

GST ALERT – JANUARY 2025

OVERVIEW OF RECENT GST NOTIFICATIONS AND CIRCULARS

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BACKGROUND

- This presentation deck covers
 - Notification No.1 to No.8 of 2025 dated 16.01.2025
 - Circular No.240 to 243 issued on 31.12.2024.
 - Decisions taken at the 55th Meeting of the GST Council.

*This Presentation has been prepared as on **19.01.2025** and addresses the scope of the changes and some legal issues that may arise. Please refer to official published notifications and circulars for detailed understanding and implementation. Views and comments on the Circular are in Italics. This tax alert is meant only for the purpose of disseminating information available in the public domain in connection with new developments in law and is not for the purpose of advertising or soliciting in any manner. K Vaitheeswaran & Co, Advocates & Tax Consultants do not take any responsibility for the decisions taken by the reader based solely on the information provided herein.*

RATE OF TAX ON GOODS - Notifications

- Changes effective from 16.01.2025.
 - GST on Fortified Rice Kernel (FRK) reduced to 5%.
 - Exemption on Gene Therapy.
 - Concessional rate of 5% on food inputs of food preparations under HSN 19 or 21 that are supplied for food preparations intended for free distribution to economically weaker sections under a government program subject to the existing conditions
 - IGST exemption to systems, sub-systems, equipment, parts, sub-parts, tools, test equipment, software meant assembly/manufacture of Long Range Surface to Air Missile (LRSAM) system under Notification 19/2019 Customs
 - Reduction of compensation cess to 0.1% on supplies to merchant exporters.
 - Exemption from IGST on imports of all equipment and consumable samples by Inspection Team of the International Atomic Energy Agency (IAEA) subject to specified conditions

RATE OF TAX ON GOODS - Notifications

- Notification No.1/2025 amends Notification No.1/2017.
- The Explanation after Schedule-VII, Notification No.1/2017 substituted as under:
 - (ii) The expression 'pre-packaged and labelled' means all commodities that are intended for retail sale and containing not more than 25 kgs. or 25 litre, which are 'pre-packed' as defined in clause (l) of section 2 of the Legal Metrology Act, 2009 (1 of 2010) where, the package in which the commodity is pre-packed or a label securely affixed thereto is required to bear the declarations under the provisions of the Legal Metrology Act, 2019 (1 of 2010) and the rules made thereunder".*
- The substitution is with effect from 16.01.2025.
- Effect of the amendment is that pre-packaged and labelled would now cover all commodities that are intended for retail sale and containing not more than 25 kgs. or 25 litre and are pre-packed as per LM Act or a label is required bearing declaration under the LM Act.

SPONSORSHIP SERVICE

- Notification No. 13/2017 – CTR provides for GST under RCM on services provided by way of sponsorship to any body corporate or partnership firm by any person
- Notification No.7/2025 amends Notification No.13/2017.
- Since the effective date is not specified, it is effective from the date of publication viz. 16.01.2025.
- Post amendment
 - Where sponsorship services are provided by any person **other than body corporates to** any body corporate or partnership firm located in the taxable territory RCM continues to apply.
 - Where sponsorship services are provided by a body corporate to any person forward charge mechanism would apply.
 - Amendments beneficial to body corporates which had to consider GST paid under RCM as exempt supply for the purpose of Rule 42.

RENTING OF IMMOVABLE PROPERTY - RCM

- Entry 5AB was inserted to Notification No.13/2017-CTR to provide for RCM in respect of services by way of renting of any immovable property other than residential dwelling provided by any unregistered person to any registered person.
- Amendment through Notification No.7/2025-CTR w.e.f. 16.01.2025 to exclude persons who have opted to pay tax under composition levy from the scope of registered person.
- Effect of the amendment is that when immovable property other than residential is rented by any unregistered person to a compounding levy registered assessee, RCM will not apply and FCM will apply subject to threshold.

SALE OF OLD AND USED VEHICLES

- Notification No.8/2018 deals with effective rates of CGST on old and used Motor vehicles.
- Amendment through Notification No.4/2025, w.e.f. 16.01.2025.
- Increase in the GST rate from 12% to 18 % on sale of all old and used vehicles, including EVs other than those specified at 18% .
- In case, a registered person has claimed depreciation under Section 32 of the Income-Tax Act, 1961 (43 of 1961) on the said goods, GST shall be on the value.
- Value represents the margin of the supplier which is the difference between the consideration received for supply of such goods and the depreciated value of such goods on the date of supply
- Contrary to apprehensions expressed in social media, in case the difference between the selling price and the purchase price is negative (loss), it shall be ignored and no GST will be payable.

