



POST BUDGET SEMINAR – 2025

Proposed Changes in GST Interaction with Tax Practitioners and Association of Industries, Dewas

- CGST & Central Excise Commissionerate Indore

Key Highlights



- **ISD Distribution of ITC for Inter-State Supplies under RCM**
- **Omission of Time of Supply Provisions for Vouchers under GST**
- **Proposed to add terms of “Local Fund” or “Municipal Fund” in definition of “Local Authority”**
- **Proposed amendment in Section 34(2)-Credit Note & Basics of IMS (Invoice Management System)**
- **The Tale of "Plant & Machinery": Government Changing Goal Post**
- **Proposed changes in Pre-deposit payment**
- **Proposed amendment in Schedule III with respect to warehoused goods**
- **Proposed to introduce Track and Trace Mechanism**
- **Amnesty Scheme – 2024 u/s 128A of CGST Act, 2017**

ISD Distribution of ITC for Inter-State Supplies under RCM

[Section 20 of CGST Act]

Key Highlights related to ISD Amendment



Mandatory ISD Mechanism for Multi-State Entities

- The **Finance Act, 2025** introduced significant changes to the **Input Service Distributor mechanism**, making it mandatory for entities having a **multi-state presence under the same PAN** to obtain **ISD registration** and distribute **Input Tax Credit** on **all invoices for receipt of services**, including those liable under **Reverse Charge Mechanism (RCM)**.
- The said provisions come into effect from **April 1, 2025**.

Clarity on ITC Distribution for RCM Transactions

- The initial amendment in the Finance Act, 2024 **only referred to the CGST Act's reverse charge provisions**, leading to ambiguity about whether ISD could distribute ITC on **inter-state RCM transactions**.
- The latest amendment explicitly **inserts references to Sec: 5(3) and Sec: 5(4) of the IGST Act 2017**, ensuring that ISDs can **distribute ITC on both intra-state and inter-state RCM transactions**.
- Hence **ambiguity is now removed** after proposed amendment, and it is now **clear** that **both intra-state and inter-state ITC under RCM are to be distributed through ISD**, ensuring a **uniform approach**.

Amendment to ISD provisions [Section 2(69) & Section 20]

Section	Provisions after proposed Amendment
2(61)	“Input Service Distributor” means an office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9 of this Act or <u>under subsection (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act, 2017</u> , for or on behalf of distinct persons referred to in section 25, and liable to distribute the input tax credit in respect of such invoices in the manner provided in section 20.
20(1)	Any office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9, of this Act or under <u>subsection (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act, 2017</u> for or on behalf of distinct persons referred to in section 25, shall be required to be registered as Input Service Distributor under clause (viii) of section 24 and shall distribute the input tax credit in respect of such invoices.
20(2)	The Input Service Distributor shall distribute the credit of central tax or integrated tax charged on invoices received by him, including the credit of central or integrated tax in respect of services subject to levy of tax under sub-section (3) or sub-section (4) of section 9 of this Act or <u>under subsection (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act, 2017</u> , paid by a distinct person registered in the same State as the said Input Service Distributor, in such manner, within such time and subject to such restrictions and conditions as may be prescribed.

- *The amendments to Section 2(61) and Section 20 aim to explicitly enable the ISD to distribute ITC in cases of inter-State supplies where Tax is payable under the Reverse Charge Mechanism. To facilitate this, references to sub-sections (3) and (4) of Section 5 of the IGST Act are proposed to be inserted.*
- *These amendments are set to take effect from April 1, 2025.*

Example – ISD Mechanism

Case – I – ITC on Common Services

- Head Office (HO) receives an invoice for shared services (e.g., Audit, Software, Consulting).
- HO distributes ITC proportionally to multiple registered locations. ITC allocation/distribution is done based on turnover of each branch.

Illustration:

- HO (ISD) receives Invoice of ₹1,00,000 + GST ₹18,000.
- ITC distributed as per turnover:
 - Branch A (50%) → ITC ₹9,000
 - Branch B (30%) → ITC ₹5,400
 - Branch C (20%) → ITC ₹3,600

Case – II – ITC on RCM

- A company avails legal services from a lawyer (RCM applicable).
- HO (regular GSTN) pays GST under RCM and takes ITC. ITC is distributed via ISD to the respective branches.

