



GST council decisions on Standby – Taxpayers face hardships till implementation

The Goods and Services Tax (GST) in India shall soon be turning three years old on 1 July 2020. The journey so far has been paved with complexities that have grappled businesses and the GST council's interventions to iron out the issues from time to time. The GST Council, chaired by the Hon'ble Finance Minister, meets at frequent intervals to discuss the crucial issues revolving around GST and provides recommendations to make the GST provisions and compliances simpler and clearer for businesses. While the government doesn't need to mandatorily implement all the decisions/recommendations made by the Council, almost all the decisions/recommendations are eventually implemented. Over the course of 40 Council meetings that have been held since September 2016, there are certain decisions/recommendations which are either not implemented or the implementation is not effective. As per the press release dated 28 October 2018, the Council had met 30 times (until then) and had taken 918 decisions, of which 96% had already been implemented. In this article, we have made an effort to cover a few key decisions that weren't implemented but remain crucial for ease of business.

Interest on delayed tax payments – on net liability or gross liability?

Payment of interest on delayed payment has been a heated issue that has involved litigations since filing the first GSTR-3B returns. *Inter alia*, it was pertinent to consider whether the interest on delayed GST liability will be applicable on the gross output liability or net cash liability (i.e., after reducing input tax credit amount). Further, the Hon'ble High Court of Telangana and Madras have issued contradictory rulings on this issue, deepening the confusion. Considering the gravity of the issue, the 31st Council meeting held on 22 December 2018, had recommended amending the section 50 of the CGST Act, 2017 and make the interest applicable only on net cash liability. The aforesaid amendment was officially introduced in the Parliament vide Finance (No.2) Act, 2019, on 1 August 2019, with an effective date of implementation to be notified in the future. To provide further relief after considering the representations by businesses, the 39th GST Council meeting held on 14 March 2020 decided to make such an amendment retrospective with effect from 1 July 2017. However, the amendment and the decision to make it retrospective are still ineffective, rendering the relief for taxpayers elusive.

Constituting Goods and Services Tax Appellate Tribunal (GSTAT)

GSTAT is the second level appeal forum under the GST law. Any taxable person/tax officer aggrieved by any order passed by the First Appellate Authorities can file an appeal before GSTAT. However, shocking as it may be, while the GST regime is on the verge of celebrating its 3rd anniversary, GSTAT is yet to see the light of the day. During its 35th meeting held on 21 June 2019, the Council made a decision regarding the location of the State and the Area Benches for setting up the GSTATs. However, on account of petitions filed with Hon'ble Delhi and Madras High Courts for declaring the relevant sections for constituting the GSTAT,

appointment of members and conditions of service as void, the formation of GSTAT remains stuck. As a consequence, the 1st Appellate authorities tend to delay the passing of orders on the pretext that GSTAT is not yet constituted. While the government has issued a circular forbidding the appellate authorities to indulge in such practice and also increasing the time limit for appealing to GSTAT, practical hardships still persist.

To add to the hardship, the Maharashtra Government has issued a Trade Circular asking taxpayers to submit a declaration regarding their intention to file an appeal with GSTAT within 15 days from the date of communication of the impugned order, whereas the law allows a time limit of 3 months for filing the appeal. The Circular further provides that in the absence of any such declaration, it shall be presumed that the assessee is not willing to file an appeal against the order, and the recovery proceedings could be initiated. Such circulars that cause hardship to the taxpayers should be withdrawn by the government as the same are *ultra-vires* the law.

Creation of National/Centralised Appellate Authority for Advance Ruling (AAAR)

During the 31st Council meeting held on 22 December 2018, it was recommended that a Centralised AAAR should be formed in order to deal with conflicting decisions of various State AAARs. The same was formally introduced vide Finance (No.2) Act, 2019 vide new sections 101A and 101B, along with further amendments in the CGST Act, 2017. However, taxpayers are still awaiting the date when the Centralised AAAR will be formed to initiate filing appeals. In this case, it may also be considered that the expectations of taxpayers from Centralised AAAR are much more than merely deciding on conflicting decisions of the State AAARs. The taxpayers expect appeals to be allowed not only for conflicting rulings but also await an avenue that can serve for filing an appeal against any ruling of the State AAARs. However, the same requires amendment in the GST law subsequent to the recommendation by the Council.