EXEMPTION

- Changes effective from 16.01.2025.
 - Services of insurance provided by Motor Vehicle Accident Fund constituted under Section 164B of the Motor Vehicles Act, 1988 against contributions made by insurer out of premiums collected for thirty party insurance of motor vehicle exempted.
 - Supply of services by way of providing metering equipment on rent, testing for meters/transformers/capacitors etc., releasing electricity connection, shifting of meters/service lines, issuing duplicate bills etc., which are incidental or ancillary to the supply of transmission and distribution of electricity provided by electricity transmission and distribution utilities to their consumers was exempt under Entry 25A.
 - Amendment to Entry 25A, Notification No.12/2017 whereby the phrase 'transmission and distribution' substituted with 'transmission or distribution'.
 - Entry 6g which deals with skill development amended to insert clause (f) to cover services provided by a training partner approved by the National Skill Development Corporation.

HOTEL AND RESTAURANT SERVICES

- The definition of 'declared tariff' omitted w.e.f. 01.04.2025.
- Notification No.5/2025-CTR.
- New definition of 'specified premises' **w.e.f. 01.04.2025.**
- Specified premises for a financial year means
 - Premises where hotel accommodation services having value of supply of any unit of accommodation above Rs.7,500/- per day or equivalent has been provided by the supplier *in the preceding financial year.*
 - Premises for which the registered person has filed a declaration on or after **01.01.2025 and not later than 31.03.2025** of the preceding financial year declaring the premises to be a specified premises.
 - Premises for which a person applying for registration has filed a declaration within 15 days of obtaining acknowledgement of the registration application, declaring the said premises to be a specified premises.
- Annexure-VII dealing with opt-in declaration.
- Annexure-VIII deals with opt-in declaration for a person applying for registration.
- Annexure-IX deals with opt-out declaration where a hotel accommodation supplier declared that the premises is not a specified premises. *This declaration should be filed on or after 1st January and not later than 31st March of the preceding financial year.*
 - All declarations would apply to the entire financial year and will continue to apply to the subsequent financial year unless a different declaration is given.

E-COMMERCE OPERATOR

- Circular No.240
 - E-commerce operator who is liable to pay tax under Section 9(5) of the CGST Act in respect of specified services is not required to reverse ITC on inputs and input services proportionately under Section 17(1) or Section 17(2) to the extent of supplies made under Section 9(5).
 - E-commerce operator is required to pay full tax liability on account of supplies under Section 9(5) only through electronic cash ledger.
 - The credit availed by him in relation to inputs and input services used to facilitates the supplies cannot be used for discharging tax under Section 9(5).
 - Such credit can be used for discharge of tax liability in respect of supplier of services on his own account.

INPUT TAX CREDIT – EX-WORKS

- Circular No.241
 - Explanation to Section 16(2)(b) of the CGST Act.
 - The registered person (the dealer) can be considered to have “received” the said goods at the time of such handing over the goods by the supplier to the transporter, at his factory gate, for their onward transmission to the said registered person (the dealer).
 - Same principle applicable in respect of supply of other goods where the contract between the supplier and the recipient is ex-works and the goods are to be delivered by the supplier to the recipient or to any other person including transporter.
 - ITC available to the recipient.
 - If goods are found to be diverted for non-business purposes at any stage either before physically receiving the goods or subsequently ITC would not be available.
 - If after “receiving” the goods, the circumstances set out in Section 17(5)(h) are applicable, ITC would not be available.

ONLINE SERVICES

- Circular No.242
 - Supplier is required to mandatorily record the name of the State of the unregistered recipient on the tax invoice in cases involving supply of online money gaming or supply of taxable services by or through an electronic commerce operator or supply of OIDAR services.
 - Recording of the name of the State of the unregistered recipient on the tax invoice shall be deemed to be the address on record of the recipient for the purpose of place of supply under Section 12(2)(b) of the IGST Act.
 - Accordingly in such cases, the POS of such services shall be considered as location of the recipient as per Section 12(2)(b)(i) of the IGST Act.
 - Proviso to Rule 46(f) to apply to all online supplies supplied to an unregistered recipient.
 - Supplier should devise suitable mechanism to ensure collection of such details from unregistered recipient for the purpose of recording the name of the State of the recipient in the tax invoice.

