

## **Kerala Flood Cess: Whether the experiment for raising additional revenue, a success?**

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After long deliberations in the GST Council, the Kerala Flood Cess (KFC) was introduced on August 1, 2019, with a view to raising resources for rebuilding the state following the devastating floods of 2018. In the Budget 2019-20, the Government has estimated additional revenue of Rs 600 crore per year from flood cess. Fortunately, the State was able to collect Rs 2118 crore, which is Rs 918 crore, higher than what was expected. This was considered as a big achievement as the State was going through a difficult time between the two consecutive floods and Covid-19 pandemic.

It is a remarkable achievement that Kerala was able to collect Rs. 2118 crore from the Flood Cess, during the Covid-19 pandemic period. This is Rs. 918 crore higher than the Budget Estimate.

The timeframe of KFC ended on 31st July 2021, which led to a slight price reduction of around 1000 items coming under the tax slabs of 12%, 18%, 28% and 0.25%. The State's proposal for calamity cess was initially raised before the 30th GST Council held on 28th September 2018. In the opening remark, the State's Finance Minister, Dr. Thomas Isaac, stated "the recent natural calamities have severely affected the State finance not only in the form of lower tax collection but also increased the expenditure like anything. The Fiscal Responsibility and Budget Management (FRBM) Act placed a limit on the expenditure of the State vis-à-vis its revenue receipts, and therefore flexibility was needed in the GST regime for the States to mobilise additional resources". Hence, Kerala was compelled to approach GST Council for permission to levy calamity cess under Article 279, 4 (a)(f) of the Constitution, which permits States to raise additional resources during natural calamity or disaster.

The Council conducted deliberative discussions on Kerala's request, and one of the major issues that came up was that whether any additional tax in the form of cess should be imposed on the people of the State, who had already suffered a great deal. There were also concerns regarding whether the implementation of cess might cause the businesses to shift from the State due to an increase in the tax rates. After careful deliberation, the Council constituted a seven-member Group of Ministers (GoM) to examine all aspects, including the constitutionality of imposing cess under the GST regime.

Accordingly, the GoM, under the Chairmanship of Shri Sushil Kumar Modi, submitted its report in favour of Kerala's request. Subsequently, the 32nd GST Council held on 10th January 2019 permitted the State to levy 1% flood cess for two years applicable only on retail transactions within the State. Based on this, the State government decided to levy KFC on all goods and services coming under the tax brackets of 12%, 18% and 28%, and also all goods coming under the fifth schedule of GST Act. The government exempted items drawing 5% to avoid price hike of essential goods.

Although the State was successful in attaining permission from the GST Council, it was compelled to extend the date of implementation twice due to the amendment required in the CGST Rule 2017. Hence, it approached the GST Council again to make necessary amendments in the CGST Rule, and the concerned provisions on the SGST Act were amended through the Finance Bill of 2019-20. The 35th GST Council held on 21st June 2019 amended the CGST Rule by incorporating a new section, 32A, prescribing that value of intra-state supply of goods or services or both (B2C) in the State of Kerala shall not include the said cess. Finally, it was introduced on 1st August 2019, after six months of its announcement in the State Budget 2019-20.

## References

1. Budget Speech (Kerala) 2019-20 (Para. 256)
2. Minutes of 30th , 32nd and 35th GST Council Meetings
3. 15th Kerala Legislative Assembly, Unstared Question No.5219, dated 12.08.2021

## **Highlights of 45th GST council meeting**

### **Less scope for compensation to states beyond June 2021**

The 45th GST Council was held on 17 September 2021 at Lucknow under the Chairpersonship of Smt. Nirmala Sitharaman, Union Minister for Finance & Corporate Affairs. Previously, it was decided that that meeting will be held exclusively for discussing the issue of GST compensation to the States but the Centre changed the course of the meeting to various other issues. With related to compensation, a brief presentation was made by the Revenue Secretary pointing out that the revenue collections from Compensation cess in the period beyond June 2022 would be exhausted in repayment of borrowings and debt servicing will be made to bridge the revenue gap in 2020-21 and 2021-22. In other words the Council decided to extend the Compensation cess period till March 2026, but the collection will be used exclusively to repay the back-to-back loans taken between 2020-21 and 2021-22, indicating that there is no scope for compensation to States beyond June 2022, even though many States demanded for an extension. Towards paying Compensation to States, the Centre borrowed Rs 1.10 lakh crore in 2020-21 and Rs 75,000 crore out of Rs 1.59 lakh crore so far in 2021-22 to meet the revenue shortfall during these years."The GST law prescribes compensation pay out for five years. Now, the Council has agreed to use the collection from the compensation cess to pay interest and repay the principal. The cess will continue to be levied till March 2026," Finance Minister Nirmala Sitharaman said in the press conference conducted after meeting and on the question of what will happen to compensation payout beyond five years, she made it clear that it will be used only for debt servicing.

