L&S UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

28 JULY 2023

INDIRECT TAX

GST rate changes bringing into effect recommendations of 50th GST Council Meeting

UPDATE NO. 30 OF 2022

Lakshmikumaran & Sridharan attorneys

exceeding expectations
SINCE 1985

The following amendments have been made in relation to GST and Compensation Cess Rate, various notifications have been introduced and previous notifications have been amended pursuant to the recommendations made by the 50th GST Council Meeting.

The changes are as follows:

A. Amendment in Notification No. 1/2017-Compensation Cess (Rate) dated 28 June 2017 vide Notification No. 03/2023-Compensation Cess (Rate) dated 26 July 2023

(w.e.f. 27 July 2023

- Compensation Cess rate has now been notified on pan masala and tobacco products where there is no legal requirement to declare the retail sale price vide Notification No. 03/2023 – Compensation Cess (Rate) dated 26 July 2023 by inserting the following entries in the Notification No. 1/2017-Compensation Cess (Rate) dated 28 June 2017:

Sl.No	Chapter / Heading / Sub-heading / Tariff item	Description of Goods	Rate of goods and services tax compensation cess
1A	2106 90 20	Pan Masala, other than goods covered under S. No. 1 above	60%
5A	2401	Unmanufactured tobacco (without lime tube)– bearing a brand name, other than goods covered under S. No. 5 above	71%
6A	2401	Unmanufactured tobacco (with lime tube)– bearing a brand name, other than goods covered under S. No. 6 above	65%
7A	2401 30 00	Tobacco refuse, bearing a brand name, other than goods covered under S. No. 7 above	61%
19A	2403 11 10	'Hookah' or 'gudaku' tobacco, bearing a brand name, other than goods covered under S. No. 19 above	72%

20A	**2403 11 10**	Tobacco used for smoking 'hookah' or 'chilam' commonly known as 'hookah' tobacco or 'gudaku', not bearing a brand name, other than goods covered under S. No. 20 above	17%
21A	**2403 11 90**	Other water pipe smoking tobacco, not bearing a brand name, other than goods covered under S. No. 21 above	11%
22A	**2403 19 10**	Smoking mixtures for pipes and cigarettes, other than goods covered under S. No. 22 above	290%
23A	**2403 19 90**	Other smoking tobacco bearing a brand name, other than goods covered under S. No. 23 above	49%
26A	**2403 99 10**	Chewing tobacco (without lime tube), other than goods covered under S. No. 26 above	160%
27A	**2403 99 10**	Chewing tobacco (with lime tube), other than goods covered under S. No. 27 above	142%
28A	**2403 99 10**	Filter khaini, other than goods covered under S. No. 28 above	160%
29A	**2403 99 20**	Preparations containing chewing tobacco, other than goods covered under S. No. 29 above	72%
30A	**2403 99 30**	Jarda scented tobacco, other than goods covered under S. No. 30 above	160%
31A	**2403 99 40**	Snuff, other than goods covered under S. No. 31 above	72%
32A	**2403 99 50**	Preparations containing snuff, other than goods covered under S. No. 32 above	72%

33A	**2403 99 60**	Tobacco extracts and essence, bearing a brand name, other than good covered under S. No. 33 above	72%
34A	**2403 99 60**	Tobacco extracts and essence, not bearing a brand name, other than goods covered under S. No. 34 above	65%
35A	**2403 99 70**	Cut tobacco, other than goods covered under S. No. 35 above	20%
36C	**2403 19 90**	All goods, other than pan masala containing tobacco 'gutkha', bearing a brand name, other than good covered under S. No. 36B	96%
36D	**2403 99 90**	All goods, other than pan masala containing tobacco 'gutkha', not bearing a brand name, with declared retail sale price	0.43R per unit
36E	**2403 99 90**	All goods, other than pan masala containing tobacco 'gutkha', not bearing a brand name, other than goods covered under S. No. 36D above	89%

- Further, Notification No. 03/2023-Compensation Cess (Rate) has also brought certain changes in the description of goods provided in the present entries of Notification No. 1/2017-Compensation Cess (Rate) as specified below:

Sl.No	Description of Goods prior to amendment	Description of Goods
1	**Pan-masala**	Pan Masala with declared retail sale price
5	**Unmanufactured tobacco (without lime tube) -bearing a brand name**	Unmanufactured tobacco (without lime tube) - bearing a brand name with declared retail sale price
6	**Unmanufactured tobacco (with lime tube) - bearing a brand name**	Unmanufactured tobacco (with lime tube) - bearing a brand name with declared retail sale

7	**Tobacco refuse, bearing a brand name**	Tobacco refuse, bearing a brand name with declared retail sale price
19	**'Hookah' or 'gudaku' tobacco bearing a brand name**	'Hookah' or 'gudaku' tobacco bearing a brand name with declared retail sale price
20	**Tobacco used for smoking 'hookah' or 'chilam' commonly known as 'hookah' tobacco or 'gudaku' not bearing a brand name**	Tobacco used for smoking 'hookah' or 'chilam' commonly known as 'hookah' tobacco or 'gudaku' not bearing a brand name with declared retail sale price
21	**Other water pipe smoking tobacco not bearing a brand name.**	Other water pipe smoking tobacco not bearing a brand name with declared retail sale price
22	**Smoking mixtures for pipes and cigarettes**	Smoking mixtures for pipes and cigarettes, with declared retail sale price
23	**Other smoking tobacco bearing a brand name**	Other smoking tobacco bearing a brand name with declared retail sale price
24	**Other smoking tobacco not bearing a brand name**	Other smoking tobacco not bearing a brand name with declared retail sale price
26	**Chewing tobacco (without lime tube)**	Chewing tobacco (without lime tube), with declared retail sale price
27	**Chewing tobacco (with lime tube)**	Chewing tobacco (with lime tube), with declared retail sale price
28	**Filter khaini**	Filter khaini, with declared retail sale price
29	**Preparations containing chewing tobacco**	Preparations containing chewing tobacco, with declared retail sale price
30	**Jarda scented tobacco**	Jarda scented tobacco, with declared retail sale price

31	**Snuff**	Snuff, with declared retail sale price
32	**Preparations containing snuff**	Preparations containing snuff, with declared retail sale price
33	**Tobacco extracts and essence bearing a brand name**	Tobacco extracts and essence bearing a brand name with declared retail sale price
34	**Tobacco extracts and essence not bearing a brand name**	Tobacco extracts and essence not bearing a brand name with declared retail sale price
35	**Cut tobacco**	Cut tobacco Cut tobacco, with declared retail sale price
36	**Pan masala containing tobacco 'Gutkha'**	Other smoking tobacco bearing a brand name with declared retail sale price
52B	**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.**	Motor vehicles known as Utility Vehicles, by whatever name called including Sports Utility Vehicles (SUV), Multi Utility Vehicles (MUV), Multi-purpose vehicles (MPV) or Cross-Over Utility Vehicles (XUV), with engine capacity exceeding 1500 cc; Length exceeding 4000 mm and Ground Clearance of 170 mm and above. Explanation: For the purpose of this entry, the Ground Clearance means ground clearance in unladen condition.

- The present Entry No. 36A & 36B of Notification No. 1/2017-Compensation Cess (Rate) has been substituted by the following entries:

Sl.No	Chapter / Heading / Sub-heading / Tariff item	Description of Goods	Rate of goods and services tax compensation cess
36A	2403 99 90	Pan masala containing tobacco 'Gutkha', other than goods covered under S. No. 36 above	204%
36B	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', bearing a brand name, with declared retail sale price	0.43R

- Further, the Entry No. 24A of Notification No. 1/2017-Compensation Cess (Rate) has also been substituted by the following entries:

Sl.No	Chapter / Heading / Sub-heading / Tariff item	Description of Goods	Rate of goods and services tax compensation cess
24A	2403 19 90	Other smoking tobacco, not bearing a brand name, other than goods covered under S. No. 24 above	11%
24B	2403 91 00	"Homogenised" or "reconstituted" tobacco, bearing a brand name with declared retail sale price	0.36R per unit
24C	2403 91 00	"Homogenised" or "reconstituted" tobacco, bearing a brand name, other goods covered under S. No. 24 B above	72%

- Clause 5 has also been inserted under the explanation given in the Notification No. 1/2017- Compensation Cess (Rate) for defining the word " declared retail sale price". It means the retail sale price of such goods which are required to be declared in compliance with the provisions of the Legal Metrology Act, 2009 (1 of 2010) or the rules made thereunder or under any other law for the time being in force.