VOUCHERS

- Taxability of Vouchers
- 55th Meeting of the GST Council has decided to omit sections 12(4) (time of supply of goods) and 13(4) (time of supply of services) from CGST Act, 2017 and rule 32(6) from CGST Rules, 2017 to resolve ambiguities in the treatment of vouchers.
- Circular No.243/37/2024 dt.31.12.2024
 - Whether voucher is covered as a pre-paid instrument recognized by RBI or not, voucher is only an instrument and transaction in voucher themselves cannot be considered as either supply of goods or supply of service.
 - Supply of underlying goods or services for which vouchers are used as consideration or part consideration may be taxable in GST.
 - Trading of vouchers would not be liable to GST.
 - Where distributors or sub-distributors or agents act as agent of the voucher issuer, GST would be payable on commission or fees.
 - Additional services such as advertisement, co-branding, marketing and promotion, customization and technology support, customer support etc. related to vouchers would be leviable to GST on the amount paid for these services
 - Unredeemed vouchers (breakage) would not be considered as supply under GST and no GST is payable on income booked in the accounts in respect of breakage

PRESS RELEASE

- Press Release reflects the decision at the 55th Meeting of the GST Council to issue various clarifications.
- Popcorn
 - Ready to eat popcorn, mixed with salt and spices are classifiable under HS 2106 90 99
 - GST at 5% if supplied as **other than** pre-packaged and labelled;
 - GST at 12% if supplied as pre-packaged and labelled.
 - Popcorn mixed with sugar thereby changing its character to sugar confectionary (eg caramel popcorn) would be classifiable under HS 1704 90 90 and attract 18% GST
 - To regularise the issues for the past on “as is where is” basis
 - No new imposition but a clarification
- Autoclaved Aerated Concrete (ACC) blocks containing more than 50% fly ash content will fall under HS 6815 and attract 12% GST
- Pepper whether fresh green or dried pepper and raisins when supplied by an agriculturist is not liable to GST
- Explanation in Sl. No. 52B, Notification No. 1/2017- Compensation Cess (Rate) regarding ground clearance is applicable with effect from 26.07.2023
- Regulated Payment Aggregators are eligible for the exemption under entry at Sl. No. 34, Notification No. 12/2017-CT(R) since they fall within the ambit of ‘acquiring bank’ as defined in the said entry.
 - This exemption does not cover payment gateway (PG) and other fintech services which do not involve settlement of funds.
- No GST is payable on the ‘penal charges’ levied and collected by banks and NBFCs from borrowers for non-compliance with loan terms

PRESS RELEASE – Late Fee

- Late fee under Section 47(2) of the CGST Act, 2017 is leviable for the delay in filing the complete annual return under Section 44 of the CGST Act, 2017, which includes both FORM GSTR-9 (Annual Return) and FORM GSTR-9C (Reconciliation Statement), where applicable.
- For the annual returns pertaining to the period 2017-18 to 2022-23, the GST Council also recommended to issue notification under section 128 of CGST Act, 2017 for waiver of the amount of late fee for delayed filing of FORM GSTR-9C, which is in excess of the amount of late fee payable till the date of filing of FORM GSTR-9 for the said financial years, provided the said FORM GSTR-9C is filed on or before 31st March 2025.

PRESS RELEASE

- Para 8, Schedule III, CGST Act, 2017 provides that (a) Supply of warehoused goods to any person before clearance for home consumption is treated neither a supply of goods nor as a supply of services
- Decision to insert clause (aa) in Paragraph 8, Schedule III, CGST Act, 2017 w.e.f.01.07.2017 to explicitly provide that
 - supply of goods warehoused in a SEZ or FTWZ to any person before clearance of such goods for exports or to the Domestic Tariff Area, shall be treated neither as supply of goods nor as supply of services.

PRESS RELEASE

- Decisions taken
 - To insert enabling provision in CGST Act, 2017 through Section 148A to empower the Government to enforce the Track and Trace Mechanism for specified evasion prone commodities
 - The system shall be based on a Unique Identification Marking affixed on the said goods or the packages thereof
 - Provide a legal framework for developing such a system and will help implementing a mechanism for tracing specified commodities throughout the supply chain
 - To amend proviso to section 107(6) of CGST Act, 2017 providing for payment of pre-deposit at 10% instead of 25 % for filing appeals before Appellate Authority in cases involving only demand of penalty without involving the demand of tax
 - To insert a new proviso to section 112(8) of CGST Act, 2017 providing for payment of pre-deposit at 10% for filing appeals before Appellate Tribunal in cases involving only demand of penalty without involving the demand of tax

