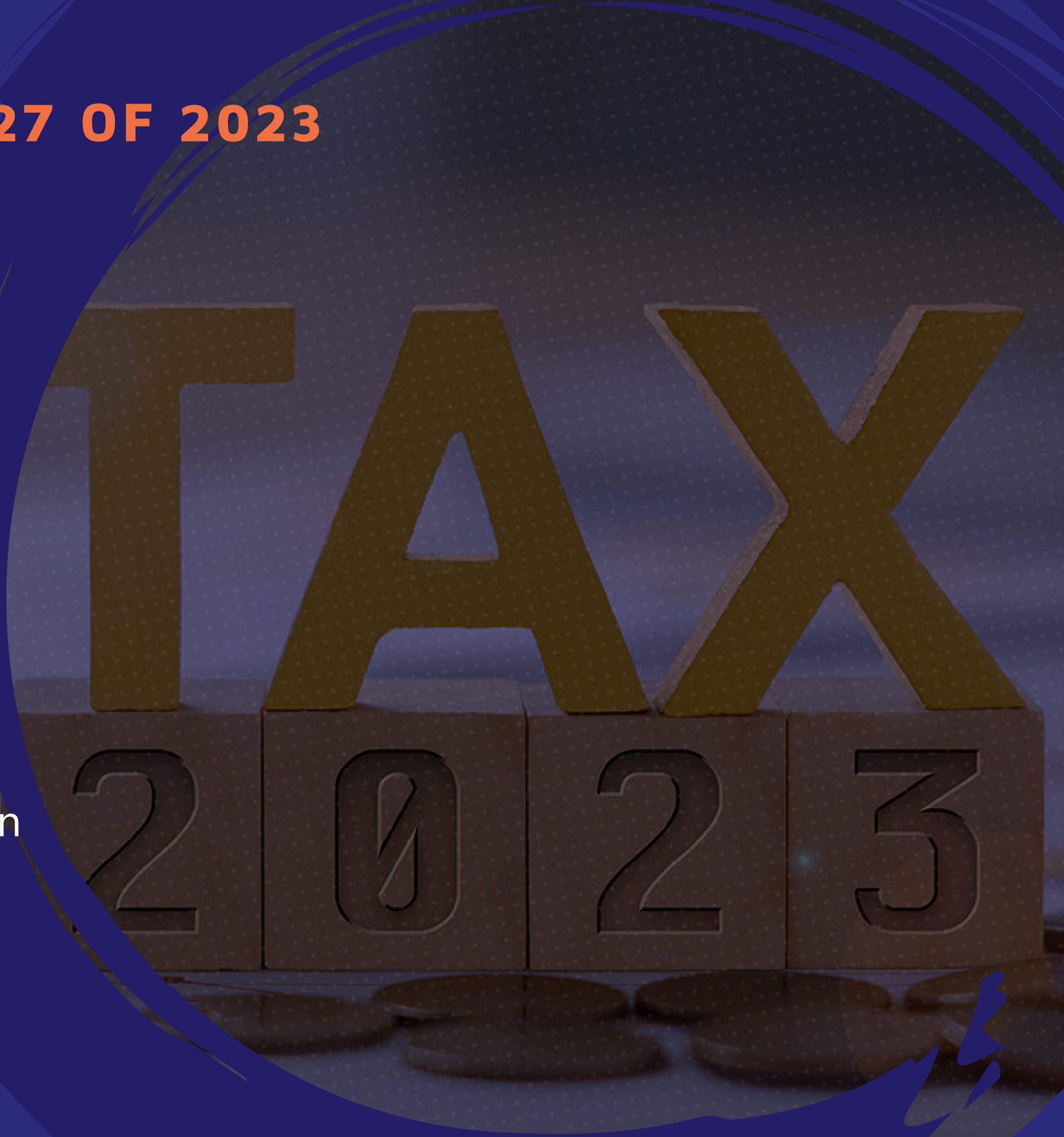
An e-update to clients from Lakshmikumaran & Sridharan

13 JULY 2023

**INDIRECT TAX**

# Analysis of the Recommendations of the 50th GST Council Meeting

**UPDATE NO. 27 OF 2023**

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# A. RECOMMENDATIONS RELATING TO SERVICES

**1. No reverse charge on services supplied by director of a company to the company in his personal capacity.**

- A clarification will be provided to clarify that the services supplied by a director of a company to the company in his private or personal capacity such as supplying services by way of renting of immovable property to the company or body corporate shall not be taxable on reverse charge basis.

