

The background of the page is a photograph of a business meeting. Two people in dark blue suits are seated at a wooden table. One person's hand is pointing at a document on the table, while the other holds a black pen. The document has a blue and white striped pattern. A large white diagonal shape cuts across the left side of the image, containing the text.

53rd GST COUNCIL MEETING

KEY DECISIONS AND
RECOMMENDATIONS

June 2024



Table of Contents

1. MEASURES FOR FACILITATION OF TRADE	4
1.1. No interest and penalty for FY 2017-18 to FY 2019-20	4
1.2. Time limit to avail ITC upto FY 2020-21 extended	5
1.3. Recommendations for Insurance Industry	6
1.4. Monetary Limit for filing of appeal by Revenue	7
1.5. No retrospective tax, if non-payment of tax is backed by Common Trade Practice... 7	7
1.6. Exception to Valuation of Corporate Guarantee.....	7
1.7. Applicability of Section 16(4) of the CGST Act on RCM transaction	8
1.8. Penalty on E-commerce Operators	8
1.9. Adjustment of payment made through DRC-03 towards pre-deposit	9
1.10. Common time limit for issuance of show cause notice.....	9
1.11. Clarification on time limit to file appeal before GSTAT	9
1.12. Refund to be allowed of additional IGST paid on exports as a part of upward price revision	10
1.13. Clarification on interest to be paid under Rule 88B	10
1.14. Applicability of second proviso to Rule 28(1) in case of import of service from related person where recipient is eligible for claiming ITC	10
1.15. Clarification on POS of custodial services by Banks to FPIs	11
1.16. Introduction of GSTR 1A.....	11
1.17. Introducing Bio-metric Aadhar Authentical on all India basis	12
1.18. Anti-profiteering may finally see the setting sun.....	12
1.19. Restriction on refund of IGST where export duty is payable.....	12
1.20. GSTR 7 to be filed for every month, including NIL returns.....	12
1.21. Where the annual turnover of any given taxpayer is less than INR. 2 crores, an exemption is recommended from filing of GSTR-9 and GSTR-9A (composition). 12	12
1.22. Clarifications to be provided	12
2. TAX RATES AND EXEMPTIONS	14
2.1.1. Uniform Rate of 5% IGST on import of goods for MRO Activities of Aircraft.....	14
2.1.2. 12% GST on all Milk Cans	14
2.1.3. Uniform tax rated of 12% on carton boxes, cases of corrugated and non-corrugated papers or paper boards.....	14
2.1.4. Uniform GST Rate of 12% on all Solar Cookers	14
2.2.1. “Poultry keeping machinery” to include “parts of poultry keeping machinery”	14
2.2.2. All types of Sprinklers including fire water sprinklers to attract 12% GST	15
2.3.1. Extension on import of Defense Items.....	15





2.3.2. Exemption on import of Research Equipment under RAMA program Extended..	15
2.3.3. Compensation Cess exemption on SEZ imports for authorized operations effective from July 1, 2017	15
2.3.4. Compensation Cess Waived on Aerated Beverages, Energy Drinks for Ministry of Defense Canteens	15
2.3.5. Ad hoc IGST Exemption Granted for AK-203 Rifle Technical Documentation Imports for Indian Defense Forces	15
2.3.6. Indian Railways Services Exempted for Public Use and Intra-Railway Transactions; Past Period Issues Addressed.....	15
2.3.7. GST Exemption for Services Between SPVs and Indian Railways, Past Period Issues Addressed	16
2.3.8. Hostel Services outside educational institutions exempted subject to conditions .	16
2.3.9. Statutory collection made by RERA exempt from GST	16
2.3.10. Non-taxability of Incentive Sharing in RuPay and BHIM-UPI Promotion Scheme	16





1. MEASURES FOR FACILITATION OF TRADE

1.1. No interest and penalty for FY 2017-18 to FY 2019-20

Council has recommended to insert Section 128A in the CGST Act, 2017 to provide conditional waiver of interest and penalty for FY 2017-18 to FY 2019-20, in cases where the orders/show-cause notice has been issued under Section 73 of the CGST Act and the taxpayer pays the tax demand on or before March 31, 2025. The waiver does not cover demands of account of erroneous refund.

TMSL Comments:

It's been seven years of advent of GST and taxpayers have received demand notices for various minor and major contraventions of GST law. This relief is applicable in cases where order/show cause notice has been issued under Section 73 of the CGST Act i.e., where there is no allegation of fraud, wilful-misstatement or suppression of facts. The cases where demand pertains to erroneous refund have been kept out of the purview of this relief.