Illustration:

- Legal Service Invoice ₹50,000 + RCM GST ₹9,000.
- ISD distributes ITC among branches:
 - Branch X (60%) → ITC ₹5,400.
 - Branch Y (40%) → ITC ₹3,600.

Omission of Time of Supply Provisions for Vouchers under GST

[Section 12(4) and 13(4) of CGST Act]

Time of Supply – Voucher

Time of Supply of Goods/Services in case of Voucher

- Date of issue of voucher, if supply is identifiable at that point or
- Date of redemption of voucher, in all other cases.

- The taxability of vouchers has been a subject of ambiguity, particularly regarding their classification and the timing of tax liability. The issue revolves around whether a 'Gift Voucher' qualifies as an 'actionable claim,' which is neither a supply of goods nor a supply of services under the CGST Act 2017, and at what point tax should be levied on such instruments.
- The key determination is:
 - (a) If the Gift Voucher is issued for specified and identified goods or for a specified value of merchandise, tax is payable at the time of issuance, as the supply (i.e., transfer) occurs at that point, per the provisions of the CGST Act.
 - (b) If the goods or services are unidentified at the time of issuance, the time of supply is deferred to the date of redemption, when the sale of merchandise or goods takes place.
- *This divergence in treatment has led to uncertainty in tax compliance, highlighting the need for an amendment to provide clarity on the classification and taxability of vouchers under GST.*
- To address ongoing concerns regarding the taxability of vouchers under GST, **it is proposed to omit Sections 12(4) and 13(4) of the CGST Act, 2017, which define the Time of Supply for vouchers.** This omission aims to eliminate ambiguities in the treatment of vouchers and provide clarity on their tax implications.

Omission of Time of Supply Provisions for Vouchers under GST



Clarification on issues pertaining to GST treatment of vouchers

Issues	Clarification
Are Transactions in Vouchers Considered as Supply of Goods or Services?	• RBI Recognized Pre-paid Instruments: Treated as money, not subject to GST. • Non-RBI Recognized Vouchers: Treated as actionable claims under Schedule III of the CGST Act and are not considered a supply under GST, thus not subject to GST.
GST Treatment of Voucher Distribution	• Principal-to-Principal Basis: Trading of vouchers is not a supply of goods or services and is not subject to GST. • Commission/Agency Basis: Commission/fees earned by distributors, sub-distributors, or agents are treated as supply of services and are taxable under GST.
GST Treatment on Additional Services Related to Vouchers	Services such as advertising, co-branding, or customer support provided to voucher issuers are taxable under GST as a supply of services in the hands of the service provider.
GST Treatment of Unredeemed Vouchers (Breakage)	Amounts attributable to unredeemed vouchers are <u>not considered as consideration for any supply, as there is no underlying supply of goods or services</u> . Hence, no GST is applicable on income booked in accounts related to breakage.

Clarification on issues pertaining to GST treatment of vouchers

Example of Flipkart Voucher Purchased through Paytm:

- **Purchase of Voucher:** A customer buys a Flipkart gift voucher worth ₹1,000 through Paytm.
- **GST Treatment:** The transaction is treated as the sale of a voucher, not a supply of goods or services, so no GST is applicable on the voucher purchase itself.
- **Commission or Fee:** If Paytm charges a fee or commission for facilitating the sale of the voucher, **GST is applicable on the commission amount** received by Paytm for this transaction.
- **GST on Purchased Products:** When the customer uses the Flipkart voucher to make a purchase on Flipkart, no **additional GST** will be levied on the voucher as it is not considered a supply under GST. However, GST on the product purchased using the voucher will be applicable at the respective rate for the product, where the voucher is used as the mode of payment.

Proposed to add terms of “Local Fund” or “Municipal Fund” in definition of “Local Authority”

Proposed to amend definition of “Local Authority” as given u/s 2(69)

Existing Provision

- As per Section 2(69) of CGST Act, 2017, “local authority” inter alia includes a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a **municipal or local fund**.