### **Petroleum products kept out of GST**

The Council also considered the possibility of inclusion of petroleum products under the ambit of GST mainly due to an order of the Hon'ble High Court of Kerala. Post a brief discussion, the Council decided that "it is not the right time to bring petrol and diesel under GST". The demand for inclusion of petroleum products under GST has been under serious public debate in the recent past as fuel prices crossed Rs 100 per litre in the country. But both the Centre and states are not in agreement with this proposal as they will stand to lose a substantial portion of their revenue. Presently they are collecting over Rs 5 lakh crore from petroleum products each year and if this is to be brought under GST, maximum 28 per cent

would be levied on them which would result significant revenue shortfall for both the Centre and the States.

"Kerala will vehemently oppose any move to bring petroleum products under the GST as that will further reduce revenue generation for the state. It is estimated that, the state would lose around Rs 8000 crore annually if it brought under GST" Kerala Finance Minister, KN Balagoal

Clause 12(A) of the Article 366 of the Constitution provides "Goods and Services Tax" means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption. Thus, supply of petroleum products is not excluded from the purview of GST. Article 279 A (5) of the Constitution prescribes that the GST Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel (ATF), also as per the Section 9(2) of the CGST Act, inclusion of these products in GST will require recommendation of the GST Council.

### **Reduction on life saving drugs**

The Council has decided to give tax exemption and reduction for selected life-saving drugs. There will be no GST on Amphotericin B, Tocilizumab till December 31, 2021. Concessional GST rates on Covid-19 related drugs, which were till September 30, have now been extended till December 31, 2021 only for medicines, but not for medical equipment. The proposal of reducing GST from 12% to 5% on seven more drugs used for cancer treatment till December 31, 2021 was also approved: Itolizumab, Posaconazole, Infliximab, Bamlanivimab and Etesevimab, Casirivimab and Imdevimab, 2-Deoxy-D-Glucose and Favipiravir. In the press conference conducted after GST Council meeting, Hon'ble Union Finance Minister said "There are some life-saving drugs not connected with Covid-19, but are very expensive, for which exemptions are being given. Zolngelsma and Viltepsa used for treatment of Spinal Muscular Atrophy (SMA), costing around Rs 16 crore will now be exempted from GST".

Chief Minister of Kerala has also written to Prime Minister seeking a waiver of Customs duty and GST on these costly life saving drugs. The customs duty of this was waived recently and the decision to exempt GST will be a great relief to the suffering people.

### **Food delivery platforms**

The Council decided that e-commerce operators (ECOs) dealing with food delivery such as Swiggy and Zomato need to pay GST. Currently, it is being paid by the restaurant. Revenue Secretary clarified that "this is not a new tax and that there will be no implication on customers as the tax rate will continue to be 5 per cent". The two apps are now registered as tax collectors at source under GST.