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LKS COMMENTS

The aforesaid amendment in the compensation cess rate notification has been introduced pursuant to the recommendations of the GST Council in the 50th Meeting. The Notification defines 'declared retail sale price' in respect of various tobacco products but there is ambiguity on how to arrive at ground clearance of motor vehicles in unladen condition.

B. Amendment made in Notification No. 26/2018-Central Tax (Rate) dated 31 December 2018 *vide* Notification No. 10/2023-Central Tax (Rate) dated 26 July 2023

(w.e.f. 27 July 2023)

- Notification No. 26/2018 - Central Tax (Rate) dated 31 December 2018 exempts the intra-State supply of gold, silver or platinum falling in Chapter 71 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when supplied by Nominated Agency under the scheme for "Export Against Supply by Nominated Agency" subject to the conditions mentioned in the said notification.

- Now, Notification No. 10/2023-Central Tax (Rate) dated 26 July 2023 has replaced Paragraph 4.41 as mentioned in opening paragraph of Notification No. 26/2018-Central Tax (Rate) dated 31 December 2018 by Paragraph 4.40.

- Further, it has also replaced the reference of Foreign Trade Policy & Handbook of Procedures 2015-20 with Foreign Trade Policy & Handbook of Procedures 2023 in clause (a) & (b) of explanation provided in the Notification No. 26/2018-Central Tax (Rate) dated 31 December 2018 respectively.

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LKS Comments

The aforesaid amendment has been introduced pursuant to the introduction of new foreign trade policy on 31 March 2023.

C. Amendment made in Notification No. 11/2017-Central Tax (Rate) dated 28 June 2017 *vide* Notification No. 06/2023-Central Tax (Rate) dated 26 July 2023.

(w.e.f. 27 July 2023)

- For item (ie) of Serial No. 3 of Notification No. 11/2017- Central Tax (Rate) dated 28 June 2017 which provides for GST rate on construction services, the following explanation has been introduced:

  "Explanation. –This item refers to sub-items of the item (iv), (v) and (vi), against serial number 3 of the Table as they existed in the notification prior to their omission vide notification No. 03/2022-Central Tax (Rate) dated the 13th July,2022."

- In case where Goods Transport Agency exercises the option to pay GST by itself on the services supplied by it, the words "on or before the 15th March of the preceding Financial Year" has been substituted with the words "on or after the 1st January of the preceding Financial Year but not later than 31st March of the preceding Financial Year" in the condition no. 2 prescribed under column 5 of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017. Further, after fourth proviso to Condition 2, the following proviso has been inserted:

  "Provided also that the option exercised by GTA to itself pay GST on the services supplied by it during a Financial Year shall be deemed to have been exercised for the next and future financial years unless the GTA files a declaration in Annexure VI to revert under reverse charge mechanism on or after the 1st January of the preceding Financial Year but not later than 31st March of the preceding Financial Year."

- Services by way of fumigation in a warehouse of agricultural produce has been omitted from the Entry 24 of Notification No. No. 11/2017- Central Tax (Rate) dated 28 June 2017 which pertains to support services to agriculture, hunting, forestry, fishing, mining and utilities.

- Changes have been made in Annexure -V to the Notification No. 11/2017-Central Tax (Rate) dated 28 June 2017 which provides a form for exercising the option by a Goods Transport Agency (GTA) for payment of GST on the GTA services supplied by him under forward charge. For the words "end of the financial year for which it is exercised", the words and figures "the start of the financial year for which I exercise option to revert under reverse charge mechanism by filing Annexure VI on or before the due date" has been substituted. Under the note section of Annexure, the words "The last date for exercising the above option for any financial year is the 15th March of the preceding financial year" has been substituted with words "The above option for any Financial Year shall be exercised on or after 1st January of the preceding Financial Year but not later than 31st March of the preceding Financial Year".