(69) “local authority” means—

- (a) a “Panchayat” as defined in clause (d) of article 243 of the Constitution;
- (b) a “Municipality” as defined in clause (e) of article 243P of the Constitution;
- (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a **municipal or local fund**;
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- (f) a Development Board constituted under article 371 and article 371J of the Constitution; or
- (g) a Regional Council constituted under article 371A of the Constitution;

Proposed to amend definition of “Local Authority” as given u/s 2(69)

Amended Definition

- As per Section 2(69) of CGST Act, 2017, “local authority” inter alia includes a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a **“municipal fund or local fund”**.

Clarification sought in GST Council Meeting & its outcome

- Delhi Development Authority has sought clarification whether it can be construed as Local Authority or not ?

CBIC clarified in **Circular No. 245/02/2025-GST** (dated 28.01.2025) that an authority similar to an elected self-governing body managing a municipal or local fund qualifies as a “local authority”. However, the Delhi Development Authority (DDA) does not meet this criterion and, therefore, **is not considered a local authority** under GST law.

Proposed Amendment

- The amendment changes the wordings of the definition from **“municipal or local fund”** to **“municipal fund or local fund”**, clearly distinguishing between funds for Panchayat areas (local funds) and Municipal/Metropolitan areas (municipal funds).

Proposed to amend definition of “Local Authority” as given u/s 2(69)



- To address ambiguities regarding the scope of “local authority,” the terms “Local Fund” and “Municipal Fund” have been explicitly defined.
- Explanation inserted in Section 2(69) of CGST Act,2017 has been provided as below:

Municipal Fund
“ Municipal fund ” means any fund under the control or management of an authority of a local self-government established for <u>discharging civic functions in relation to a Metropolitan area or Municipal area</u> and vested by law with the powers to levy, collect and appropriate any tax, duty, toll, cess or fee, by whatever name called.

Local Fund
“ Local fund ” means any fund under the control or management of an authority of a local self-government established for <u>discharging civic functions in relation to a Panchayat area</u> and vested by law with the powers to levy, collect and appropriate any tax, duty, toll, cess or fee, by whatever name called.

Proposed amendment in Section 34(2) - Credit Note & Basics of IMS (Invoice Management System)

Proposed amendment in Section 34(2)-Credit Note

Existing Provision

“(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than 5[the thirtieth day of November] following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:

Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.”

Proposed amendment

The condition in Section 34 has been expanded to provide reduction in output tax liability of the supplier shall be permitted, if the –

i) input tax credit as is attributable to such a credit note, if availed, has been reversed by the recipient, where such recipient is a registered person; or

(ii) in other cases, incidence of tax on such supply has not been passed on to any other person.