### **Other important recommendations**

1. The rate of GST has been increased to help mines and industries to adjust their ITC accumulated due to inverted duty structure, which was otherwise not eligible for refund.
  - a. Ores and concentrates of metals such as iron, copper, aluminum, zinc and few others increased from 5% to 18%
  - b. Specified Renewable Energy Devices and parts from 5% to 12%
  - c. Cartons, boxes, bags, packing containers of paper etc. from 12/18% to 18%
  - d. Waste and scrap of polyurethanes and other plastics from 5% to 18%
  - e. All kinds of pens from 12/18% to 18%
  - f. Railway parts, locomotives & other goods in Chapter 86 from 12% to 18%
  - g. Miscellaneous goods of paper like cards, catalogue and printed material (Chapter 49 of tariff) from 12% to 18%
2. GST rate reduced to 5% on Retro fitment kits for vehicles used by the disabled, Fortified Rice Kernels for schemes like ICDS etc, Medicine Keytruda for treatment of cancer and Biodiesel supplied to OMCs for blending with Diesel.
3. Supply of Mentha oil from unregistered person has been brought under reverse charge. Further, Council has also recommended that exports of Mentha oil should be allowed only against LUT and consequential refund of ITC. Hence export of menthe oil with payment of IGST and getting refund of the same will not be allowed.
4. BRICK KILNS would be brought under special composition scheme with threshold limit of Rs. 20 lakhs, with effect from 1.4.2022. Bricks would attract GST at the rate of 6% without ITC under the scheme. GST rate of 12% with ITC would otherwise apply to bricks.
5. Various state transport authorities are charging GST on transport vehicles given on hire to transport operators. This GST leads to increase in their cost of service as the output service is exempted. GST Council has now clarified that the renting of vehicle

by State Transport Undertakings and Local Authorities is covered by expression 'giving on hire' for the purposes of GST exemption

6. There has been long confusion in GST rate on Royalty paid on mining rights for the period 01.07.2017 to 31.12.2018. The confusion has been due to various contrary advance rulings. However it is now clarified that the services by way of grant of mineral exploration and mining rights attracted GST rate of 18% e.f. 01.07.2017.
7. Admission to amusement parks having rides etc. attracts GST rate of 18%. The GST rate of 28% applies only to admission to such facilities that have casinos etc.
8. Now 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.
9. The GST council had already clarified in its earlier meeting that Interest u/s 50 shall be charged only on delayed payment of tax from cash ledger. There has been continuous effort from the department to demand interest at 24% on all kinds of ITC reversals, even if it is ITC availed and not utilized, causing undue hardship on assesses.

However the GST council has now clarified that section 50(3) of the CGST Act to be amended retrospectively, w.e.f. 01.07.2017, to provide that interest is to be paid by a taxpayer on "ineligible ITC availed and utilized" and not on "ineligible ITC availed". It has also been decided that interest in such cases should be charged on ineligible ITC availed and utilized at 18% w.e.f. 01.07.2017.

10. There is no need to carry the physical copy of tax invoice in cases where invoice has been generated from e-invoice portal having IRN;
11. As per the provision of section 54(3) of GST law, no refund of unutilised ITC shall be allowed in cases where the goods exported out of India are subjected to export duty. There has been a dispute from department that goods attracting NIL rate of duty is also a rate of duty as per the judgment of Hon'ble Supreme Court and therefore goods attracting NIL rate shall also be considered as goods subject to export duty, hence refund not allowed.

The issue is now clarified that only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) of CGST Act, 2017 from avilment of refund of accumulated ITC.

12. GST law shall be amended to restrict registered person from filing of FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for the preceding month. Currently the condition is on non-filing of FORM GSTR-3B for the preceding two months.

Two GoM formed to examine the possibilities of rate rationalization and system reforms

The GST Council has discussed the need to undertake GST rate rationalization including correction of inverted duty structure with an objective to simplify the rate structure, to reduce classification related dispute and enhance GST revenue. Accordingly, a seven member GoM has constituted under the convenorship of Shri Basavaraj S. Bommai, Hon'ble Chief Minister of Karnataka to study and report on rate rationalization within two months. Shri K.N Balagopal, Finance Minister of Kerala is also part of the GoM along with Finance Ministers of Bihar, Goa, Rajasthan, Uttar Pradesh and west Bengal. The GoM shall consider the following issues:

1. Review the supply of goods and Services exempt under GST with an objective to expand the tax base and eliminate breaking of ITC chain;
2. Review the instances of inverted duty structure other than where Council has already taken a decision to correct the inverted structure and recommend suitable rates to eliminate inverted duty structure as far as possible so as to minimize instances of refund.
3. Review the current tax slab rates and recommend changes in the same as may be needed to garner required resources; and
4. Review the current rate slab structure of GST, including special rates, and recommend rationalization measures, including merger of tax rate slabs, required for a simpler rate structure in GST.