The said amnesty scheme aims to reduce litigation and would cover cases where an appeal is pending before the Appellate Authority or a show cause notice is pending adjudication. This is a significant respite for taxpayer, considering taxpayers made bonafide contraventions to the GST Law during the initial strenuous years of GST and consequently, demands were raised. It is important to note that the benefit will be available only to the taxpayer who will pay the entire tax demand on or before March 31, 2025. In case, a taxpayer has paid the interest and penalty, no refund will be granted in such cases.

Clarity would be required on whether partial waiver can be availed in respect of selective issues from any given show cause notice/order or one would have to pay the entire tax demand on the given show cause notice/order to claim this waiver.





1.2. Time limit to avail ITC upto FY 2020-21 extended

The Council has recommended to extend the time limit for availing ITC pertaining to FY 2017-18 to FY 2020-21 to November 30, 2021 retrospectively w.e.f. July 1, 2017.

The Council has also recommended retrospective amendment to Section 16(4) of the CGST Act, so as to allow benefit of ITC for the period between cancellation and revocation of registration to the taxpayers who has filed all the return for the said period within 30 days from the date of revocation of registration.

TMSL Comments:

Section 16(4) of the CGST Act, 2017, provided that ITC in relation to an invoice or debit note shall be availed on or before the due date of filing return for the month of September following the financial year (till March 2019 for FY 2017-18) to which such invoice or debit note pertains.

*Recently, many taxpayers were issued notices demanding reversal of ITC claimed beyond the time limit prescribed under Section 16(4) of the CGST Act. This recommendation will resolve petitions filed across the various High Courts of the country leading to reduction in litigation. In-fact, the issue of validity of Section 16(4) is pending before the Hon'ble Supreme Court and in the case of **Shanti Motors vs. Union of India [(2024) 19 Centax 214 (S.C.)]** the Court has issued notice to the Revenue. Recently, the Hon'ble Kerala High Court in the case **M/s M. Trade Links vs. Union of India [WP(C) No. 31559 of 2019]**, held that the amendment to Section 16(4) is procedural in nature and allowed petitioners to avail ITC if claimed after 20th October but before 30th November of the following Financial Year.*

Further, the taxpayers whose registrations were cancelled were facing challenges to avail ITC within prescribed time limit due to their registrations being inactive. A retrospective amendment to allow ITC to such taxpayers is a welcome step.

However, there is no clarity on cases where ITC has already been reversed by taxpayers and interest and penalty has been discharged – whether such cases warrant refunds?

Sr. no. 1.1 and 1.2 when read together gives an indication that since the taxpayer may not be required to pay tax on issue pertaining to violation of Section 16(4) of the CGST Act or other reliefs announced, a prudent decision should be made before paying the tax liability before one applies for waiver of interest and penalty.





1.3. Recommendations for Insurance Industry

- a. The GST Council has recommended that the premium amount apportioned by the lead insurer to the co-insurer in a co-insurance agreement may be declared no supply under Schedule III of the CGST Act, 2017 and past cases may be regularized on 'as is where is' basis.
- b. Furthermore, the Council also recommended that transaction of ceding commission/re-insurance commission between the insurer and re-insurer may also be declared as no supply under Schedule III of the CGST Act, 2017
- c. GST liability on reinsurance services of specified insurance schemes covered by Sr. Nos. 35 & 36 of notification No. 12/2017-CT (Rate) dated 28.06.2017 may be regularized on 'as is where is' basis for the period from 01.07.2017 to 24.01.2018.
- d. For the period from July 1, 2017 to July 26, 2018, the GST liability on reinsurance services of the insurance schemes for which the Government pays the entire premium and which are covered by Sr. No. 40 of notification No. 12/2017-CTR dated June 28, 2017, may be regularized on "as is - where is" basis.
- e. To issue clarification that retrocession is 're-insurance of re-insurance' and therefore, eligible for the exemption under Sl. No. 36A of the notification No. 12/2017-CTR dated 28.06.2017

TMSL Comments:

It seems as if the Council was committed to resolve issues faced by Insurance Industry pursuant to the industry representations. The move to categorise co-insurance premium apportioned by lead insurer to co-insurer and reinsurance commission between the insurer and re-insurer as 'No supply' under schedule III will be welcomed by the Insurance industry. There was an ambiguity on the taxability in both the above transactions and more than 20 insurance companies received notices from the GST authorities. The matter was then represented and the fitment committee had proposed to not treat re-insurance and co-insurance as supplies under GST. It is anticipated that the entire litigation going on would be dropped pursuant to this clarification.