Impact due to proposed Amendment in Sec 34: Credit Note

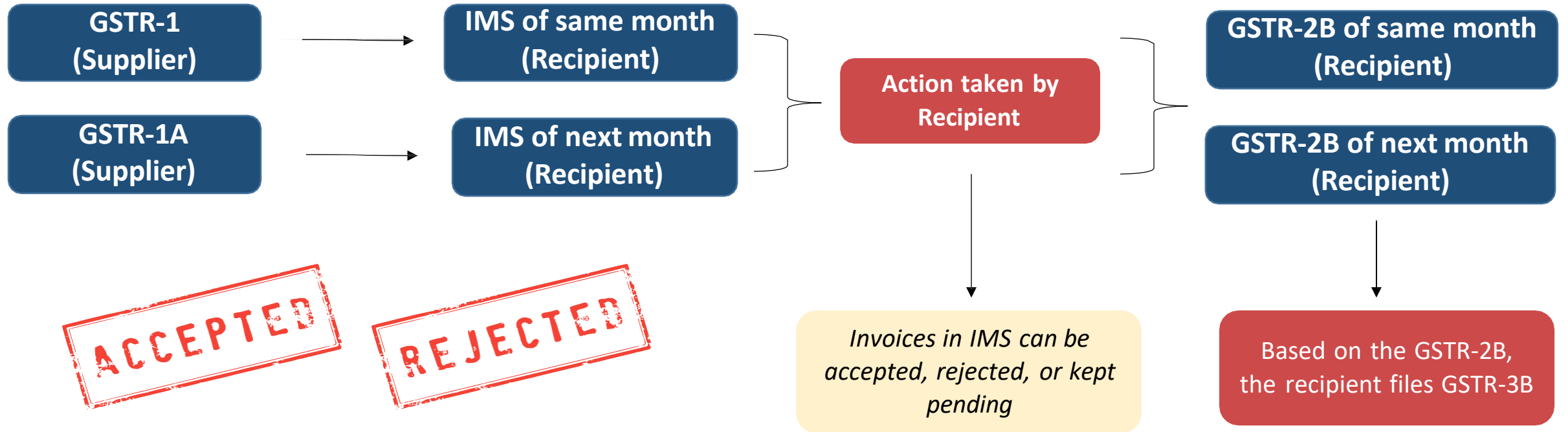
Aspect	Existing Provision	Proposed Amendment	Impact and Insights
Condition for Reduction in Output Tax Liability	No reduction if the incidence of tax has been passed on.	Reduction allowed if, 1. ITC attributable to the credit note is reversed by the recipient (if registered) or 2. tax incidence is not passed on (in other cases).	1. Ensures ITC reversal as a precondition for reduction in output tax liability through IMS mechanism. 2. No mechanism to ensure reduction in outward liability.
Existing Compliance for Post-Supply Discounts (Section 15(3))	As per the existing provision, the reduction in the value of supply (such as through post-supply discounts) is allowed only if the ITC attributable to that discount has been reversed by the recipient.	The proposed amendment ensures that all credit notes, not just those for post-supply discounts, are subject to the same ITC reversal requirement. This brings consistency to the treatment of credit notes issued for various reasons (e.g., excess tax, sales return, etc.).	The change brings uniformity to the process, ensuring that all credit notes—whether issued for post-supply discounts, sales returns, or other reasons—will now require that the recipient reverse the corresponding ITC.

Invoice Management System (IMS) Key Points

Launch Date

Available on GST portal from 1st October 2024 for efficiently managing ITC records

IMS Process Flow



"This functionality is facilitation for the taxpayers and will not add any compliance burden on the taxpayers as No Action records shall be considered as Deemed Accepted and the taxpayer's intervention will only be required in case a record need to be Rejected or kept Pending."

Process Flow for GSTR-1 (Supplier) Filed for Oct'24

1. Supplier Files GSTR-1 for (10th Nov 2024)

- Supplier files GSTR-1 for October 2024.
- Invoices are visible to the recipient in the IMS .

2. Recipient Actions in IMS (Before 14th Nov 2024)

- Recipient can accept, reject, or keep invoices pending.
- **Accepted invoices:** Eligible for ITC in GSTR-2B.
- **Rejected invoices:** Not considered for ITC.
- **Pending invoices:** Remain for future action

3. Draft GSTR-2B Generated (14th Nov 2024)

- GSTR-2B generated with actions taken in IMS.
- **Records with no action:** Deemed accepted and included in GSTR-2B.

4. Further Actions by Recipient (After 14th Nov 2024)

- If any changes are made, a revised GSTR-2B is generated.
- Recipient needs to recompute GSTR-2B before filing GSTR-3B.

5. Recipient Files GSTR-3B (By 20th Nov 2024)

- ITC from accepted invoices included in GSTR-3B.
- After GSTR-3B filing, GSTR-2B becomes static for October 2024.

6. Records Removed Post GSTR-3B

- Accepted/rejected invoices removed from the IMS dashboard after GSTR-3B filing.

Note: If the GSTR-1A for October 2024 is filed by the supplier, the corresponding entries will be updated in the recipient's GSTR-2B in the next month, i.e., Nov'24 GSTR-2B.

