

49th GST Council meeting: Key recommendations and decisions

21 February 2023



Summary

The Goods and Service Tax (GST) Council held its 49th meeting on 18 February 2023. The GST Council has, inter-alia, made various significant recommendations relating to GST compensation, GST appellate tribunal, changes in GST rates on goods and services, and other trade facilitation measures, including the introduction of an amnesty scheme, rationalisation of late fees for filing the annual return, etc.

Key recommendations/decisions

1. GST Appellate Tribunal

- The GST Council adopted the Group of Ministers (GoM) report to constitute the tribunal with certain modifications.
- The final draft amendments to the GST laws shall be circulated to the members for their comments.

2. Measures for facilitation of trade

i. Rationalisation of late fee for GSTR-9 from FY 2022-23 onwards

- If the aggregate turnover (AT) is up to INR 5 crores, the late fees shall be INR 50 per day, subject to a maximum of 0.04% of turnover in the state/ union territory (UT).
- In case the AT is more than INR 5 crores and up to 20 crores, it shall be INR 100 per day, subject to a maximum of 0.04% of turnover in the state/UT.
- There shall be no change in the late fees if the AT exceeds INR 20 crores.

ii. Revocation of cancellation of registration

- The time limit for applying for the revocation of cancellation of registration is to be increased from 30 days to 90 days (further extendable by 180 days).
- Amnesty for past cases where registration has been cancelled on account of non-filing of the returns, but the application could not be filed within the prescribed time, by allowing such persons to file such an application by a specified date.

iii. Assessment of non-filers of returns

- The period for filing of return for enabling deemed withdrawal of best judgment assessment order is to be increased from 30 days to 60 days (extendable by another 60 days).
- Amnesty is to be provided for past cases where the return could not be filed within the prescribed time but has been filed along with due interest and late fee, irrespective of whether an appeal has been filed or not against the assessment order or whether the said appeal has been decided or not.

iv. Amnesty scheme for pending returns

- Conditional waiver/reduction of late fee for pending composition scheme return, annual return, and the final return in Form GSTR-4, Form GSTR-9, and Form GSTR-10.

v. Place of supply of services of transportation of goods

- In cases where the location of the supplier of services or the location of the recipient of services is outside India, the place of supply of services of transportation of goods shall be the location of the recipient of services.

3. GST rates on goods and services

- Taxable services provided by the courts and tribunals shall be taxable under the reverse charge mechanism (RCM).
- Extension of exemption to any authority, board or a body set up by the central government or state government, including the National Testing Agency for the conduct of entrance examination for admission to educational institutions.
- The GST rate on rab is to be reduced from 18% to 5% if sold, packaged, and labelled, and nil if sold otherwise. Past periods are to be regularised on an 'as is basis' on account of genuine doubts.
- The GST rate for pencil sharpeners shall be reduced from 18% to 12%.

4. Approval of the report of GoM on capacity-based taxation and special composition scheme in certain sectors on GST:

To plug leakages and improve revenue collection from commodities, such as *pan masala*, *gutkha*, and chewing tobacco, the GST Council approved the GoM's recommendations, including inter-alia:

- Capacity-based levy is not to be prescribed
- Implementation of compliance and tracking measures
- Exports only against a letter of undertaking (LUT)
- Levy of compensation cess to be changed from *ad valorem* to specific tax based

5. GST compensation to states

- The Government of India (GOI) has decided to release the pending balance of GST compensation of INR 16,982 crore among 23 states for June 2022 from its own resources, which will be recouped through future compensation cess collection.
- In addition, the centre would clear the admissible final GST compensation to those states that have provided the revenue data certified by the Accountant General of the states, amounting to INR 16,524 crore.

Our comments

The key expectations from the Union budget for 2023–24 included, inter-alia, the setting up of GST Appellate Tribunal and introduction of an amnesty scheme, but these expectations were not met. Positively, the GST Council has taken up both these matters in its 49th meeting.

The proposed amnesty scheme aims to provide relaxation to the taxpayers and foster improved compliances. The delay in setting up the GST Tribunal has led to ongoing litigation and ambiguous legal positions. In this respect, the acceptance of the GoM report with certain modifications indicates that the GST Tribunal shall be hopefully constituted with some amendments under the law. The constitution of the GST Tribunal shall help in resolving prolonged litigations and reducing the burden on high courts.

The recommendations made by the GST Council would facilitate ease of doing business and provide relief to taxpayers. Nevertheless, the actual impact would only be assessed post issuance of the relevant circulars/ notifications/ law amendments to give effect to these recommendations.

Furthermore, the GoM report on online gaming could not be taken up at this meeting and is expected to be discussed in the next GST Council meeting.

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