- Further, only the services provided by director in the capacity of a director of the company or body corporate shall be taxable under reverse charge in the hands of the company or body corporate.

### LKS COMMENTS

- This is a welcome recommendation made by the Council to bring clarity on the scope of Entry 6 of Notification No. 13/2017-Central Tax (Rate) dt 28 June 2017. Ongoing dispute regarding payment of tax under reverse charge by the company on the services provided by a director in personal capacity such as renting of property would get settled.

- We may await the Circular to see if it is clarified that services provided by a director by way of personal guarantee is in the personal capacity or in the capacity of a director.

**2. GST on Casinos, Horse Racing and Online Gaming**

- It has been recommended to make amendment in Schedule III of the CGST Act to include online gaming and horse racing as taxable actionable claim.

- It has been recommended that casino, horse racing and online gaming are to be taxed at the uniform rate of 28%.

- The value on which Goods and Services Tax (**'GST'**) shall be liable to be paid has been decided to be:
  - Face value of the chips purchased in the case of casinos,
  - Full value of the bets placed with bookmaker / totalizator in the case of Horse Racing and
  - Full value of the bets placed in case of the Online Gaming.

### LKS COMMENTS

- The Council has proposed to put the transactions of horse racing and online gaming at par with the transactions of betting and gambling.

- The recommendations do not make a distinction between the games of skill and the games of chances.

## 3. Supply of Food and Beverages in cinema halls

- The Council has recommended that supply of food and beverages in cinema halls is taxable as restaurant service as long as:
  - they are supplied by way of or as part of a service and
  - supplied independently of the cinema exhibition service.

- It has further been clarified that where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundle satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to services of exhibition of cinema, the principal supply.

### LKS COMMENTS

- We need to await for the Circular to see whether all supplies effected from a food counter within the complex of cinema hall would constitute to be supply of restaurant services.

**4. Exemption on Satellite Launch Services**

The Council has recommended that the GST exemption available on satellite launch services supplied by ISRO, Antrix Corporation Limited and New Space India Limited (NSIL) may be extended to such services supplied by organisations in private sector also to encourage start ups.

**5. Filing of declaration for paying GST under forward charge by Goods Transport Agency ('GTA')**

- The GST Council has recommended that GTAs will not be required to file declaration for paying GST under forward charge every year. Option for payment of tax under forward charge once exercised shall be deemed to have exercised for subsequent financial years unless a declaration to the contrary is filed by GTA.

- Further, the last date for exercising the said option by GTAs to pay tax under forward charge shall be 31st March of the preceding Financial Year (and not 15th March).

- Such option can be exercised by the GTA for the financial year at any time on or after 1st January till 31st March of the preceding Financial Year for the subsequent financial year.

## B.MEASURE FOR FACILITATION OF TRADE

**1. Input Services Distributor ('ISD')**

The Council has recommended that a Circular be issued to clarify that the Input Services Distributor mechanism is not mandatory for the distribution of input tax credit (**'ITC'**) of common input services procured from third parties to distinct persons as per the present provisions of the GST law.
Further, it has been recommended to clarify the taxability of internally generated services provided by one distinct person to another distinct person.
Also, the Council has recommended to make changes in law to make ISD mechanism mandatory for distribution of ITC of common input services procured from third parties.

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### LKS COMMENTS

- The Government would issue Circular to bring clarity over the requirement of cross charge vis-à-vis ISD in light of ambiguities prevailing in the industry.

- We need to wait for the fine print of law to see the requirement of cross charge vis-à-vis ISD in respect of common input services which are consumed by one distinct person to provide support services to other distinct persons.