IMS Impact on GSTR-3B, GSTR-2B and Suppliers' Liability

Impact on GSTR-3B and GSTR-2B based on Actions taken by the Recipient

Action	Impact on Recipient's GSTR-2B	Impact on Recipient's GSTR-3B	Further Consideration
Accept	Included in GSTR-2B as eligible ITC	Auto-populated as eligible ITC in GSTR-3B	Will be removed from recipient's IMS dashboard after GSTR-3B filing
Reject	Included in GSTR-2B as ITC Rejected	Not included in GSTR-3B	Will be removed from recipient's IMS dashboard after GSTR-3B filing
Pending *	Not included in GSTR-2B for the current period	Not included in GSTR-3B for the current period and will be included whenever accepted but before the time limit of 16(4)	Remains on IMS dashboard for future action, can be accepted/rejected later
No Action	Deemed Accepted; included in GSTR-2B	Auto-populated as eligible ITC in GSTR-3B	Nothing to be done

*** 'Pending action' not permitted in following cases:**

- Original Credit Note
- Upward Amendment of an Original Credit Note (whether rejected or accepted)
- Downward Amendment of Rejected Original Credit Note
- Downward Amendment of Original Invoice/Debit Note accepted and GSTR-3B has been filed by recipient

IMS Impact on GSTR-3B, GSTR-2B and Suppliers' Liability



Impact on Supplier's Liability in Specified Scenarios

#	Scenario	Impact on Supplier's GSTR-3B Liability
1	Original Credit Note Rejected by Recipient	Supplier's liability increases in the subsequent tax period.
2	Upward Amendment of Credit Note Rejected by Recipient	Supplier's liability increases, regardless of the action on the original credit note.
3	Downward Amendment of Credit Note Rejected by Recipient	Supplier's liability increases if the original credit note was rejected by the recipient.
4	Downward Amendment of Invoice/Debit Note Rejected by Recipient	Supplier's liability increases if the original invoice/debit note was accepted by the recipient, and GSTR-3B has already been filed.

The Tale of "Plant & Machinery": Government Changing Goal Post

[Section 17(5)(d) of CGST Act]

The Tale of "Plant & Machinery": Government Changing Goal Post

Background

- ITC on goods/services used for constructing immovable property is generally blocked under Section 17(5)(d) of the CGST Act, except when used for "plant or machinery" or for own-account use.
- Litigation has arisen where properties (e.g., malls, hotels, factories) were rented out with GST payable on rent, arguing that ITC denial unfairly increases costs.
- In *Safari Retreats Pvt. Ltd. vs. Chief Commissioner of CGST* (2019), the Orissa High Court allowed ITC on mall construction since the mall was rented out. The Revenue challenged this in the Supreme Court.

Supreme Court Judgment in Safari Retreats Case

Key Issues Considered:

- Whether "plant or machinery" in Section 17(5)(d) should align with the definition in the Explanation to Section 17.
- Whether the terms should be interpreted differently.
- Whether Section 17(5)(c) and (d) are unconstitutional.

Supreme Court Ruling:

- "Plant or machinery" in Section 17(5)(d) is distinct from the defined term "plant and machinery" in Section 17.
- The restriction on ITC aligns with legislative intent to prevent misuse and is not unconstitutional.
- If a building is specially designed for a technical business requirement, it may qualify as "plant" and be eligible for ITC.

Legal Developments leading to the amendment in Sec: 17(5)

Event	Key Decision
Orissa High Court Ruling	Allowed ITC on construction-related goods and services for rented properties, reasoning that if rental income is taxed, the related expenses should qualify for ITC.
Revenue Challenge	Revenue authorities challenged this ruling before the Supreme Court.
Supreme Court Verdict	Distinguished between " plant or machinery " and " plant and machinery ", allowing ITC if the building qualifies under a functionality test . Cases were remanded back to the Orissa High Court for factual determination.
55 th GST Council Proposal	Recommended retrospective amendment to Section 17(5)(d) to block ITC on construction of leased properties.
Revenue Challenge	Revenue filed review against Supreme Court's verdict in Safari Retreats
Budget 2025 Proposal	- Officially proposed the amendment to ensure retrospective application from 01.07.2017, aligning the interpretation of plant and machinery with the existing definition in Sec: 17. - The amendment proposes to replace the phrase "plant <u>OR</u> machinery" with "plant <u>AND</u> machinery", effective retrospectively from 01.07.2017