The Council has acknowledged that IT systems have stabilized and there is a need to introduce IT based checks and balances in the GST IT system. The Council has also acknowledged the use of data analysis like BIFA system of GSTN and stressed on expanding use of data analytics in increasing efficacy and efficiency of GST administration. Accordingly, an eight member GoM has constituted under the convenorship of Shri Ajit Pawar, Hon'ble Dy. Chief Minister of Maharashtra to study and report on GST system reforms with the following ToR;

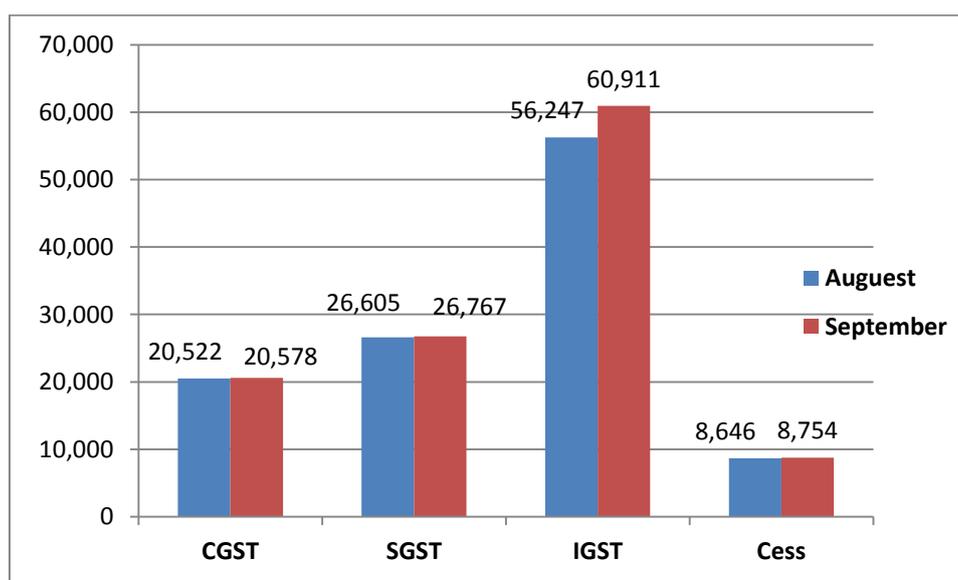
1. Review the IT tools and interface available with tax officers and suggest measures to make the system more effective and efficient including changes in business process;
2. Identify potential sources of evasion and suggest changes in business process and IT systems to plug revenue leakage;
3. Identify possible use of data analysis towards better compliance and revenue augmentation and suggest use of such data analysis;
4. Identify mechanisms for better coordination between Central and State tax administration and tax administrations of different States; and suggest timeline for changes recommended.

## GST revenue collection for August and September 2021: An analysis

### Gross GST collection was Rs 1,12,020 crore in August 2021 and Rs.1,17,010 crore in September 2021

The gross GST collections for August and September 2021 have crossed Rs 1 lakh crore, which indicates that the economy is recovering gradually from the second wave of Covid-19. Apart from that, the revenue augmentation and anti-evasion measures, especially action against fake billers have also been contributing to the enhanced GST collections. The gross GST revenue collection in the month of August 2021 was Rs 1,12,020 crore of which CGST is Rs 20,522 crore, SGST is Rs 26,605 crore, IGST is Rs 56,247 crore and Cess is Rs 8,646 crore. The government has settled Rs 23,043 crore to CGST and Rs 19,139 crore to SGST from IGST as regular settlement. In addition, Centre has also settled Rs 24,000 crore as IGST ad-hoc settlement in the ratio of 50:50 between Centre and States/UTs. The total revenue of Centre and the States after regular and ad-hoc settlements in the month of August 2021 is Rs 55,565 crore for CGST and Rs 57,744 crore for the SGST. The revenues for the month of August 2021 are 30% higher than the GST revenues in the same month last year. During the month, the revenues from domestic transaction (including import of services) are 27% higher than the revenues from these sources during the same month last year. Even as compared to the August revenues in 2019-20 of Rs 98,202 crore, this is a growth of 14%.