In order to not flare up the past tax positions, it has also been recommended to regularise past transactions on as-is basis.

Similar, clarification is also required for the banking sector in the case of co-lending business where the industry has received abundant notices on the front.





1.4. Monetary Limit for filing of appeal by Revenue

Council has recommended to prescribe the below monetary limit for filing of appeal by Revenue before GSTAT, High Court and Supreme Court

Forum	Amount (INR)
GSTAT	20,00,000/-
High Court	1,00,00,000/-
Supreme Court	2,00,00,000/-

TMSL Comments:

This is similar to litigation policy adopted by the Government in the erstwhile regime. Such policies are being made with the objective to reduce litigation, lower the burden of courts and to cut down expenditure in contesting litigations. However, it is not clear whether the monetary limit is cumulative of IGST, CGST & SGST. Also, for seamless implementation, the State Governments will be required to adhere to these limits as well.

1.5. No retrospective tax, if non-payment of tax is backed by Common Trade Practice

The Council has recommended to insert Section 11A in the CGST Act, so as to empower the Government, to allow regularization of non-levy or short levy of GST, where tax was being short paid or not paid due to common trade practices.

TMSL Comments:

Taxing statues and retrospective tax collection is not new. However, this recommendation is contrary to general practice seen in the past. The Government will have power to notify industry/ sector which due to common trade practice had either short paid or not paid tax on the activities/ transaction undertaken. The industries/ sectors facing such issues can approach Government for benefit under this provision. It certainly seems that the Government is inclined to make GST a Goods and Simple Tax.

1.6. Exception to Valuation of Corporate Guarantee

The Council has recommended to amend Rule 28(2) of the CGST Rules, 2017 retrospectively w.e.f. October 1, 2023 and clarification to be issued to provide that valuation under Rule 28(2) of CGST Rules would not be applicable in case of export of such services and cases where the recipient is eligible for full ITC.





TMSL Comments:

The GST Council's recommendation to clarify the matter is a welcome move. Recently, the High Courts have granted interim relief against the revenue action based on circular providing clarification on levy of GST on Corporate Guarantee provided to group companies. This will benefit taxpayers whose group companies are entitled to avail full ITC. However, the dispute with respect to those taxpayer's where group company is not entitled to avail full ITC will continue and may not attain finality in near future.

1.7. Applicability of Section 16(4) of the CGST Act on RCM transaction

Clarification has been provided that time limit for availing ITC against supplies received from unregistered person where tax is payable under Reverse Charge Mechanism ('RCM'), shall be calculated from the financial year in which self-invoicing has been done by the recipient.

TMSL Comments:

This is a welcome step as the Council has recommended to permit recipients to avail ITC of RCM paid at the time of raising of self-invoices in case supplies are received from unregistered suppliers (such as import of services, legal fee etc.). Therefore, the time limit to avail ITC in case of such services has been left open till the time self-invoices are raised.

However, the department may still deny the ITC for the want of proper document when ITC was availed. The taxpayer can contest that substantive benefit of ITC cannot be denied due to procedural requirement of self-invoice.

At this juncture, it will be vital to understand whether there would be any interest exposure on account of breach of time of supply provision.

1.8. Penalty on E-commerce Operators

Council has recommended retrospective amendment to Section 122(1B) of the CGST Act to provide that the said penal provision shall be applicable only on those E-commerce Operators ('ECOs') who are liable to collect tax under the provisions of Section 52 of the CGST Act.

TMSL Comments:

This clarification makes it aptly clear that the penal provision was inserted w.e.f. October 01, 2023 with an intent to impose penalty on ECOs who were required to collect tax at source under Section 52 of the CGST Act. This provision ensures that such ECOs must ensure that a non-compliant unregistered persons or composition taxpayers should not make supplies through their platforms.





1.9. Adjustment of payment made through DRC-03 towards pre-deposit

The Council has recommended to amend Rule 142 of the CGST Rules to provide for a mechanism for adjustment of tax paid through Form GST DRC-03 towards payment of pre-deposit while filing an appeal.

TMSL Comments:

Till date if a taxpayer has paid tax towards demand by filing Form GST DRC-03 before issuance of an order, they were required to make an additional pre-deposit when filing an appeal on the portal. This recommendation provides relief to taxpayers by reducing the burden of making this additional pre-deposit payment when filing an appeal. This recommendation aims to resolve a technical difficulty faced by the taxpayer on the portal at the time of filing an appeal.