The Tale of "Plant & Machinery": Government Changing Goal Post

Proposed Amendment to Section 17(5)(d) of CGST Act, 2017 (w.e.f. 01.07.2017)

- It is proposed amend **Section 17(5)(d)** of the CGST Act, 2017, to address issues raised in the **Safari Retreats case**. The amendment proposes to replace the phrase "**plant or machinery**" with "**plant and machinery**", effective **retrospectively from 01.07.2017**.
- This change clarifies that the restriction on claiming ITC applies to civil structures not forming part of **plant and machinery**, as defined in the Explanation at the end of the section. It ensures that essential components like foundations or supports specifically designed for machinery are eligible for ITC, while ITC on unrelated civil structures (like office buildings) remains blocked.
- Furthermore, an explanation is proposed to be inserted, explicitly stating that, notwithstanding any judgment, decree, or order of any court, tribunal, or authority, the term "**plant or machinery**" shall always be construed as "**plant and machinery**". ***This amendment effectively overrides the impact of the Supreme Court's judgment in the Safari Retreats case.***
- *Explanation 2.—For the purposes of clause (d), it is hereby clarified that notwithstanding anything to the contrary contained in any judgment, decree or order of any court, tribunal, or other authority, any reference to “plant or machinery” shall be construed and shall always be deemed to have been construed as a reference to “plant and machinery.*

Proposed changes in Pre-deposit payment

[Section 107(6) and 112(8) of CGST Act]

Proposed changes in Pre-deposit payment



Amendment in Sec: 107(6) & 112(8) of CGST Act

Section	Scenarios	Present pre-deposit (%)	Proposed pre-deposit (%)
Sec: 107(6) i.e., Appeal to Appellant Authority	Cases covered u/s 129(3) where demand is only for Penalty (E-way Bill Cases)	25% of Penalty	10% of Penalty
	Cases other than above where demand involves Tax + Interest+ Penalty	10% of Tax in dispute	10% of Tax in dispute (no change proposed)
	Cases other than above where demand is only for Penalty	NIL	10% of Penalty
Sec: 112(8) i.e., Appeal to Appellant Tribunal	Cases where demand involves Tax + Interest + Penalty	10% of Tax in dispute	10% of Tax in dispute (no change proposed)
	Cases where demand is only for Penalty	NIL	10% of Penalty

Proposed amendment in Schedule III with respect to warehoused goods

[Paragraph 8 of Schedule III of CGST Act]

Proposed amendment in Schedule III w.r.t. Warehoused Goods



- **Existing Provision:** Entry 8(a) of Schedule III of the CGST Act, 2017, currently excludes the supply of **warehoused goods** to any person before clearance for home consumption from the scope of supply under GST.
- The term "warehoused goods" is defined with reference to the Customs Act, 1962, where it includes goods deposited in a public warehouse licensed under Section 57, a private warehouse licensed under Section 58, or a special warehouse licensed under Section 58A. However, this provision does not explicitly cover goods warehoused in a **Special Economic Zone (SEZ)** or **Free Trade Warehousing Zone (FTWZ)** before clearance.
- To address this gap, the following amendment is **proposed** in Schedule III of the CGST Act, 2017
 - A new **clause (aa)** will be inserted in paragraph 8 of **Schedule III** of the CGST Act, 2017, with effect from 01.07.2017. This will explicitly state that the ***supply of goods warehoused in a Special Economic Zone (SEZ) or Free Trade Warehousing Zone (FTWZ) to any person before the clearance of such goods*** for export or to the Domestic Tariff Area **will be treated neither as a supply of goods nor as a supply of services.**
 - **An explicit provision is introduced stating that no refund shall be granted for tax already collected on such transactions before the amendment, even though such tax was not leviable.**
 - **No proportionate reversal of Input Tax Credit (ITC)** under Section 17(2) of the CGST Act will be required for goods warehoused in a SEZ or FTWZ covered under this amendment. Section 17 (2) specifically refers to 8(a) of Sch. III.