Allowing single Credit Note/Debit Note against multiple invoices

The decision on the above was taken in the 28th Council meeting held on 21 July 2019. The same was formally made effective by amendments in the GST law vide Finance Act, 2019. Hence, as per the law, taxpayers are now allowed to issue single CN/DN against multiple tax invoices. However, the GST portal still does not allow the said facility, thereby creating menace for the taxpayers while filing of GSTR 1 or while correlating details with GSTR 2A basis transaction details filed by respective suppliers. While the decisions of Council are approved by the government(s), attention should also be focused on the implementation of the same from the GST portal engineering perspective.

Linking of Original Invoice with Credit Note/Debit Note

The Council had formed a 'Committee on Returns Filing' for simplification of Returns under GST. During the 25th meeting held on 18 January 2018, the committee, inter alia, had recommended delinking of original invoice details with Credit Note/Debit Note at the time of filing GSTR-1 since the same involved practical difficulty for taxpayers. Further, the Council on 9 July 2018 had released a list of 46 proposed amendments to the GST law for stakeholder comments, and the proposal for delinking of credit notes with the original invoice was included in the subsequent list recommending 17 out of these 46 proposed amendments to the GST law. However, with more than 2 years already elapsed, there is no development available on the public domain on this aspect.

While taxpayers feel relieved that aforesaid linking has been done away with in the new returns filing mechanism, the implementation of a new return facility is still far away, and an immediate relief from this havoc is immensely expected.

Taxability of 'intermediary services' in case of Information Technology Enabled Services (ITeS)

Intermediary services have always been one of the prime areas of litigations in indirect taxes. Even under GST, subsequent to a few AAAR's rulings upholding GST applicability on back-office support services (treating it to be 'intermediary services'), there was a detailed Circular in July 2019 supporting this view with clarifications. However, the same opened a Pandora's box in the industry, and even in genuine cases, ambiguity arose on the question of treating the supply of services as 'exports' and claim benefits of zero-rated supplies. Hence the GST Council perceived the need to overcome this chaos in the ITeS sector and to clarify the situation. In its 37th meeting held on 20 September 2019, the Council recommended that a further study shall be undertaken based on data available for the pre-GST period, and a fresh circular shall be issued in this regard. Subsequently, a Circular was issued in February 2020, quashing the July 2019 Circular. While the February 2020 circular mentions of issuing another circular to provide clarity on the subject, the same is still awaited. Therefore, ambiguity still persists on the treatment of ITeS (specifically back-office support services), leaving taxpayers in the dark on this issue. In fact, there has been no sign of any discussions on the aforesaid issue in the Council meetings held thereafter.

Turmoil around taxability in case of Solar Power Generating Systems (SPGS) and Wind Turbines

In its 31st meeting, the Council had recommended that in case of contracts of supply for SPGS, 70% of gross contract value would be deemed as value of supply of goods and attract 5% GST while the balance 30% of the contract value will be deemed as value of supply of service attracting 18% GST. The decision was taken in the wake of contradictory decisions of State AARs, one of which considered the SPGS as 'works contract,' the second one treated it as a mere 'composite supply,' and another AAR ruled it to be a separate contract of goods and services. To put a permanent closure on valuation and rate applicability aspects on such contracts, the recommendation was implemented effective January 2019. However, industry players made representations to the government that the effective tax applicability on these projects exceeds 8.9% vis-à-vis pre-GST rate of less than 2%. Hence, a petition was filed in Delhi High Court, and the Hon'ble HC directed the Council to consider the issues raised by the SPGS dealers and wind turbine manufacturers. In its 35th meeting held on 21 June 2019, the Council had stated that on receipt of the requisite information from the dealers, this issue would be examined by the Fitment Committee and subsequently, a detailed proposal was to be placed before the Council. Again, in the 37th meeting on 20 September 2019, the Council, post the Fitment Committee's report (report not available on the public domain), had concluded to maintain a status quo on the issue at hand. However, taxpayers engaged in the business of SPGS and wind turbines are expecting a relaxation on this issue to date.

While the crucial topics which require the attention of the GST Council/government have been captured in the article, the list above can be elongated further in order to make the industry players aware of the important unresolved issues which continue to cause hardship due to pending implementation. It is recommended that the Council should re-evaluate all the minutes of its various meetings and take necessary actions in cases –

- i. Wherever pending on its own, issue necessary recommendations
- ii. Pending with Committee or Group of Ministers, issue a reminder for their report/recommendations
- iii. Pending with the government(s), issue a reminder from the past references to issue notifications/bring in amendments
- iv. Of any incorrect implementation, amend the past recommendation or issue a fresh recommendation.

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