1.10. Common time limit for issuance of show cause notice

The Council has recommended to insert Section 74A in the CGST Act to provide for a common time limit for issuance of demand notices and orders in respect of demands for FY 2024-25 onwards, irrespective of cases involving fraud or wilful misstatement or not. Further, the time limit for availing benefit of reduced penalty is recommended to be increased from 30 days to 60 days.

TMSL Comments:

Prima-facie this recommendation may work against taxpayers, as this amendment will give ample time to the authorities for issuing show cause notice without worrying about the allegations of fraud or wilful misstatement etc. But at the same time, it will bring a genuine taxpayer and a fraudulent one at par. This will be inconsistent with the legislative intent till date. The division/ bifurcation of taxpayer for the purpose of demand or recovery provision encourage compliant taxpayers and foster trust within tax regime. Therefore, detailed analysis is required once the draft provision is released.

1.11. Clarification on time limit to file appeal before GSTAT

As per the Removal of Difficulties Order issued in 2019, the time limit to file GSTAT was prescribed to be three months from the date when the President or State President enters office. It has been clarified that the date from which the period of three months shall be counted would not be such date when the President enters office but shall be the date to be notified by the GST Council.

TMSL Comments:

On May 6, 2024, Mr. Sanjay Mishra took the office as the President of GSTAT. The time limit for filing an appeal before GSTAT started on the said date and the due date for filing appeal before GSTAT was thus August 05, 2024. This recommendation provides respite to the taxpayers as the time limit will now start to tick from a date as may be notified by the Government.





1.12. Refund to be allowed of additional IGST paid on exports as a part of upward price revision

In order to grant refund to exporters to the maximum extent possible, it has been clarified that in cases where IGST is paid on exports as a part of upward price revision, such IGST can be claimed as a refund even though it has been charged at a later point. This shall positively impact exporters in industries like steel and cement where the prices of goods fluctuate on a regular basis.

1.13. Clarification on interest to be paid under Rule 88B

Rule 88B which was introduced in 2022, prescribes the manner of computing interest in case of delayed payment of taxes as a result of late filing of GSTR 3B. It has been clarified that such interest shall be computed after excluding any amount already lying in Electronic Cash Ledger (ECL).

TMSL Comments:

Rule 88B, since the time of inception has been subject to various interpretations. The CBIC in 2023 also issued Circular 192/04/2023 to clarify interest computation in case of wrong availment of ITC.

Vide this clarification, it becomes amply clear that if the taxpayer has balance lying in ECL, the same shall be reduced while computing interest.

This clarification also is a result of the decision pronounced by a single member bench of Madras HC in the case of Eicher Motors wherein it was held that the assessee is not liable to pay interest on the amount deposited in the ECL, within the time-limit for payment of tax, even where GSTR-3B is filed belatedly, since such amount gets credited to the government account on the date of deposit of cash in the ECL. Interestingly, the Jharkhand HC had contrary views in the case of RSB Transmissions India Limited, wherein it held that deposit of cash in ECL does not amount to discharge of tax liability till such amount is debited from ECL by way of filing GSTR-3B.

1.14. Applicability of second proviso to Rule 28(1) in case of import of service from related person where recipient is eligible for claiming ITC

To reduce any disputes on the valuation mechanism on supplies between related parties, second proviso to Rule 28 was introduced which mentioned that if the recipient is eligible for full ITC, the invoice value shall be deemed to be the Open Market Value (OMV). However, there was an ambiguity whether import of service from related party will be included in the said proviso or not. It has been clarified that in such cases, the value declared by the recipient in the invoice shall be the OMV. If no invoice is issued by the recipient, then the OMV shall be deemed to be Nil.





TMSL Comments:

In lines with Schedule I, any import of service without consideration from a related party shall be considered as a supply within the meaning of the same u/s 7 of the CGST Act, 2017 and the same shall be taxable. This clause was proving to be the root cause of litigation as the authorities were not agreeing with the value ascribed by the taxpayers in such cases.

The Council has simplified the valuation mechanism by taking the declared value as the OMV when the recipient is eligible to claim ITC. In other cases, the recipient may determine the value as per the Valuation Rules as prescribed. This should result in dropping of various litigations on this aspect.