**Comparison of GST Collection for August & September 2021**



Source: PIB press release dated 1.10.2021

In the month of September, the Government has collected Rs 1,17,010 crore of which CGST is Rs 20,578 crore, SGST is Rs 26,767 crore, IGST is Rs. 60,911 crore (including Rs 29,555 crore collected on import of goods) and Cess is Rs 8,754 crore (including Rs 623 crore collected on import of goods). The government has settled Rs 28,812 crore to CGST and Rs 24,140 crore to SGST from IGST as regular settlement. The total revenue of Centre and the States after regular settlements in the month of September 2021 is Rs 49,390 crore for CGST and Rs 50,907 crore for the SGST. The revenues for the month of September 2021 are 23% higher than the GST revenues in the same month last year. During the month, revenues from import of goods were 30% higher and the revenues from domestic transaction (including import of services) are 20% higher than the revenues from these sources during the same month last year. The revenue for September 2020 was, in itself at a growth of 4% over the revenue of September 2019 of Rs 91,916 crore.

The average monthly gross GST collection for the second quarter of the current year has been Rs 1.15 lakh crore, which is 5% higher than the average monthly collection of Rs 1.10 lakh crore in the first quarter of the year. This clearly indicates that the economy is recovering at a fast pace. Coupled with economic growth, anti-evasion activities, especially action against fake billers have also been contributing to the enhanced GST collections. It is expected that the positive trend in the revenues will continue and the second half of the year will post higher revenues

### **State wise GST collection for August and September 2021**

When we look at the GST monthly collection of selected States during the month of August and September 2021 as compared to same months in the last year, it indicates that the key manufacturing States has achieved of 25-35 per cent growth in August 2021 compared to August 2020 and, Odisha and Jharkhand shows significant growth rate of more than 40 per cent. When we analyze the monthly collection of September 2021 among the States, almost all States has achieved positive growth rate except the State of Bihar which reported a growth rate of -12. The State wise grant collection was Rs.84490 and Rs. 86832 crore in August and September 2021 respectively. This shows the States are slowly recovering from the second wave of Covid-19 pandemic.

**Table 1.** State wise GST collected during August and September 2021

States/UTs	Aug.2020	Aug.2021	Change	Sep.2020	Sep.2021	Change
J&K	326	392	20%	368	377	3%
Himachal Pradesh	597	704	18%	653	680	4%
Punjab	1139	1414	24%	1194	1402	17%
Uttarakhand	1006	1089	8%	1065	1131	6%
Haryana	4373	5618	28%	4712	5577	18%
Delhi	2880	3605	25%	3146	3605	15%
Rajasthan	2580	3049	18%	2647	2959	12%
Uttar Pradesh	5098	5946	17%	5075	5692	12%
Bihar	967	1037	7%	996	876	-12%
Assam	709	959	35%	912	968	6%
West Bengal	3053	3678	20%	3393	3778	11%
Jharkhand	1498	2166	45%	1656	2198	33%
Odisha	2348	3317	41%	2384	3326	40%
Chhattisgarh	1994	2391	20%	1841	2233	21%
Madhya Pradesh	2209	2438	10%	2176	2329	7%
Gujarat	6030	7556	25%	6090	7780	28%
Maharashtra	11602	15175	31%	13546	16584	22%
Karnataka	5502	7429	35%	6050	7783	29%
Goa	213	285	34%	240	319	33%
Kerala	1229	1612	31%	1552	1764	14%
Tamil Nadu	5243	7060	35%	6454	7842	21%
Telangana	2793	3526	26%	2796	3494	25%
Andhra Pradesh	1955	2591	33%	2141	2595	21%
<b>Grand Total</b> (all States & UTs)	<b>66598</b>	<b>84490</b>	<b>27%</b>	<b>72250</b>	<b>86832</b>	<b>20%</b>

**Source:** Compiled from PIB Press Release dated 01.09.2021 & 01.10.2021

## GST Compensation released to states

The Union Government on 15th July 2021 has released Rs75,000 crore to the States and UTs with Legislature under the back-to-back loan facility in lieu of GST Compensation. This release is in addition to normal GST compensation being released every 2 months out of actual cess collection. Subsequent to the 43rd GST Council Meeting held on 28th May 2021, it was decided that the Central Government would borrow Rs 1.59 lakh crore and release it to States and UTs on a back-to-back basis to meet the resource gap due to the short release of Compensation on account of inadequate amount in the Compensation Fund. This amount is as per the principles adopted for a similar facility in FY 2020-21, where an amount of Rs1.10 lakh crore was released to States under a similar arrangement. This amount of Rs1.59 lakh crore would be over and above the compensation in excess of Rs1 lakh crore (based on cess collection) that is estimated to be released to States/UTs during this financial year. The sum total of Rs2.59 lakh crore is expected to pay GST compensation to States/UTs for FY 2021-22.