## 2. GST Appellate Tribunal

The GST Council recommends the Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023, governing the appointment and conditions of the President and members of the proposed GST Appellate Tribunals (GSTAT), which may be notified by the Centre with effect from 01.08.2023.

## 3. Annual Returns

- The Council recommended that the relaxations provided in FY 2021-22 in respect of various tables of the Form GSTR-9 and 9C to be continued for FY 2022-23.

- The exemption from filing Form GSTR-9/9A by small taxpayers (with an aggregate annual turnover up to Rs.2 crore) to continue for FY 2022-23 as well.

**4.** The Council has recommended that a Circular be issued to clarify various issuespertaining to the GST liability as well as to reverse ITC in cases involvingwarranty replacement of parts and repair services during warranty periodwithout any consideration from customers.

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### LKS COMMENTS

- It is noted here that no GST is chargeable by supplier for replacement / repair of warranty parts made during warranty period without any consideration.

- This would provide clarity to the issue on ITC reversal on the replacement of parts and repair services during the warranty period.

- It is to be seen if the Circular would cover scenarios where the warranty obligation of one taxable person is met by the distinct person of the same supplier.

**5. A Circular will be issued to clarify various refund related issues:**

- With effect from 1st January 2022, refund of accumulated ITC under Section 54(3) of the Central Goods and Services Tax Act, 2017 (**'CGST Act'**) for a tax period is to be restricted to the ITC on inward supplies reflected in the GSTR-2B of the said tax period or any previous tax period.

- The value of export goods is to be included while calculating the "adjusted total turnover" in the formula under Rule 89(4), which will be determined as per the said explanation.

- A clarification would be issued regarding admissibility of refund in cases where the export of goods or the realization of payment for the export of services, as the case may be, is made after the time limit provided under Rule 96A of the CGST Rules, 2017.

**6.** A Circular is to be issued to provide clarity regarding the TCS liability under Section 52 of the CGST Act in cases where multiple e-commerce operators (**'ECOs'**) are involved in a single transaction for the supply of goods or services or both. .

**LKS COMMENTS**

- In e-commerce transactions involving multiple ECOs, the question arises which ECO is liable to effect TCS under Section 52. In this regard, FAQ issued by the department in the past clarifies that TCS is to be collected by that ECO who is making payment to the supplier for the particular supply effected through its portal. The Circular would further provide clarity on this.

**7.** To ease compliance burden of the taxpayers, clause (f) of rule 46 of CGST Rules, 2017 to amended to provide for requirement of only name of the State of the recipient, and not the name and full address of the recipient, on the tax invoice in cases of supply of taxable services by or through an ECO or by a supplier of Online Information Database Access and Retrieval services ('**OIDAR services'**) to an unregistered recipient.

## LKS COMMENTS

- This is a welcome proposal to provide huge relief to the suppliers of OIDAR Services/ECO/Online gaming companies where the customers generally refuse to provide complete address to such suppliers for several reasons which had resulted in non-compliance of provisions of Rule 46 (f) by some of such suppliers.

- Providing merely the name of the State in the invoice would make the compliance of this provision easier.

**8. Circulars clarifying the following shall be issued:**

- E-invoices for supplies to government departments: That the registered person, whose turnover exceeds the prescribed threshold for generating of e-invoicing, are required to issue e-invoices under Rule 48(4) of CGST Rules for supplies made to government departments or establishments/ Government agencies / local authorities / PSUs, etc., registered solely for the purpose of TDS.

- Calculation of interest liable to be paid under Section 50(3) of the CGST Act: Regarding the manner of calculation of interest liable to be paid under Section 50(3) of the CGST Act in respect of wrongly availed and utilised Integrated Goods and Services Tax ('IGST') credit. Further clarifying that in cases of wrong availment of IGST credit, the balance of ITC in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has to be taken in consideration while calculating such interest liability as per rule 88B of CGST Rules, 2017.

- Holding of securities of a subsidiary company by a holding company: That mere holding of securities of a subsidiary company by a holding company cannot be treated as a supply of services and therefore cannot be taxed under GST.