1.15. Clarification on POS of custodial services by Banks to FPIs

It has been clarified that POS of the custodian services rendered by Banks to Foreign Portfolio Investors (FPIs) shall be determinable as per Section 13(2) of the IGST Act, 2017 which is the residuary section. This means that POS of custodian services rendered by Indian Banks to FPIs will now be considered as the location of the service recipient which in present case is outside India.

TMSL Comments:

As per Section 13(8)(a) of the IGST Act, 2017, the POS in case of services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders is the place of the supplier.

Basis this section the GST department had issued notices to various banks rendering services to FPIs alleging that the same is not export of service as the POS of such service is in India as per the above section.

With this clarification, such litigation would finally be put to rest in favor of the taxpayer.

1.16. Introduction of GSTR 1A

A new **optional** return has been proposed to be introduced which can be filed post filing of GSTR 1 and before filing of GSTR 3B to amend any invoices uploaded in the GSTR 1.

TMSL Comments:

In order to move completely towards automated 3B, a chance to rectify mistakes is being provided to taxpayers wherein any errors made in GSTR 1 can be rectified before filing of GSTR 3B.





1.17. Introducing Bio-metric Aadhar Authentical on all India basis

The GST Council recommended to roll-out the biometric-based Aadhaar authentication of registration applicants on pan-India basis in a phased manner.

TMSL Comments:

Post its pilot in Gujarat, Puducherry and Andhra Pradesh, Bio-metric Aadhaar authentication will go live PAN India. While the move aims to strengthen the registration process and combat fake ITC claims, it may prove to be a step against ease of doing business.

Typically, senior employees and directors are the authorized signatories. If a Company was to avail registration in ten states, such employee or director may have to travel across for the Bio-metric Aadhaar authentication leading to travel costs and time costs.

1.18. Anti-profiteering may finally see the setting sun

Introduced for an initial period of three years, Anti-Profiteering will finally see the settings sun after eight years of introduction of GST on April 1, 2025.

1.19. Restriction on refund of IGST where export duty is payable

Exporters of goods which attract export duty shall not be eligible for claiming refund under section 54 of the CGST Act, 2017 and Section 16 of the IGST Act, 2017. Such restriction shall also apply to similar goods being supplied to SEZ developer or SEZ unit for authorized operations.

1.20. GSTR 7 to be filed for every month, including NIL returns

GSTR-7 is the return prescribed to be filed by TDS deductors (majorly Government undertakings) under GST (Section 51 of the CGST Act, 2017 by the 10th of the following month. It has been proposed that such return should be filed as NIL return even if there are no TDS deductions in any given month. However, no late fees should be made applicable in case of delayed filing of such returns.

1.21. Where the annual turnover of any given taxpayer is less than INR. 2 crores, an exemption is recommended from filing of GSTR-9 and GSTR-9A (composition)

1.22. Clarifications to be provided

Council has recommended to issue clarifications on the following issues:





- (a) Taxability of Reimbursement of Securities/Shares as ESOP/ESPP/RSU provided by a Company to its Employees
- (b) Reversal of Input Tax Credit on Premium in Life Insurance Services
- (c) Taxability of Wreck and Salvage Values in Motor Insurance Claims
- (d) Warranty/Extended Warranty provided by Manufacturers to End Customers
- (e) Availability of Input Tax Credit on Repair Expenses in Motor Vehicle Insurance Claims
- (f) Taxability of Loans Granted Between Related Persons or Group Companies
- (g) Time of Supply for Annuity Payments under HAM Projects
- (h) Time of Supply for Allotment of Spectrum to Telecom Companies
- (i) Place of Supply of Goods to Unregistered Persons with different delivery and billing addresses
- (j) Mechanism for providing evidence for compliance of Section 15(3)(b)(ii) of CGST Act concerning post-sale discounts and reversal of input tax credit by the recipient
- (k) Clarifications on special procedures for manufacturers of specified commodities like pan masala, tobacco etc.





2. TAX RATES AND EXEMPTIONS

2.1 Tax Rate Changes

2.1.1. Uniform Rate of 5% IGST on import of goods for MRO Activities of Aircraft.

The GST Council has recommended a uniform Rate of 5% IGST on import of parts, components, tool, tool-kits required in Maintenance, Repair, and Operations Activities of Aircrafts irrespective of their HS Classification. This is intended to provide an impetus to MRO activities within the country. However, the said rate is subject specified conditions, which is awaited.

2.1.2. 12% GST on all Milk Cans

The GST Council recommended a uniform tax rated at 12% for all milk cans of steel, iron, and aluminum, irrespective of their end use.

