Confederation of Indian Industry

CII GST Recommendations for Life-Sciences Sector

Sr. No.	Issue	Details	Recommendations
Goods and Services Tax			
1	**GST Rate structure for finished formulations / medicines /active pharmaceutical ingredients**	In the erstwhile regime, indirect tax rate structure for pharma goods were as follows: Excise Duty was levied at 6% on an assessable value (i.e. 65% of MRP) effectively 3.9% and Value Added Tax about 5%. Thus the effective indirect tax Rate was around 9%. Some of the essential medicines like Insulin, certain oncology products were exempted from Excise Duty and some of the State Governments were also granted	It is imperative to keep tax incidence on essential products like medicines at the minimum, as higher cost burden due to higher tax rate will have a direct impact on the patients. A high GST rate will be unviable for the Indian economy leading to significant inflationary pressures, affect consumer (patient's) sentiments and risk alienating the weaker sections of society. As per the present GST rate schedule some of the medicaments classified under HSN 3002, 3003, 3004 etc. would attract 12% GST with

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		exemption from VAT for such products.	some lifesaving drugs etc. covered under 5%. **Recommendation:** • GST rate for all formulations/ medicines should be fixed at the lower rate @ 5%. • The refund of accumulated inverted duty credit of erstwhile taxes should be provided to pharma companies seamlessly.
2	**No reversal of Input Credit on Destruction of Date Expired Goods**	In Pharmaceutical Industry, the shelf life of drugs and pharmaceutical products are generally of 2-3 years and after that these become date expired. These date expired goods are returned by Retailers and Stockists to the manufacturers for destruction. As a long established industry practice, Pharmaceutical Manufacturers accept date expired goods returned from the Retailers and Stockists and give them the credit for the value of such goods mainly for the following reasons: • To avoid risk of such expired goods being sold to unsuspecting consumers	It is thus clear that the above expenditure are not abnormal losses, like for example, losses arising out of destruction of goods by fire, but normal business expenditure incurred in course of, and wholly and exclusively, for furtherance of business. Hence, there should be an appropriate amendment or suitable clarification to do away with the requirement to reverse input credit, in respect of goods expired in the normal course of business. This is in line with best international practice where such destructions are considered as in the ordinary course of business and for

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		• To enable the Stockists and Retailers to keep adequate stocks of medicines without any risk of loss due to expiry for them • The above, in turn, enable the manufactures to gain customer confidence in the efficacy of the products and also timely availability Thus, it is clear that the manufacturers bear the cost of date expired goods in furtherance of their business and cost of these are factored while fixing the selling price of the goods. However, Section 17(5) of CGST Act provides restrictions on availing credit on goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.	furtherance of business and thus not liable for reversal of input credit However, disregarding the above facts, Central Board of Indirect Taxes and Customs has issued a circular no 72 dt. 26th October 2018, which effectively means that GST on destroyed expired goods are required to be reversed and borne by the manufacturer. In the section (B) Return of time expired goods by issuing of credit note, under para (d), it is provided that where the expired goods are destroyed by the manufacturer, he is required to reverse the ITC attributable to manufacture of the goods. While the logic of the above can be understood in the Case 1 where date expired goods are returned before 30th September and GST adjusted, it is illogical to apply this in Case 2, where goods are returned after 30th September of the next year and the GST cannot be adjusted. **Recommendations:** • An appropriate amendment or suitable

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			clarification be issued to do away with the requirement to reverse input credit, in respect of goods expired in the normal course of business. • A clarification be issued that ITC need not be reversed on destruction of expired goods, where the manufacturer has not adjusted GST on return of such goods.
3	**Following cumbersome prescribed Job Work Procedure should be made optional if GST exemption is not claimed**	Loan Licensee Model or the Job Work Model is prevalent in the pharmaceutical industry and fundamental to its operations. In the previous tax regime, manufacturer would send RM/PM to Job worker without availing input credit of the same. The job worker would avail input tax credit and discharge the Excise duty liability on the clearance of finished product from the job-worker's factory. In the GST regime, Goods movement from Principal to Job-Worker are exempt from GST, subject to the condition that goods sent by Principal to Job-Worker should be	**Recommendation:** • The following an explanation be added to 2nd provisio of Section 16(2) of CGST Act, which reads as follows: "Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax

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		returned after processing, within a period of one year. To monitor movement of such goods and to ensure that goods not returned within one year are levied appropriate GST, GST rules provide for filling up of Return called ITC-04. While this procedure is certainly beneficial in certain types of industry where there is one to one relationship between input and output unit (for e.g. chassis manufacturer sending the chassis to the job worker to be fitted with bus body and returned), it is highly complex to implement in pharmaceutical industry. Typically in pharmaceutical industry for a single Finished Product, Bill of Material would contain about 10 to 15 input materials. Hence, when reporting Finished products returned by the Job-Worker to Principal, it would become necessary to co-relate the same with the supply details of multiple input raw and packing materials sent to Job-worker, which could have been sent on various dates. It would also be necessary to work out equivalent quantities	liability, along with interest thereon, in such manner as may be prescribed” Explanation – For the purposes of this proviso, in the case of supply of goods from principal manufacturer and job worker or contract manufacturer or vice –versa, where there is no obligation for payment of value of such goods, payment of the conversion charges or processing charges along with tax payable thereon by the principal manufacturer to the job worker or contract manufacturer shall be deemed to sufficient compliance of this provisio by principal manufacturer and job worker or contract manufacturer.

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		of each Input Raw and Packing Materials, which is highly complicated and very difficult to comply. The problem is further complicated as many of the Input materials are also used for multiple Output Finished Goods The manufacturer and job worker (or Toll manufacturer) should have the option of following the prescribed procedure for Job work where goods are cleared without payment of GST or to pay GST on both leg of the transaction. Principal who do not wish to follow the prescribed job work process should be allowed to send goods to job worker on payment of GST. In turn, Job worker should be allowed to pay GST on the value of the processed goods returned back to the principal, which would comprise of value of inputs plus conversion charges. He should be eligible to take the input credit of GST paid by the principal on goods transferred to Job Worker or Toll Manufacturer. When	

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		Principal supplies the goods, he will pay GST on the same and be eligible to take input credit of GST paid by the Job worker or Toll Manufacturer on the goods transferred to Manufacturer. Accordingly, at each leg, GST shall be paid and there shall be no revenue loss to Government. Simultaneously, manufacturer would not be required to link consumption of Raw material / Packing material with the finished products and hence there would be no need to comply with provisions of ITC-04. Currently manufacturer or job worker even if they wish to pay GST and let the other party take the input credit of the same to avoid following complicated prescribed procedure, they are unable to do so in view of the 2nd proviso to Section 16 (2) (d), which provides that input credit shall be denied if the recipient of the goods or services does not pay the amount of the invoice to the supplier of goods or services	

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		within 180 days. In the case of job work or toll manufacture as the material is not legally transferred from principal manufacturer to the job worker /contract manufacturer, there is no question of payment of the invoice for the value of the material given by the manufacturer to job worker or vice-versa. The only payment that is required to be done is the payment of Conversion Charges or Processing Charges payable by the Manufacturer to the Job Worker or Toll Manufacturer.	
4	Imported medicines or drugs or vaccines (in respect of description, quantity and technical specifications) supplied by United Nations International Children's Emergency Fund (UNICEF), Red Cross, WHO or an	Under IGST rule Currently imported Medicines or drugs supplied Free of Cost by UNICEF, Red Cross, WHO to the central government or state government for diseases elimination programmes are required to pay 12 % IGST duty at the time of import. **Eisai Case:** Eisai is suppling **Free of Cost** Diethylcarbamazine Citrate Tablets 100 mg	We recommend that following amendment in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 50/2017-Customs, dated the 30th June 2017 **Serial No 212 A (30) condition 103** shall be as- If the importer at the time of import- (1) furnishes a certificate from an officer not below the rank of a Deputy

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	international organisation for Central Government/State Government sponsored diseases elimination programmes shall be exempted from IGST.	(DEC) to the central government Lymphatic Elimination program through WHO. DEC is manufactured at Eisai, Vizag plant situated in SEZ. DEC supply to Indian Government is considered as Import and IGST of 12 % is applicable.	Secretary to the Government of India in the Department of Health and Family Welfare, Government of India, to the effect that the imported medicines or drugs or vaccines (in respect of description, quantity and technical specifications) are supplied by United Nations International Children's Emergency Fund (UNICEF), Red Cross or an international organisation and are required for Central Government/State Government Sponsored immunisation programmes and ***disease elimination programmes*** .

5. **Reduce the Goods and Services Tax (GST) rate on goods/ materials/ drugs, which are critical for defending COVID-19, to 0.1%**

GST reduction should be granted temporarily till the COVID-19 pandemic subsides. This request is in consonance with Section 11 of the Central Goods and Services Tax Act, 2017 (CGST Act), which authorizes the Government, on the recommendations of the GST Council, to exempt goods or services or both of any specified description from the whole or any part of the tax leviable thereon.