## LKS COMMENTS

- This is a welcome clarification providing that ITC wrongly claimed would be deemed to be utilised when the balance ITC under all heads in the ECL falls below the amount of ITC wrongly availed.

**9.** Issuance of a circular to provide for a procedure for verification of ITC in cases involving difference in ITC claimed in Form GSTR-3B vis a vis the ITC available in Form GSTR-2A during the period from 01.04.2019 to 31.12.2021.

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### LKS COMMENTS

- The benefit under Circular No. 183/15/2022-GST given for the FY 2017-2018 and 2018-2019 has been recommended to be extended for the period upto 31.12.2021.

**10.** A special procedure is to be provided under Section 148 of the CGST Act to enable the manual filing of appeals against orders passed by the proper officers in respect of TRAN-1/ TRAN-2 claims of taxpayers.

**11.** Rule 108(1) and Rule 109(1) of CGST Rules, 2017 to be amended to provide for manual filing of appeal under certain specified circumstances.

**12.** Council recommended to extend the amnesty schemes notified vide notifications dated 31.03.2023 regarding non-filers of Form GSTR-4, Form GSTR-9 & Form GSTR-10 returns, revocation of cancellation of registration and deemed withdrawal of assessment orders issued under Section 62 of CGST Act, till 31.08.2023.

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### LKS COMMENTS

- Amnesty scheme is recommended for such taxpayers for filing of pending returns by way of conditional waiver/ reduction of late fee.

**13.** In view of the prevailing law and order situation in the State of Manipur, the Council recommended to extend the due dates for filing of Form GSTR-1, Form GSTR-3B and Form GSTR-7 for the months of April, May and June, 2023 for the registered persons of State of Manipur till **31.07.2023.**

# C.MEASURES FOR STREAMLINING COMPLIANCES IN GST

1. **Implementation of E-way Bill Requirement for movement of gold/ precious stones**

   - Insertion of Rule 138F in CGST Rules and SGST Rules of States that want to mandate the requirement of generation of e-way bills for intra-State movement of gold and precious stones classifiable under Chapter 71 within their States.

2. **Following recommendations are made on Capacity based taxation and Special Composition Scheme**

   - **Special procedure to be followed by manufacturers of tobacco, pan masala and other similar items.**
     Notification to be issued under Section 148 of the CGST Act prescribing a special procedure to be followed by the manufacturers of tobacco, pan masala and other similar items for registration of machines and filing of special monthly returns.

   - Insertion of Section 122A in the CGST Act providing for special penalty for non-registration of machines by such manufacturers.

   - Notification to be issued under Section 16(4) of the IGST Act to provide for restriction of IGST refund route in respect of exports of tobacco, pan masala and other similar items as well as mentha oil.

3. **Amendment in CGST Rules relating to Registration to effectively deal with the menace of fake and fraudulent registrations in GST.**

   - **Amendment in Rule 10A –** To provide for details of Bank Account, name and PAN of registered person to be furnished within 30 days of grant of registration or before filing of statement of outward supply under Section 37 of CGST Act in Form GSTR-1/ IFF, whichever is earlier

   - **Amendment in Rule 21A(2A) –** to provide for System based suspension of registration of such registered persons who do not furnish valid bank details as per Rule 10A and within the time period prescribed therein.

- **Insertion of 3rd Proviso in Rule 21A(4) –** to provide for automatic revocation of such system based suspension upon compliance with Rule 10A.

- **Amendment in Rule 59(6) –** to provide that where a registered person has not furnished valid bank details as per Rule 10A, the said registered person may not be allowed to furnish the details of outward supplies in Form GSTR-1 or using IFF.

- **Amendment in Rule 9 and Rule 25 –**
    - to do away with the requirement that the physical verification of business premises is to be conducted in the presence of the applicant and
    - also to provide for physical verification in high risk cases even where Aadhar has been authenticated.