- Annexure -VI has been inserted which provides a form for exercising option by a GTA intending to revert under reverse charge mechanism which needs to be submitted before the jurisdictional GST Authority and to be filed before the commencement of any financial year. The same is in line with the changes made under Condition 2 prescribed under column 5 against item (iii) of serial no. 9 of Notification No. 11/2017- Central Tax (Rate) dated 28 June 2017 where GTA exercises the option to pay GST by itself on the services supplied by it.

LKS Comments

The aforesaid amendment has been introduced pursuant to the recommendations of the GST Council in the 50^{th} Meeting.

D. Amendment in Annexure III of Reverse Charge Notification of Services *vide* Notification No. 08/2023-Central Tax (Rate) dated 26 July 2023.

(w.e.f. 27 July 2023)

- In Annexure III to Notification No. 13/2017 – Central Tax (Rate) dt 28 June 2017, the words "during the Financial Year __ under forward charge", have been substituted with the words and figures "from the Financial Year __ under forward charge and have not reverted to reverse charge mechanism".

- The notification provides for categories of supply of services, tax on which shall be paid on reverse charge basis by the recipient of such services.

- As per Entry 1 to the said notification, the tax applicable on supply of services by a GTA in respect of transportation of goods by road to specified categories of recipients of services shall not be payable on reverse charge basis where the supplier has inter alia made a declaration as prescribed in Annexure III on invoice charging Central Tax at applicable rate issued by him.

LKS Comments

The aforesaid substitution corresponds to the amendments in Notification No. 11/2017-Central Tax (Rate) dt 28.06.2017 whereby an option has been provided to revert to reverse charge mechanism where forward charge mechanism has been adopted by the GTA

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E. Exemption on Satellite Launch Services extended to private sector

(w.e.f. 27 July 2023)
[Notification No. 07/2023-Central Tax (Rate) dated 26 July 2023]

- "Satellite launch services supplied by Indian Space Research Organisation, Antrix Corporation Limited or New Space India Limited" under S. No. 19C of Notification No. 12/2017-Central Tax (Rate) has been substituted with "Satellite launch services".

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LKS Comments

The above amendment has been made pursuant to the recommendations made by GST Council in its 50th meeting. The purpose of this amendment is to extend the benefit of exemption on satellite launch services to all the suppliers of services including the private sector and also to encourage start-ups.

F. Amendment made in Notification No. 1/2017 – Central Tax (Rate) dated 28 June 2017 *vide* Notification No. 09/2023-Central Tax (Rate) dated 26 July 2023.

(w.e.f. 27 July 2023)

- Following entries have been inserted in Schedule I- 2.5%

Sl.No	Chapter/ Heading/ Tariff Item	Description of Goods
99B	1905	Un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion
108A	2309	Fish Soluble Paste
156B	2619	Linz-Donawitz (LD) slag price
218AA	56050020	Imitation zari thread or yarn known by any name in trade parlance.

- The description of goods against S No. 137 in Schedule II- 6% has been substituted by the following:

  "Metallised yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal, other than- (i) real zari thread (gold) and silver thread combined with textile thread (ii) imitation zari thread or yarn known by any name in trade parlance"

- The description of goods against S No. 16 & 28 in Schedule III- 9% has been substituted by the following:

Sl.No	Description of Goods
16	Pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products [other than pizza bread, khakhra, plain chapatti or roti, bread, rusks, toasted bread and similar **toasted products, un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion].**
28	Slag, dross (other than granulated slag), scalings and other waste from the manufacture of iron or steel, **other than Linz-Donawitz (LD) slag**

LKS Comments

There was dispute regarding the rate of GST leviable on unfried snack pellets specifically on account of Circular 189/01/2023-GST dated 13 January 2023 which clarified that snack pellets/fryum shall be taxable at the rate of 18%.

The Council acknowledging the above issue, recommended to reduce the rate of GST leviable on uncooked/unfried snack pellets to 5% and also recommended to regularize payment of GST on uncooked / unfried snack pellets supplied during the past period on "as is basis".

Similarly, the Council has recommended reducing the rate of GST leviable on fish soluble paste and imitation zari thread from 18% to 5% and also to regularize payment of GST for the past period on "as is basis".

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