All eligible States and UTs have agreed to the arrangements of funding of the compensation shortfall under the back-to-back loan facility. For effective response and management of Covid-19 pandemic and a step-up in capital expenditure, all States and UTs have a very important role to play. The release of Rs 75,000 crore being made now is funded from borrowings of Centre in 5-year securities, totaling Rs 68,500 crore and 2-year securities for Rs 6,500 crore issued in the current financial year, at a Weighted Average Yield of 5.60 and 4.25 percent per annum respectively.

**The State/ UTs wise details of amount released in lieu of GST Compensation are given below:**

Sl. No.	Name of the State/ UTs	GST Compensation shortfall released		
		5-year tenor	2-year tenor	Total
1.	Andhra Pradesh	1409.67	133.76	1543.43
2.	Assam	764.29	72.52	836.81
3.	Bihar	2936.53	278.65	3215.18
4.	Chhattisgarh	2139.06	202.98	2342.04

Sl. No.	Name of the State/ UTs	GST Compensation shortfall released		
		5-year tenor	2-year tenor	Total
5.	Goa	364.91	34.63	399.54
6.	Gujarat	5618.00	533.10	6151.10
7.	Haryana	3185.55	302.28	3487.83
8.	Himachal Pradesh	1161.08	110.18	1271.26
9.	Jharkhand	1070.18	101.55	1171.73
10.	Karnataka	7801.86	740.31	8542.17
<b>11.</b>	<b>Kerala</b>	<b>3765.01</b>	<b>357.26</b>	<b>4122.27</b>
12.	Madhya Pradesh	3020.54	286.62	3307.16
13.	Maharashtra	5937.68	563.43	6501.11
14.	Meghalaya	60.75	5.76	66.51
15.	Odisha	2770.23	262.87	3033.10
16.	Punjab	5226.81	495.97	5722.78
17.	Rajasthan	3131.26	297.13	3428.39
18.	Tamil Nadu	3487.56	330.94	3818.50
19.	Telangana	1968.46	186.79	2155.25
20.	Tripura	172.76	16.39	189.15
21.	Uttar Pradesh	3506.94	332.78	3839.72
22.	Uttarakhand	1435.95	136.26	1572.21
23.	West Bengal	2768.07	262.66	3030.73
24.	UT of Delhi	2668.12	253.18	2921.30
25.	UT of Jammu & Kashmir	1656.54	157.19	1813.73
26.	UT of Puducherry	472.19	44.81	517.00
	<b>Total</b>	<b>68500.00</b>	<b>6500.00</b>	<b>75000.00</b>

Source: PIB Press Release dated 15.07.2021

## **Statutory updates on GST**

The CBIC has issued five central tax notifications, seven central tax (rate) notifications, seven integrated tax (rate) notifications, and five circulars in the month of August and September 2021.

### **Notifications**

- 1) The filing of GSTR-3B and GSTR-1/ IFF by companies using electronic verification code (EVC), instead of Digital Signature certificate (DSC) has already been enabled for the period from 27.04.2021 to 31.08.2021. This has been further extended to 31st October, 2021 under Notification No. 32/2021-CT, dated 29.08.2021. The above extension of the closing date of late fee amnesty scheme and extension of time limit for filing of application for revocation of cancellation of registration will benefit a large number of taxpayers, specially small taxpayers, who could not file their returns in time due to various reasons, mainly because of difficulties caused by Covid-19 pandemic, and whose registrations were cancelled due to the same.
- 2) The Government, vide Notification No. 19/2021- CT, dated 01.06.2021, had provided relief to the taxpayers by reducing / waiving late fee for non-furnishing FORM GSTR-3B for the tax periods from July, 2017 to April, 2021, if the returns for these tax periods are furnished between 01.06.2021 to 31.08.2021. Vide Notification No. 33/2021- CT, dated 29.08.2021, the last date to avail benefit of the late fee amnesty scheme, has now been extended from existing 31.08.2021 to 30.11.2021.
- 3) Government has also extended the timelines for filing of application for revocation of cancellation of registration to 30.09.2021, where the due date of filing of application for revocation of cancellation of registration falls between 01.03.2020 to 31.08.2021. The extension vide Notification No. 34/2021- CT, dated 29.08.2021 would be applicable only in those cases where registrations have been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of the CGST Act.
- 4) Few specified persons notified under Notification No. 3/2021-CT, dated 23.02.2021 such as Government Departments, PSUs, person who is not a citizen of India, etc. who are already registered under the GST law, are excluded from the requirement of getting Aadhar Authentication vide Notification No. 35/2021 - CT, dated 24.09. 2021.
- 5) The Government has amended the CGST Rules, 2017 vide Notification No. 35/2021 - CT, dated 24.09. 2021. The brief of this amendments are as under:

- a) Aadhaar authentication mandated for persons already registered under the GST law for the purpose of filing revocation of cancellation of registration and for filing refund applications under Rule 89 including refund of IGST paid on export of goods
- b) Bank account furnished on GST portal should be in the name of registered person and is also required to be linked with the PAN. Refund would be granted in such bank account only. For proprietors, linking of Aadhaar with PAN is to be mandated under GST law
- c) Change in the frequency of filing Form GST ITC-04
- d) Restricting filing of GSTR-1 where the GSTR-3B of previous month is not filed
- e) Insertion of specific rules for granting the refund of tax which paid under wrong head

(Source: CBIC, <https://www.cbic.gov.in/htdocs-cbec/gst/noticentraltax>)

### Notifications (Central Tax-Rate)

To give effect to recommendation of 45th GST Council meeting CBIC has issued 7 Central Tax (Rate) Notifications on 30.09.2021. These are amends GST Rate on Services and Goods, Exempts certain services and Goods from GST and notified RCM applicability on supply of menthe oil by unregistered person to registered person, with effect from 1st October, 2021.

**Table 1.** Notifications (Central Tax-Rate)

Notification No.	Date	Title
06-2021-CT (Rate)	30.09.2021	Amend notification No. 11/2017- CT (Rate) so as to notify CGST rates recommended by GST Council in its 45 <sup>th</sup> meeting held on 17.09.2021
07/2021-CT (Rate)	30.09.2021	Amend notification No. 12/2017- CT (Rate) so as to implement recommendations made by GST Council in its 45th meeting
08/2021-CT (Rate)	30.09.2021	Amend notification No. 1/2017- CT (Rate)
09/2021-CT (Rate)	30.09.2021	Amend notification No. 2/2017- CT (Rate)
10/2021-CT (Rate)	30.09.2021	Amend notification No. 4/2017- CT (Rate)
11/2021-CT (Rate)	30.09.2021	Amend notification No. 39/2017- CT (Rate)
12/2021-CT (Rate)	30.09.2021	Exempt CGST on specified medicines used in COVID-19, up to 31st December, 2021

Source: CBIC, <https://www.cbic.gov.in/htdocs-cbec/gst/noticentraltaxrate>

### Notifications (Integrated Tax-Rate)

To give effect to recommendation of 45th GST Council meeting CBIC has issued 7 Integrated Tax (Rate) Notifications on 30.09.2021. (Table 2)

**Table 2.** Notifications (Integrated Tax-Rate)

Notification No.	Date	Title
12/2021-IGST (Rate)	30.09.2021	IGST exemption on specified medicines used in COVID-19
11/2021- IGST (Rate)	30.09.2021	Reg. IGST on Food for free distribution to economically weaker sections
10/2021- IGST (Rate)	30.09.2021	IGST payable under RCM on essential oils other than those of citrus fruit w.e.f 01.10.2021
9/2021- IGST (Rate)	30.09.2021	IGST Exemption on Seeds, fruit & spores used for sowing w.e.f 01.10.2021
8/2021- IGST (Rate)	30.09.2021	Changes in IGST Rate on Certain Goods w.e.f 01.10.2022
07/2021- IGST (Rate)	30.09.2021	Changes in IGST exemption on Supply of services w.e.f 01.10.2021
06/2021- IGST (Rate)	30.09.2021	CBIC notifies IGST Rate on various services w.e.f 01.10.2021