KEY JUSTIFICATIONS FOR THE REQUEST:

- There has been an unprecedented surge in the number of COVID19 cases across the country. The health infrastructure of several States and UTs has been overwhelmed by the very high number of daily cases and increased mortality. Therefore, improving access to affordable medicines is critical for the fight against the COVID19 pandemic.
- Many pharmaceutical products are currently fitted under 5%, 12% and 18% GST slabs. The relief from GST as sought for will lower the cost of healthcare materials/drugs, which are critical for fighting against COVID-19, and thereby improve the access to such healthcare materials. This will be a boon for the Government's fight against the global COVID-19 pandemic.
- Government of India in its fight against COVID-19 pandemic has given a similar ad-hoc relief with respect to Customs Duty and Health Cess on import of twenty-one goods identified for fighting against COVID-19 [Notifications No. 27/2021–Customs dated April 20, 2021, No. 29/2021- Customs dated April 30, 2021 and Notification No. 28/2021–Customs dated April 24, 2021].
- A complete GST exemption on goods critical for defending COVID-19 products will make such products costlier for the patients/end customers. GST captures value addition in the production chain as manufacturers can claim credit for all the taxes paid on inputs. Exemptions break up the input tax credit (ITC) chain. If manufacturers cannot offset the taxes that they pay on inputs used to make the final product, it will result in the accumulated taxes being recovered from the consumer.
- Given these, the instant ask to reduce the GST rate on critical COVID-19 materials to 0.1% is justified vis a vis GST exemption as ITC cannot be claimed for inputs used in exempted supply – supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax.
- Therefore, reducing the GST rate on goods/ materials critical for defending COVID-19 to 0.1% will help the supplier to get the ITC, which in turn will result into reduced cost for such goods/ materials.
- The instant request also supports GOI objective under 2017 National Health Policy to make healthcare more accessible. The Government of India has been consistent in communicating its intent to make healthcare more accessible to all its citizens, an objective reiterated in its 2017 National Health Policy.

Recommendation:

- Goods and Services Tax (GST) rate on goods/ materials/ drugs, which are critical for defending COVID-19, be reduced to 0.1%

6. Customs Exemption for Remdesivir intermediaries & GST exemption/ concession on API/ intermediaries / Formulation

Customs duty has been waived off on import of Remdesivir (API), Remdesivir (Injection) and conditional exemption granted to Beta Cyclodextrin used in the manufacture of Remdesivir (API) in light of the second wave of Covid -19 pandemic vide. notification no. 27/2021 dated 20.04.2021.

Unfortunately, the below mentioned organic chemical/drug intermediates which are key ingredients in chemical synthesis of Remdesivir API, falling under Chapter 29 of the Customs Tariff Act, 1975, have not been considered for exemption in the Customs notification no.27/2021 dated 20.04.2021.

Sr. No.	Name of the Organic Chemical/Drug intermediate	CAS No.	CTH code
1	(2R,3R,4S,5R)-2-(4-aminopyrrolo[2,1-f][1,2,4]triazin-7-yl)-3,4-dihydroxy-5-(hydroxymethyl)tetrahydrofuran-2-carbonitrile	1191237-69-0	29349990
2	2-ethylbutyl ((S)-(perfluorophenoxy)(phenoxy)phosphoryl)-L-alaninate	1911578-98-7	29331999

Further, also provide exemption/concession on GST rate leviable of 18% for the above-mentioned intermediates as this will help in eliminating the inverted duty structure. Additionally**,** request to review the current IGST leviable @ 18% and @12%, on import of Remdesivir (API) and Remdesivir injections respectively, which culminates into inverted duty structure.

Recommendations:

- Unconditional exemption be extended in the above notification would be benevolent and economical in the process of Remdesivir API manufacturing, which will thereby augment the domestic availability of Remdesivir.
- GST rates be reduced to @ 5% on both Remdesivir (API) and Remdesivir injection which would also reduce the tax burden on the end consumer.

7. **GST exemption for COVID drugs** – It is recommended that for COVID drugs such as Remdesivir and Favipiravir on which currently 12 % GST is being levied be reduced to 5% GST.