PLANT AND / OR MACHINERY

- The SC in the case of ***CCCGST Vs. Safari Retreats Pvt. Ltd. (2024) 23 Centax 62***, upheld the constitutional validity of clauses (c) and (d) of Section 17(5) and held that its plain interpretation does not lead to any ambiguity and that the question of reading down the provisions does not arise. The Supreme Court further held that
 - The expression "plant or machinery" used in Section 17(5)(d) cannot be given the same meaning as the expression "plant and machinery" defined by the explanation to Section 17;
 - The question whether a mall, warehouse or any building other than a hotel or a cinema theatre can be classified as a plant within the meaning of the expression "plant or machinery" used in Section 17(5)(d) is a factual question which has to be determined keeping in mind the business of the registered person and the role that building plays in the said business.
 - If the construction of a building was essential for carrying out the activity of supplying services, such as renting or giving on lease or other transactions in respect of the building or a part thereof, which are covered by clauses (2) and (5) of Schedule II, CGST Act, the building could be held to be a plant. Then, it is taken out of the exception carved out by Section 17(5)(d) to Section 16(1).
 - Functionality test will have to be applied to decide whether a building is a plant.
 - By using the functionality test, in each case, on facts, in the light of what we have held earlier, it will have to be decided whether the construction of an immovable property is a "plant" for the purposes of clause (d) of Section 17(5).
- Press states that to align the provisions of section 17(5)(d) of CGST Act, 2017 with the intent of the said section, the Council has recommended amending section 17(5)(d) of CGST Act, 2017, to replace the phrase "plant or machinery" with "plant and machinery", w.r.e.f.01.07.2017, so that the said phrase may be interpreted as per the Explanation at the end of Section 17 of CGST Act, 2017.
- Review Petition before the Supreme Court.
- *Dehors the proposed amendments, the existing language adequate enough to cover lease since it will not be for own use.*

PRESS RELEASE

- Decisions on other amendments.
 - To provide for definitions of the terms 'Local Fund' and 'Municipal Fund' used in Section 2(69)(c) of the CGST Act, 2017 and to insert an Explanation under the same
 - Input Service Distributor
 - To amend Section 2(61) and Section 20(1) of the CGST Act, 2017 to explicitly include inter-state RCM transactions under the ISD mechanism by including reference to supplies subject to tax under section 5(3) and 5(4) of IGST Act, 2017 in the said provisions
 - Currently ISD with respect to RCM covers only Section 9(3) and Section 9(4)
 - Consequentially, to amend section 20(2) of CGST Act, 2017 and rule 39(1A) of the CGST Rules, 2017.
 - Effective from 01.04.2025
 - To insert new rule 16A in CGST Rules, 2017 to provide for a separate provision for generation of temporary identification number for persons, who are not liable to be registered under CGST Act, 2017 but are required to make any payment as per rule 87(4) of CGST Rules, 2017
 - Consequential amendment to Rule 87(4) of CGST Rules, 2017 incorporating a reference to the new Rule and modification of FORM GST REG-12
 - To amend Rule 19(1) of CGST Rules, 2017 to include reference to FORM GST CMP02 in the said rule to allow the taxpayers to modify their "category of registered person" in Table 5 of FORM GST CMP-02 through FORM GST REG-14.

PRESS RELEASE - IMS

- Decision taken
 - To amend Section 38 of CGST Act, 2017 and Rule 60 of CGST Rules, 2017 to provide a legal framework in respect of generation of FORM GSTR-2B based on the action taken by the taxpayers on the Invoice Management System (IMS)
 - To amend Section 34(2) of CGST Act, 2017, to specifically provide for requirement of reversal of ITC as is attributable to a credit note, by the recipient, to enable the reduction of output tax liability of the supplier
 - To insert a new Rule 67B in CGST Rules, 2017, to prescribe the manner in which the output tax liability of the supplier shall be adjusted against the credit note issued by him
 - To amend Section 39(1) of CGST Act, 2017 and Rule 61 of CGST Rules, 2017 to provide that FORM GSTR-3B of a tax period shall be allowed to be filed only after FORM GSTR-2B of the said tax period is made available on the portal

OTHER MEASURES

- The GST Council approved the recommendation of the committee of officers suggesting measures for the various issues raised by the States in respect of issues pertaining to IGST settlement and asked the committee to conclude the desired changes by March, 2025
- The GST Council took note of the procedural rules proposed for the internal functioning of the GSTAT, which would be notified after examination by the Law Committee helping in operationalization of the GSTAT
- The Council also decided to extend the time frame for the Group of Ministers on the restructuring of the GST Compensation till 30.06.2025
- On the request of State of Andhra Pradesh, the Council recommended that a Group of Ministers be constituted to examine the legal and structural issues, and recommend a uniform policy on imposition of levy in case of a natural disaster/calamity in the State

THANK YOU



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