Proposed to introduce Track and Trace Mechanism

[Section 148A and 122B of CGST Act]



Proposed to introduce Track and Trace Mechanism

Insertion of Section 148A in CGST Act, 2017

- Enables the government to enforce a Track and Trace Mechanism for evasion-prone commodities.
- Unique Identification Marking (UIM) to be Affixed on goods/packages which includes digital stamp, digital mark, or any secure, non-removable marking. [**Insertion of Clause 116A in Section 2 of CGST Act, 2017**].
- Compliance Requirements:
 - ✓ Affix UIM as prescribed.
 - ✓ Maintain records and furnish required details.
 - ✓ Provide machinery details (ID, capacity, duration of operation).
 - ✓ Pay applicable system-related charges which is provided by Govt.



Insertion of Section 122B in CGST Act, 2017

- For the Non-compliance of the requirements of Section 148A, the taxpayer shall be liable to penalty amounting to:
₹1 lakh or 10% of tax payable on such goods, whichever is higher.
- This Penalty will apply over and above existing penalties under **Chapter XV** or other provisions of this chapter.

GST Amnesty Scheme – 2024: Key Highlights on Section 128A

- The GST Amnesty Scheme applies for the financial years 2017-18 to 2019-20. It applies to non-fraudulent cases assessed under Section 73 of CGST Act 2017.
- It waives interest under Section 50, penalty or both.
- To qualify for the amnesty, the tax amount due must be paid on or before the specified deadline - **March 31, 2025**.
- Applications for waivers must be submitted before **June 30, 2025**.
- No refunds will be provided if interest or penalties have already been paid.
- A separate application must be filed for multiple notices, statements or orders.
- The waiver is not applicable if an appeal or writ petition is pending and not withdrawn before appellate forum.
- It is not applicable if any amount is payable due to an erroneous refund.
- Further appeal is not allowed against the concluded order in such cases.
- Proper and timely filing of forms is essential to avoid rejections and ensure waiver approval in prescribed time limit.

Circular No. 238/32/2024-GST dated 15.10.2024 [Clarification of various doubts related to Section 128A of the CGST Act, 2017]

- **Section 128A** has been inserted in the Central Goods and Services Tax Act, 2017 with effect from 01.11.2024 to provide for waiver of interest or penalty or both, relating to demands under section 73 of the CGST Act pertaining to Financial Years 2017-18, 2018-19 and 2019-20, subject to certain conditions.
- **Rule 164** has been inserted in Central Goods and Services Tax Rules, 2017 with effect from 01.11.2024 vide notification No.20/2024 Central tax dated 08.10.2024, providing for procedure and conditions for closure of proceedings under section 128A of CGST Act.
- Vide notification No. 21/2024-Central tax dated 08.10.2024, **31.03.2025** has been notified under sub-section (1) of section 128A of CGST Act as the date on or before which the full payment of tax demanded in the notice/ statement/ order needs to be made by the taxpayer in order to avail the benefit of waiver of interest or penalty or both under the said section.

The procedure to be followed by the taxpayer and the tax officers to avail & implement the benefit provided under Section 128A of the CGST Act 2017

01. Filing of application:

In cases referred to in clause (a) of sub-section (1) of Section 128A where a notice/ statement/order under Section 73 has been issued demanding tax pertaining to the period from July 2017 to March 2020, an application in **FORM GST SPL-01 or FORM GST SPL-02**, as the case may be, may be filed electronically on the common portal, by the taxpayer.

02. Payment of tax:

With respect to a notice or statement referred to in clause (a) of sub-section (1) of Section 128A, i.e., a notice or statement that is yet to be adjudicated, the payment towards the tax demanded in the said notice shall be made by the taxpayer through FORM GST DRC-03. In cases where the payment towards tax demanded in the demand order has already been made through FORM GST DRC-03, the procedure prescribed in rule 142(2B) may be followed. In such cases, the taxpayer shall be required to file an application in **FORM GST DRC-03A** as prescribed in the said rule, in order to adjust the amount already paid vide the FORM GST DRC-03, towards the demand created in the ELR-Part II, before filing the application for waiver under Section 128A in FORM GST SPL-02.

