

## EASE OF DOING ... COURTESY LUCKNOW (LUKHNAU)



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### **A** daab.... 45th GST council meeting.

45th GST council meeting held at Lucknow, a city of culture, art, music, dance, Urdu literature and poetry. All this is part of "Lukhnawi Tehzeeb". City of Lucknow is also known for its Nawaabs and their rich and carefree life style.

Following "Lukhnawi Tehzeeb" and Nawaabi style, GST council on 17th Sept, 2021 took many decisions to give relief to the tax payers under GST laws and procedures. Major reliefs that industry and other stake holders were expecting and announced are as under:

#### **1. Correction in Inverted Duty structure in Footwear and Textiles sector:**

A long pending issue of inverted duty tax structure in Footwear and Textiles sector has been resolved and will be effective from 01.01.2022.

As per Textile Value Chain, "Inputs into the MMF fabric segment (fibre and yarn) attract a GST rate of 18 per cent and 12 per cent whereas the GST rate on the MMF fabric is 5 per cent and that for the finished goods apparel is 5 per cent and 12 per cent. It creates a tax structure where the rate on inputs is higher than that on the outputs. This increases the effective rate of taxation of MMF fabrics and garments and violates the principle of fibre neutrality.

The inverted duty structure has been an issue with the apparel industry and that the Council had made recommendations to the Government for the elimination of this anomaly that has been resulting in input tax credit accumulation blocking crucial working capital for businesses."

Similarly, as per the statement of Shoes and Accessories (S&A), The footwear sector uses a variety of components with different rates. The raw materials used in the footwear industry are taxed at 12% or 18%. The final product is taxed at 5% in cases where the price of footwear is up to Rs.1,000/-. This leads to unrecovered credits for the manufacturer. The consumers do not gain anything rather this may result in a higher price for consumers.

#### **2. Interest is payable on ITC utilized:**

It's one of the major relief to Industry that interest is payable on ineligible ITC availed and utilized: GST council has once again clarified that interest u/s 50(3) of CGST Act, 2017 is payable on net cash liability paid and not on gross liability of outward GST. It is further clarified that Interest on "Ineligible ITC availed and utilised" is subject to Interest @18%. "Ineligible ITC availed but not utilised" is not subject to any interest. This clarification and change is applicable w.e.f 01.07.2017.

#### **3. IGST and CGST of one state can be utilized in another state:**

It's a big relief for the industry, especially having cash crunch that balance in electronic cash ledgers of CGST and IGST in one state can be utilized for the payment of CGST and IGST of other states without going for refund mechanism. So, registered persons having same PAN no but registered in another state as distinct entity, can avail this facility by transferring such cash balance to another state for payment of these taxes.

#### **4. Date of Debit Note is considered to avail ITC:**

W.E.F 01.01.2021, date of Debit note raised by supplier shall be considered to avail the ITC of GST paid on said Debit note amount. In a major move, it is again clarified that date on invoice is delinked to date of Debit note to avail ITC u/s Section 16(4).

**For example:** If any invoice is raised for supply of goods on 01.05.2018 for Rs. 1,00,000/- plus GST @ 18% i.e. Rs. 18000/- than buyer is eligible and can claim ITC of GST paid on such goods up to the month of Sept., 2019 GST-3B return. i.e. 20.10.2019.

If later on, a debit note is raised by supplier for any reasons for Rs. 10,000/- plus GST @18% i.e. Rs. 1800/- against above said invoice, on 01.11.2020. In that case buyer was not allowed to avail ITC for said debit note.

