

45th GST Council Updates in relation
to Laws & Procedures

In the backdrop of coming elections in few states & heightened expectations post COVID scenarios, the GST Council had its 45th meeting on 17th September, 2021 at Lucknow. The GST Council made host of recommendations from rate change to simplifications of compliances. We provide the gist of such recommendations in relation to laws & procedures as follows:

GST LAW AND PROCEDURE RELATED RECOMMENDATIONS

Trade Facilitating Measures

Relaxation in filing FORM GST ITC-04 (Job Work)

Sr No.	Taxpayers Annual Aggregate T/O in Preceding F.Y.	Relaxation in filing ITC-04
1	> 5 Crore	Half Yearly
2	Upto 5 Crore	Annually

Levying Interest on Availment of Ineligible ITC

- With the retrospective amendment to Section 50 of CGST Act, 2017, the Council has also recommended streamlining the interest provisions relating to availment of ineligible ITC without utilizing it. This is a trade facilitating measure
- It has been recommended that interest is to be levied @18% (*w.e.f. 01.07.2017*) on **"ineligible ITC availed and utilized"** & not on **"ineligible ITC availed"**.

Inter GSTIN (Within same PAN) Transfer of Cash Ledger Balances

- Hitherto, a GSTIN was required to file a refund claim if there is excess balance in cash ledger even through there is cash requirement in its another GSTIN (under the same PAN).
- The Council has recommended that Unutilized balance in CGST and IGST cash ledger may be allowed to be transferred between distinct persons (entities having same PAN but registered in different states), without going through the refund procedure.

Procedure for filing refund of tax wrongfully paid as IGST instead of CGST/SGST or vice-versa

- Council recommended to incorporate requisite provisions in in CGST Rules, 2017 for removing ambiguity regarding procedure & time limit for filing refund of tax wrongfully paid as specified in section 77(1) of the CGST/SGST Act & section 19(1) of the IGST Act.

Clarifications / Circulars

GST Council has recommended issuance of Circulars in relation to various contentious issues.

- Clarification on scope of **"Intermediary Services"**: This would go a long way in resolving the issues as the entire trade is grappling with the newly found zeal of authorities towards classification of services under intermediary services, especially while granting refunds;
- Clarification relating to interpretation of the term **"Merely establishment of distinct person"**: This would again bring cheers to industry which was otherwise proving drain to time and resources both for trade and Government. It has been recommended if both supplier and recipient are separate legal entities, they would not be treated as **"Merely establishment of distinct person"** and hence benefit of exports would be allowed;
- In view of certain drafting issues in amendments made to CGST Act, 2017 in relation to allowing credits on debit notes, it has been recommend that w.e.f. 01.01.2021, the date of issuance of debit note (and not the date of underlying invoice) shall determine the relevant F.Y. for the purpose of section 16(4) of CGST Act, 2017;
- To clarify that there is no need to carry the physical copy of tax invoice in cases where E- invoice has been generated by the supplier;

Measures for streamlining compliances in GST

Additionally, the GST Council recommended certain measures to streamline the overall compliances and to curb the fake invoicing and ITC availment. The Council recommended as follows:

- Aadhaar authentication of registration to be made mandatory for being eligible for filing refund claim & application for revocation of cancellation of registration;

- Late fee for delayed filing of FORM GSTR-1 to be auto-populated & collected in next open return in FORM GSTR-3B;
- Refund to be disbursed in the bank account, which is linked with same PAN on which registration has been obtained under GST;
- W.e.f. 01.01.2022, a registered person shall not be allowed to furnish FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for the preceding month;
- To restrict availment of ITC in respect of invoices/ debit notes, to the extent the details of such invoices/ debit notes are furnished by the supplier in FORM GSTR-1/ IFF & are appearing in FORM GSTR2B of registered person. This provision is fall out of recently amended Section 16(2) of CGST Act, 2017 which allows the credit of only those invoices or debit notes which are uploaded by the supplier on the GSTN portal.