**Source:** CBIC, <https://www.cbic.gov.in/htdocs-cbec/gst/noticentraltaxrate>

### **Circular**

(1) **Circular No. 158/14/2021-GST dated 6.09.2021**, clarified the issues relating to the extension of timelines for application for revocation of cancellation of registration in view of Notification No. 34/2021-CT, dated 29.08.2021. The Government has issued this notification to extend the timelines for filing of application for revocation of cancellation of registration to 30th September, 2021, where the due date of filing of application for revocation of cancellation of registration falls between 1st March, 2020 to 31st August, 2021 and registration was cancelled on account of non-filing of GST returns. Now, this circular has been issued to provide clarification that the benefit of extension shall be available irrespective of the status of such applications. The benefit shall be available whether application for revocation of cancellation of registration has not been filed by the taxpayer or where application has already been filed but pending with the proper officer or where application was rejected irrespective appeal is filed against it or not. This circular also clarifies the cases where the due date of filing applications for revocation of registration can be extended further for the period of 60 days (30 + 30) by the Joint Commissioner/ Additional Commissioner/ Commissioner.

(2) **Circular 159/15/2021-GST dated 20.09.2021** focuses on resolving the issue of confusion in the definitions of an intermediary with the help of examples. Definition of intermediary "Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or

more persons, but does not include a person who supplies such goods or services or both or securities on his own account."

Primary requirements for intermediate service -

1. Minimum three parties
2. Two distinct supplies: There should be two distinct supplies in case of provision of intermediary services;(a) Main supply, between the two principals, which can be a supply of goods or services or securities.(b)An Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals. This ancillary supply is the supply of intermediary service, and is clearly identifiable, and distinguished from the main supply. A person involved in supply of main supply on principal to principal basis to another person cannot be considered as a supplier of intermediary service.
3. Intermediary service provider to have the character of an agent, broker or any other similar person.
4. Does not include a person who supplies such goods or services or both or securities on his own account.
- 5 Sub-contracting for a service is not an intermediary service.
- 6 The specific provision of place of supply of 'intermediary services' under section 13 of the IGST Act shall be invoked only when either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India.

(3) ***Circular 160/16/2021-GST dated 20.09.2021*** clarified that there is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules and production of the QR code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice. It is also clarified that only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) from availment of refund of accumulated ITC. Goods, which are not subject to any export duty and in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, would not be

covered by the restriction imposed under the first proviso to section 54(3) of the CGST Act for the purpose of availment of refund of accumulated ITC.

(4) ***Circular 161/17/2021-GST dated 20.09.2021*** has issued clarification relating to export of services-condition (v) of section 2(6) of the IGST Act 2017-reg. Condition (v) of section 2(6) "Export of service not treated when" (v) the supplier of service and the recipient of service are establishments of a distinct person in accordance with Explanation 1 in section 8

Example 1: XYZ foreign company having an office or branch in India- There was a doubt regarding the nature of the transaction in case of export of service by the Indian branch of the foreign company to its head office in another country. The circular has stated that this transaction can also be classified as an export of service.

Example 2: ABC Indian Company having a branch or office outside India- ABC - there was the same doubt prevailing about the transaction type of an Indian company that provided its services to its own branch or office outside India. But the circular states that this transaction also falls under the category of export of services. Hence, the circular sheds light on the points that - supply of services by a subsidiary/ sister concern/ group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013 (and thus qualifies as a 'company' in India as per Companies Act), to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act 2017 for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under Explanation 1 of section 8 of IGST Act 2017 . Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct persons under Explanation 1 of section 8 of IGST Act 2017. Such supplies, therefore, would qualify as 'export of services', subject to fulfilment of other conditions as provided under sub-section (6) of section 2 of IGST Act.

(5) ***Circular 162/18/2021-GST, dated 25.09.2021*** has been issued to clarify in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act. Following is the brief summary:

“ The term 'subsequently held' in section 77 of CGST Act, 2017 or under section 19 of IGST Act, 2017 covers both the cases where the inter-State or intra-State supply made by a

taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding.

“ The relevant date for claiming refund of incorrect tax shall be as explained supra.

“ Refund under section 77 of the CGST Act / section 19 of the IGST Act would not be available where the taxpayer has made tax adjustment through issuance of credit note under section 34 of the CGST Act in respect of the said transaction.

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