03. Processing of application and issuance of order:

The proper officer on receipt of the application in FORM GST SPL-01 or FORM GST SPL-02, shall examine the said application. If, on examination, he finds that the said application is liable to be rejected, he shall issue a notice to the applicant, **within three months** from the date of receipt of the said application, in **FORM GST SPL-03** on the common portal. The proper officer shall also give the applicant an opportunity of personal hearing.

On receipt of the notice in FORM GST SPL-03, the applicant may file his reply in **FORM GST SPL-04**, electronically on the common portal, within a period of one month from the date of receipt of the notice. The proper officer **shall issue an order in FORM GST SPL-05**, accepting the said application, if he is satisfied that the applicant is eligible for waiver of interest or penalty or both under Section 128A.

04. Appeal against the orders issued under Rule 164:

No appeal shall lie under section 107, against an order issued in FORM GST SPL-05 concluding the proceedings under section 128A. The order issued in **FORM GST SPL-07**, rejecting the application for waiver, shall be, however, appealable in accordance with sub-section (1) of section 107 within the time limit specified therein, by filing an application in FORM GST APL-01. In cases where an appeal has been filed by the applicant against the order in FORM GST SPL-07, and the appellate authority holds that the proper officer has wrongly rejected the application, thereby allowing the applicant the benefit of the waiver of interest or penalty or both, the said appellate authority shall pass an order in **FORM GST SPL 06**.

S. No.	Issue raised by Trade/Field Formations	Clarification
01	Whether the benefit provided under Section 128A will be applicable to taxpayers who have paid the tax component in full before the date on which the said section has come into effect?	In this regard, it is to be mentioned that all such amount paid towards the said demand up to the date notified under sub-section (1) of section 128A, irrespective of whether the said payment has been done before Section 128A comes into effect, , or after that, and irrespective of whether such payment was made before the issuance of the demand notice or demand order, or after that, shall be considered as paid towards the amount payable in sub-section (1) of Section 128A, as long as the said amount has been paid up to the date notified under sub-section (1) of section 128A and was intended to be paid towards the said demand.
02	Whether amount recovered by the tax officers as tax due from any other person on behalf of the taxpayer, against a particular demand can be considered as tax paid towards the same for the purpose of Section 128A?	Yes.
03	Whether the benefit provided under Section 128A will be applicable in cases, where the tax due has already been paid and the notice or demand orders under Section 73 only pertains to interest and/or penalty involved?	Where the tax due has already been paid and the notice or demand orders under Section 73 only pertains to interest and/or penalty involved, the same shall be considered for availing the benefit of section 128A.

04	Whether the benefit under Section 128A is available, if the taxpayer intends to avail partial waiver of interest or penalty or both, on certain issues, by making part payment of the amount demanded in the notice/ statement/ order, as the case may be, and opts to litigate for the remaining issues?	No.
05	Where the notice/order involves multiple periods, ranging from the period for which waiver provided in Section 128A is applicable, and includes some other tax periods for which such waiver is not applicable, whether the benefit of waiver of interest or penalty or both under Section 128A can be availed for the period covered under section 128A?	The taxpayer is eligible to apply for waiver of interest or penalty or both, in such cases where the demand notice/ order spans tax periods covered under Section 128A and those not covered under the said section.
06	Whether Section 128A will cover waiver of penalties under other provisions, late fee, redemption fine etc?	It is clarified that any penalty, including penalties under section 73, section 122, section 125 etc, demanded under the demand notice/ statement/ order issued under section 73, is covered under the waiver provided under Section 128A. However, late fee, redemption fine etc are not covered under the waiver provided under Section 128A.
07	Whether payment to avail waiver under Section 128A can be made by utilizing ITC?	Yes.

Note:- This PPT is for education purpose only

Thank You