**4. Procedure for recovery of tax and interest in terms of Rule 88C(3)**

- Rule 88C was inserted in CGST Rules w.e.f 26.12.2022 for system based intimation to the registered person in cases where their output tax liability in Form GSTR-1 for any particular month exceeds their output tax liability provided in Form GSTR-3B for the said month by a specified threshold.

- In this regard, Rule 142B and Form GST DRC-01D will be inserted to provide for manner of recovery of tax and interest in respect of the amount intimated under Rule 88C which has not been paid and for which no satisfactory explanation has been furnished by the registered person.

**5. Mechanism to deal with differences in ITC between Form GSTR-2B and Form GSTR-3B and to avoid misuse of ITC facility.**

- Mechanism for system based intimation to the taxpayers has been recommended in respect of excess availment of ITC in Form GSTR-3B in comparison to ITC available in Form GSTR-2B above a certain threshold. Also, a procedure of auto-compliance on the part of the tax payers will be prescribed to explain the reasons for the said difference or take remedial action in respect of such difference.

- For this purpose, Rule 88D and Form DRC-01C will be inserted along with amendment in Rule 59(6) of CGST Rules.

6. Amendment to Form GSTR-3A to provide for issuance of notice to the registered taxpayers for their failure to furnish Annual Return in Form GSTR-9 or Form GSTR-9A by due date.

7. Amendment of Rule 64 and Form GSTR-5A to require OIDAR service providers to provide the details of supplies made to registered persons in India in his return in Form GSTR-5A. This is done in order to track payment of tax by registered person on reverse charge basis in respect of such OIDAR services received in India.

8. Insertion of Explanation 3 to Rule 43 of CGST Rules to prescribe that the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers to be included in the value of exempt supplies for the purpose of reversal of input tax credit.

9. Insertion of Sub-Rule (3A) to be inserted in Rule 162 to prescribe the compounding amount for various offences under Section 132 of the CGST Act.

10. Insertion of Rule 163 to provide for manner and conditions of consent-based sharing of information of registered persons available on the common portal with other systems. In this regard, a notification will be issued under Section 158A of the CGST Act for notifying "Account Aggregators" as the systems with which the information is to be shared.

11. Insertion of a clause (ca) in Section 10(1) of the IGST Act to clarify the place of supply in respect of supply of goods to unregistered persons.

# D.RECOMMENDATIONS RELATING TO GOODS

1. **Compensation Cess at the rate of 22% shall be applicable on all 'Utility Vehicles' of specified parameters**

   - As per entry 52B, compensation cess at the rate of 22% is applicable on:
     *"Motor vehicles of engine capacity exceeding 1500 cc, popularly known as Sports Utility Vehicles (SUVs) including utility vehicles. Explanation. - For the purposes of this entry, SUV includes a motor vehicle of length exceeding 4000 mm and having ground clearance of 170 mm. and above."*

- The GST Council has decided to amend the aforesaid entry to expand the scope of the entry to include all utility vehicles by whatever name called provided they meet the parameters of Length exceeding 4000 mm, Engine capacity exceeding 1500 cc and having Ground Clearance of 170 mm & above.

- It also states that an explanation clarifying that 'Ground clearance' means Ground Clearance in un-laden condition shall also be inserted.

### LKS COMMENTS

- Compensation cess under entry 52B at the rate of 22% will now be levied on all utility vehicles fulfilling the criteria laid down in the notification by whatever name called.

**2. Reduction of rates of GST on uncooked/unfried snack pellets** *(with regularization for past period)*

- The Council has decided to reduce the rate on uncooked/unfried snack pallets (by whatever name called) to 5% and to also regularize the payment of GST on the said goods during the past period on "as is basis".

### LKS COMMENTS

- The classification of pellets and the rate of tax leviable thereon has been a contentious issue specifically in the light of Circular 189/01/2023-GST dated 13.01.2023 wherein it was clarified that snack pellets which are manufactured through the process of extrusion, are appropriately classifiable under Tariff Item 1905 90 30 and shall be subject to levy of GST at the rate of 18%.

- Now, it has been proposed to reduce the rate of GST leviable on pellets at the rate of 5% to resolve the ongoing dispute.