2.1.3. Uniform tax rated of 12% on carton boxes, cases of corrugated and non-corrugated papers or paper boards.

The GST Council keeping in mind the requirements of the Apple farmers in Himachal Pradesh, and Jammu and Kashmir, in particular reduced the rate on Carton Boxes, cases of corrugated and non-corrugated papers or paper boards (bearing HSN 4819 10; 4819 20) from 18% to a uniform rate of 12%.

2.1.4. Uniform GST Rate of 12% on all Solar Cookers

The GST keeping in mind the need to switch to renewable sources of energy has recommended a Uniform Tax Rate at 12% on all Solar Cookers regardless of their energy source.

2.2 Clarifications

2.2.1. “Poultry keeping machinery” to include “parts of poultry keeping machinery”

Owing to the significant amount of perplexity in the Poultry industry regarding the taxability of parts of poultry keeping machinery, the GST Council provided a clarification in this regard to the effect that the entry covering poultry keeping machine shall include parts of poultry keeping machinery attracting 12% of GST rate.





2.2.2. All types of Sprinklers including fire water sprinklers to attract 12% GST

The GST Council recommended that all types of sprinklers including fire water sprinklers shall attract 12% GST.

2.3 Exemptions

2.2.3. Extension on import of Defense Items

The GST Council has recommended the extension of exemption on the import of specified Defense Items from GST for 5 more years until June 30, 2029.

2.2.4. Exemption on import of Research Equipment under RAMA program Extended

The GST Council has recommended the extension of exemption on import for research equipment under the Research Moored Array for African-Asian-Australian Monsoon Analysis and Prediction (RAMA) program subject to specified conditions.

2.2.5. Compensation Cess exemption on SEZ imports for authorized operations effective from July 1, 2017

The GST Council has recommended exemption of compensation cess on the import by the SEZ Unit/Developer or import in SEZ with effect from July 1, 2017

2.2.6. Compensation Cess Waived on Aerated Beverages, Energy Drinks for Ministry of Defense Canteens

The GST Council recommends exemption of Compensation cess on supply of aerated beverages and energy drinks to authorized customers by Unit Run Canteens under Ministry of Defense.

2.2.7. Ad hoc IGST Exemption Granted for AK-203 Rifle Technical Documentation Imports for Indian Defense Forces

2.2.8. Indian Railways Services Exempted for Public Use and Intra-Railway Transactions; Past Period Issues Addressed

The GST Council recommended that the services provided by the Indian Railway to general public, in the issuance of platform ticket, services of waiting room, cloak room, battery-operated car services and to also exempt the Intra-Railway transactions.





Furthermore, issue for the past period will be regularized from 20.10.2023 to the date of issue of exemption notification in this regard.

2.2.9. GST Exemption for Services Between SPVs and Indian Railways, Past Period Issues Addressed

To exempt Special Purpose Vehicles (SPV) from paying GST on the services they offer to Indian Railway. This is done by enabling Indian Railway to use infrastructure that SPV built and owned during the concession period and by providing SPV with maintenance services that Indian Railways provides to SPV. For the period from July 1, 2017, to the date of the exemption notification's issuance, the issue for the past will be regularized "as is, where is."

2.2.10. Hostel Services outside educational institutions exempted subject to conditions

Keeping in mind the needs of the Students and Working Professional and decrease their financial burden the GST Council recommended to exempt the Hostel services provided outside of the educational institutions. However, such exemption is subject to the condition that the maximum value of such supply shall be INR.20,000/- per month per person and the service provided for a continuous period of 90 days.

2.2.11. Statutory collection made by RERA exempt from GST

The GST Council recommended that a clarification shall be issued to the effect that the statutory collection made by Real Estate Regulatory Authority are exempt from GST as they fall within the scope of entry 4 of No.12/2017-CTR dated 28.06.2017.

2.2.12. Non-taxability of Incentive Sharing in RuPay and BHIM-UPI Promotion Scheme

The GST Council recommended that a clarification may be issued to the effect that incentive sharing by the acquiring bank with other stakeholders will be determined in the same proportion and method as specified under the incentive program for promoting RuPay Debit Cards and low-value BHIM-UPI transactions. Furthermore, that in agreement with the collaborating banks, NPCI is not subject to taxation.



T



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Disclaimer: This document is based on press release dated June 22, 2024 and covers recommendations made by the GST Council in its 53rd meeting. The taxpayers are advised to peruse appropriate amendment, notifications and circulars, as and when issued, before taking any decision.

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