   Considering that the above-mentioned drugs are critical for the treatment of mild to severe COVID-19 and has potential to provide substantially meaningful benefit to needy patients and the society at large, it is requested that the said item be included in List I or List 2 of Schedule I of Notification No. 1/2017 (CGST) dated 28/06/2017 and be subject to 5% GST only. Since the GST law provides for refund in case of inverted structure for domestic sales, similar such refund should be granted for inputs and inputs services for export of the drug as well.

   We would like to your attention that the Entry 63 of Schedule II of Rate Notification No. 1/2017 (CGST) dated 28/06/2017covers sub-heading 3004 with description *“Medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retails sale, including Ayurvedic, Unani, homeopathic, siddha or Bio-chemic systems medicaments, put up for retail sale*”. We understand that Remdesivir (injectable) supplied for retail sale as well as supplied to hospitals is covered under this entry and is subject to GST @ 12%.

   Entry 180 of Schedule I of Notification No. -1/2017(CGST) dated 28/06/2017 covers HSN chapter heading “30 or any Chapter” with description ‘*Drugs or medicines including their salts and esters and diagnostic test kits, specified in **List I** appended to*

Schedule I'. All goods mentioned in Schedule 1 and list 1 are subject to 5% GST. There are certain pharmaceutical drugs which are covered under List I, for example **Tocilizumab** which is covered under serial no. 100 of List 1 and thus attracts 5% GST. **Tocilizumab** is an anti-inflammatory drug and is employed for the management of cytokine storm experienced by certain patients suffering from COVID-19. It may be noted that Remdesivir is not mentioned under the List 1.

Further, Entry 181 of Schedule I of the Rate Notification covers *formulations manufactured from the bulk drugs specified in list 2.* These items are also subject to 5% GST. Remdesivir is not specifically covered under List 2 of Schedule I of Rate Notification also.
Considering that **Remdesivir** is one of the most promising anti-viral drugs for the treatment of severe COVID-19 and has potential to provide substantially meaningful benefit to needy patients and the society at large, it is requested that the said item be included in List I or List 2 of Schedule I of Notification No. 1/2017 (CGST) dated 28/06/2017 and be subject to 5% GST only.

Similarly, **Favipiravir**, oral anti-viral drug that has also been shown to hasten clinical recovery in COVID -19 patients with mild to moderate symptoms. It has also potential to provide benefit to patients. Therefore, it is requested that the said item be included in List I or List 2 of Schedule I of Notification No. 1/2017 (CGST) dated 28/06/2017 and be subject to 5% GST only.

In view of the emergency need for making effective and affordable therapies for COVID-19 widely available to Indian patients, we believe that the request is adequately justified and hope that it will be considered favourably.

Recommendation:

- COVID drugs such as Remdesivir and Favipiravir on which currently 12 % GST is being levied be reduced to 5% GST.

8. Allow input tax credit on COVID vaccine used for employees

To combat the spread of COVID -19 infection, the Emergency Use Authorisation (EUA) has been granted to COVID-19 vaccines namely Covishield, Covaxin, Sputnik V and a mega vaccination drive is already in process across the country for all adults (18+ years). Recently, as part of Liberalised Pricing and Accelerated National COVID-19 Vaccination Strategy, the private hospitals, industrial establishments through hospitals can procure vaccines to inoculate its workforce, thereby enhancing the vaccination coverage. Needless to say, COVID-19 vaccination is need of the hour to combat pandemic in most effective, efficient and economical manner. Therefore, in order to ensure affordability of the cost of vaccine and as a step towards robust vaccination drive, and on behalf of the industry, it is our humble request to exempt vaccines used in the treatment of COVID-19 from the burden of GST levy**.** Union Budget 2021, although providing necessary budgetary allocations for COVID-19 vaccination, did not provide any concession/exemption from duties to Covid-19 vaccine. Therefore, the cost of vaccine carrying tax burden remains a challenge for the corporate sectors and common public in fighting the pandemic.

Further, if the exemption is likely to distort the duty structure at the supplier's end, alternately, the benefit of Input Tax Credit (ITC) may be extended at the recipient end by providing suitable amendment to Section 17 (5) of the CGST Act, 2017.

Under the GST law, no ITC is allowed on goods or services used for personal consumption of employees. ITC on goods would be available only if its obligatory on the part of the employer under any statute or any law for the time being in force, which compels employer to extend the benefit to his workmen/employees.

Recommendation:

- Considering this as an exceptional circumstance, ITC on vaccine be allowed despite end use being for personal consumption. By inserting suitable explanation or provision to Section 17 (5) of the CGST Act, 2017, the said personal consumption of vaccine can be kept outside the bars of restricted credit.