3. **Reduction of GST rate on imitation zari thread or yarn from 12% to 5%** *(with regularization for past period)*

- The GST Council has decided to reduce GST on imitation zari thread or yarn (known as 'Kasab' or by any name in trade parlance) classifiable under tariff heading 5605 from 12% to 5%.

- For the past period, the payment of GST on the same is to be regularized on 'as is basis'.

4. **Reduction of GST rate on LD slag from 18% to 5%**

- The Council has decided that the rate of LD slag generated from the manufacture of steel classifiable under 2619 shall be reduced from 18% to 5% to encourage better utilization of this product and for protection of the environment.

- Further, the said product has been brought at par with blast furnace slag.

5. **Reduction of GST rate on fish soluble paste from 18% to 5%** *(with regularization for past period)*

- The Council has decided to reduce the GST rate on fish soluble paste from 18% to 5% and the payment of GST on the same is to be regularized on 'as is basis'.

6. **IGST on import of cancer related drugs, medicines for rare diseases for personal use exempted.**

- It has been decided to exempt Integrated Goods and Services Tax (**'IGST'**) on Dinutuximab (Quarziba) medicine when imported for personal use.

7. **Exemption from IGST on import of medicines and Food for Special Medical Purposes.**
It has been decided to exempt IGST on medicines and Food for Special Medical Purposes (FSMP) used in the treatment of rare diseases enlisted under the National Policy for Rare Diseases, 2021
- when imported for personal use subject to existing conditions, and
- when imported by Centres of Excellence for Rare Diseases or any person or institution on recommendation of any of the listed Centres of Excellence.

8. **RCM applicable on raw cotton, including kala cotton, by agriculturalists to cooperatives.**

- It has been decided that supply of raw cotton, including kala cotton, by agriculturalists to cooperatives is taxable under reverse charge mechanism.

- It has been further decided that the issues relating to the past period shall be regularized on 'as is basis'.

**LKS COMMENTS**

- Currently, GST on supply of raw cotton by an agriculturalist to any registered person is payable on reverse charge basis by such registered person.

- It needs to be seen that after the said changes are implemented, if the cooperative societies will be mandatorily required to be registered under the GST law since they will be liable to pay tax under reverse charge.

# E. OTHER RECOMMENDATIONS W.R.T. GOODS :

1. **Ad valorem rate for pan masala, tobacco products where there is no legal requirement to declare the retail sale price.**

- Pursuant to amendments w.e.f. 01.04.2023, retail sale price-based GST compensation cess was introduced on pan masala, tobacco products, etc.

- It has been decided that where retail sale price is not required to be declared, the earlier ad valorem rate as was applicable on 31.03.2023 may be notified in order for levy of compensation cess.

2. **The Council has decided to regularize the issues relating to GST on the following products and period:**

- <u>Trauma, spine and arthroplasty implants for the period prior to 18.07.2022:</u> By virtue of Notification No. 06/2022-Central Tax (Rate) dated 13.07.2022 w.e.f. 18.07.2022, Sl. No. 255A was inserted which provided for a rate of 5% on Orthopaedic appliances classifiable under Heading 9021. In view of the interpretational issues existing prior to the said insertion, the Council has decided to regularize the matters relating to trauma, spine and arthroplasty implants for the period upto 18.07.2022 on ' as is basis'.

- GST on dessicated coconut in view of interpretational issues existing during the period from 01.07.2017 to 27.07.2017 on ' as is basis'.

- GST on Plates and Cups made to areca leaves prior to 01.10.2019.

- GST on Biomass briquettes for the period 01.07.2017 to 12.10.2017.

**3.** The GST Council has decided to include RBL Bank and ICBC Bank in the list of specified banks for which IGST exemption is available on imports of gold, silver or platinum and update the list of banks/ entities eligible for such IGST exemption as per Annexure 4B (HBP) of Foreign Trade Policy 2023. Further, it has been recommended that consequential changes in notifications may be carried out in view of new Foreign Trade Policy 2023.

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