But now with w.e.f 01.01.2021, date of debit note is delinked from invoice date and date of debit note shall be

counted for to avail the ITC. In above example buyer can now avail the ITC up to 20.10.21 i.e Sept 2021 GSTR-3B filing. (Circular No. 160/16/2021-GST dt 20.09.2021)

#### **5. No need to carry Invoice Copy:**

Cases where e-invoice is mandatory under law, transporters need not to carry copy of e-invoice along. The same can be verified online. However, copy of e-way bill and/or other documents are to be carried. (Circular No. 160/16/2021-GST dt 20.09.2021)

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

GST council has relaxed norms regarding filing of ITC -04 by the dealers having Job work transactions and said that Taxpayers whose annual aggregate turnover in preceding financial year is:

- a. > Rs. 5 crores shall furnish ITC-04 once in six months;
- b. < Rs. 5 crores shall furnish ITC-04 annually.

As per rule 45 (3), of CGST Act, 2017 FORM GST ITC-04 needs to be filed on the quarterly basis on or before the 25th day of the month succeeding the said quarter.

Through Notification no 35/2021 dt 24.09.2021 the amendment has been made effective from 01.10.2021.

#### **7. Refund of GST wrongly paid in wrong heads:**

There are cases where assesses have paid CGST and SGST in place of IGST on transactions considered to be interstate. In other cases, paid IGST on intra-state transactions. Now council has decided to incorporate the provisions in Section 77(1) of CGST Act, 2017 and Section 19(1) of IGST Act, 2017 to remove ambiguity to get the refund for the same.

So, through notification no 35/2021 dt 24.09.2021 and circular no 162/18/2021-GST dt 25.08.2021, council has announced simplified and amended procedure to claim refunds u/s 71(1) within a period of two years from the date of payment of tax or date of notification dt 24.09.2021 as the case may be.

A Circular No. 162/18/2021-GST dt 25.09.2021 clarifying the various related issues has been issued for the convenience of the stake holders.

#### **8. Reduction in GST rates on Goods and Services:**

For the benefit of Industry and trade, council has proposed reduction in rate of GST on many goods and services which will definitely help the stake holders to grow further. Especially in post COVID-19 era. Also, council has clarified various issues pertaining to GST rates as applicable on Goods and services and were having confusions among the stake holders.

#### **9. Clarifications on some legal issues:**

To streamline the procedures and to reduce the litigation, council has also clarified the definition of "intermediary services" and "merely establishment of distinct person" under IGST Act for considering a supply of service as export of services.

Detailed Circulars No.159/15/2021-GST and 161/17/2021-GST dt 20.09.2021 clarifying the issues emerged in above two cases have been issued for the convenience of the stake holders.

#### **10. State compensation Cess:**

As per the provisions of The GST (Compensation to States) Act, 2017, states shall be compensated for any revenue loss from GST laws for five years i.e till June, 2022 from the collection of cess amount. But due to less collection in GST to states for various reasons, centre government has borrowed money to compensate states. Now, Cess shall be collected upto March 2026 and the amount so collected shall be used to clear debt and interest there on and states will not get anything out of it.

#### **Council also tightened the screw:**

During 45th council meeting, to streamline the procedures under GST

Laws, Council has also taken some steps and are narrated as under:

- Late fee shall be charged on delayed GSTR-1 return and shall be paid through next GSTR-3B,
- W.e.f 01.01.2022, registered person shall not be allowed to file GSTR-1, if previous month's GSTR-3B not filed (Rule 59(6) shall be amended accordingly)
- ITC shall be allowed strictly as per GSTR-2B, once Section 16(2)(aa) will be notified -Rule 36(4) of CGST Act, 2017.
- Aadhaar authentication is mandatory for refunds and for application for revocation of cancellation of registration,
- Bank account must be linked to the PAN on which registration is obtained by registered dealer to get refund amount,

**Conclusion:** During 45th GST Council meeting at Lucknow, a city of Nawabs, the Council has tried to address many issues in Lakhnavi style. Though, in some of the cases notifications have been issued but in some of the cases notifications are still awaited. Further, apart from what council has clarified or relaxation has been given in GST Laws, still a lot has to be done to make GST user friendly. So, more such meetings are required at Lucknow.