9. Allow input tax credit of GST on Physician Samples

Pharmaceutical manufacturers provide limited quantity of Physician Samples to check efficacy of the products to Doctors. Reversal of proportionate ITC is not only cumbersome procedure but also adds cost, hence Input Tax Credit of GST be allowed on such expenses. It will help in removing the cascading effect of input taxes and will further help in reduction of the overall pricing of the medicines to the general public.

Recommendation:

- Input tax credit of GST on Physician Samples be allowed.

10. Rationalization of GST for health care services

The Healthcare sector in India is one of the most critical sectors which is intrinsically linked to the well being of our huge population. The sector's contribution to the GDP and overall health of human capital in India is unassailable. The ongoing pandemic has had irreversible effects and significant impact on health care institutions. The ground realities related to the financial situation under which the private healthcare sector is operating is contrary to the conventional belief that hospitals must be doing well in a pandemic situation.

Outpatients traffic as well as non-emergency treatments and elective surgeries have witnessed a significant reduction coupled with national / international medical travel restrictions. The challenge of increase in cost of operations is also a major concern given more stringent hygiene and containment requirements during and post Covid-19 periods, not to mention the risk/hardship related incentives that we have to additionally pay to our frontline Doctors, nurses and para medical staff to keep them motivated in these tough times.

In view of this and even otherwise, we believe some rationalization from the Government on GST policy for the sector can lighten the burden on the industry.

We have recommended below two options for the Government to consider. While we believe that Option 1 is the most scientific method to provide the necessary benefit without breaking the chain of input tax credit, we have also provided an alternative option for the Government's consideration.

Recommendations:

- ***Option 1 - Zero rating and subsequently allowing output GST levy at 5% to the health care sector***

  Zero rating of GST for Hospitals can bring maximum relief at a time like this. It is respectfully requested that the Government should consider **zero rating of healthcare services for a period of 24 months during this pandemic period**, which will not only ensure that the input tax credit chain is intact but also ensure that the input taxes are not loaded into the cost of healthcare services. Currently, GST paid on inputs, input services and capital goods used for healthcare services are not eligible for input tax credit since the output service is exempt. Zero-rating would not break the chain of duty / tax flows in the structure. This will also ensure immediate relief to the healthcare sector to navigate the current pandemic.

While we would respectfully request the Government to continue giving this benefit to the sector for a longer period of time, in the event that the Government believes that zero-rating benefit is not sustainable, it is respectfully requested that the Government may consider the option **to treat the health care services as taxable supply of services at a lower rate of 5% after the period of 24 months**. This would go a long way in keeping healthcare services costs affordable, without breaking the input tax credit chain.

- ***<u>Option 2 – Providing end-user-based exemption to major services consumed by the healthcare sector</u>***

If the Government decides to persist with the GST exemption status provided for the healthcare services without Zero rating it, we respectfully table the following recommendations, for immediate implementation:

Grant end-user-based exemptions to input, input services and capital goods for healthcare sector. Such exemption could include (not limited to):

a) **Leasing of medical infrastructure including leasing of building / premises** to hospitals for providing health care services shall be exempted.

Needless to state this will help the sector to foster infrastructure creation by attracting larger infrastructure players including foreign funds / asset managers to build and lease large hospitals to hospital operators in an asset light manner. This will also help the sector evaluate options like Hospital REITs to build much larger capacities across India to build healthcare infrastructure for the future and to be instrumental in building a $5 Trillion GDP economy.

b) **Providing exemptions to suppliers of various auxiliary services** in relation to health care such as

- Housekeeping services
- Food and beverages supplies and catering services
- Annual Maintenance contracts paid for Equipment maintenance and upkeep
- Transportation
- Outsourcing contracts for labour / staff etc

c) Rationalize the rates of tax for all medicines and consumables to a rate of 5% maximum so as to retain the tax chain for other suppliers/ industries.

Similar exemptions are already provided to other sectors like the educational sector.

These measures are imperative for the country to ensure that health care undertakings are prepared to tackle the ongoing covid-19 second wave and impending third wave, and for economic stability which would ensure overall lower costs of treatment to the general public, even as the Government continues to work on measures to shore up Public Infrastructure.

Given that private healthcare players are important stakeholders in the ongoing crisis, and are fully supportive of the Government's efforts, it is crucial to consider the recommendations to facilitate health care services in an efficient manner and for smoother hospital operations without supply chain disruptions.