



ONE DAY SEMINAR ON
UNION BUDGET 2024 –
CLAUSE BY CLAUSE
DISCUSSION ON
INDIRECT TAXES
PROPOSAL

G SHIVADASS,
SENIOR ADVOCATE

AGENDA

GST

RECENT CIRCULARS

GST LAW



Section 16 of the CGST Act - Insertion

The following has been inserted -

- *(5) Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017- 18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed upto the thirtieth day of November, 2021.*
- *(6) Where registration of a registered person is cancelled under section 29 and subsequently the cancellation of registration is revoked by any order, either under section 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where availment of input tax credit in respect of an invoice or debit note was not restricted under sub-section (4) on the date of order of cancellation of registration, the said person shall be entitled to take the input tax credit in respect of such invoice or debit note for supply of goods or services or both, in a return under section 39,—*
 - (i) filed upto thirtieth day of November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or*
 - (ii) for the period from the date of cancellation of registration or the effective date of cancellation of registration, as the case may be, till the date of order of revocation of cancellation of registration, where such return is filed within thirty days from the date of order of revocation of cancellation of registration,*

whichever is later.

RELAXATIONS under Section 16 of the CGST Act

Section 16(4) – time limit for the period 2017-18 to 2020-21 has been extended to 30.11.2021

- As a major relief to many taxpayers, input tax credit in respect of any invoice or debit note pertaining to FY 2017-18, 2018-19, 2019-20, and 2020-21 can be availed in any GSTR-3B filed until 30.11.2021.

Relaxation for availing ITC for assesseees whose registration was cancelled

- Returns for the period from the date of cancellation of registration/effective date of cancellation till revocation of the cancellation of registration can be filed by availing the eligible ITC within 30 days of the order of revocation by the registered person.

The Finance Bill, 2024 stipulates that refund will not be granted for the tax already paid or the ITC reversed, wherein normal circumstances, the tax would not have been paid or the ITC would not have been reversed.

AMENDMENTS

Amendment of Section 9 to not levy GST on un-denatured Extra Neutral Alcohol (ENA) or rectified spirit which is used to manufacture alcoholic liquor for human consumption.

Different positions was being taken by various states on the taxability of ENA, wherein some states levied GST and some levied VAT on the liquor companies. This amendment would put an end to the confusion on the taxability of ENA.

Insertion of Section 11A

- 11A. Notwithstanding anything contained in this Act, if the Government is satisfied that --*
- (a) a practice was, or is, generally prevalent regarding levy of central tax (including non-levy thereof) on any supply of goods or services or both; and*
 - (b) such supplies were, or are, liable to, –*
 - (i) central tax, in cases where according to the said practice, central tax was not, or is not being, levied, or*
 - (ii) a higher amount of central tax than what was, or is being, levied, in accordance with the said practice, the Government may, on the recommendation of the Council, by notification in the Official Gazette, direct that the whole of the central tax payable on such supplies, or, as the case may be, the central tax in excess of that payable on such supplies, but for the said practice, shall not be required to be paid in respect of the supplies on which the central tax was not, or is not being levied, or was, or is being, short-levied, in accordance with the said practice.*

The said insertion is to allow regularization of non-levy or short-levy of GST, wherein tax was short-paid or not paid due to common practices. The same comes as a relief for the Assesseees as it does not have a retrospective effect. Further, an enabling provision for 'as is where is' amendment which have been proposed and for any subsequent decisions, which ratify the business practices.

AMENDMENTS

Amendment to Section 17(5)(i)- the words and figures “**sections 74, 129 and 130**” have been substituted to “***section 74 in respect of any period upto Financial Year 2023-24***” for blockage of ITC on tax paid under Section 74 for demands upto FY 2023-24

- The amendment to the following section is made since a new Section has been introduced i.e., Section 74A. Further, Section 74 has been amended to the extent of determination of tax will pertain only till FY 2023-24.

Insertion to proviso to Section 30- a second proviso has been inserted after the first proviso in sub section (2): “*Provided further that such revocation of cancellation of registration shall be subject to such conditions and restrictions, as may be prescribed.*”

- The Central Government has been provided the power to formulate conditions and restrictions pertaining to revocation of cancellation to maintain uniformity.

Amendment to Section 13

Following changes have been made to Section 13(3) of the CGST Act:

- In terms of Section 13(3)(b) of the CGST Act, the phrase “by the supplier” has been substituted with “*by the supplier, in cases where invoice is required to be issued by the supplier; or*”.
- Insertion of a new clause “(c) the date of issue of invoice by the recipient, in cases where invoice is to be issued by the recipient”.
- Amendment is made in the first proviso: “*Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), or clause (c) the time of supply shall be the date of entry in the books of account of the recipient of supply.*”

A detailed provision towards the time of supply of services taxable under RCM is provided adding the scenario of self invoice.

Amendment to Section 17(5)

Following amendment is made to Section 17(5)(i) of the CGST Act:

(5) Notwithstanding anything contained in sub-section (1) of Section 16 and sub-section (1) of Section 18, input tax credit shall not be available in respect of the following namely,

(i) Any tax paid in accordance with the provisions of ~~sections 74, 129 and 130~~ section 74 in respect of any period up to Financial year 2023-24.

The tax paid in relation to goods confiscated under Section 129 and 130 of the CGST Act is an eligible credit and further tax paid under Section 74A is also not blocked.

Amendment to Section 31

Following changes have been made to Section 31(3) of the CGST Act:

- In terms of Section 31(3)(f), the phrase “*within the period as may be prescribed*” has been **inserted**: “*a registered person who is liable to pay tax under sub-section (3) or subsection (4) of section 9 **within the period as may be prescribed** shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both*”
- Insertion of a Explanation after Section 31(3)(g): “*Explanation.--For the purposes of clause (f), the expression “supplier who is not registered” shall include the supplier who is registered solely for the purpose of deduction of tax under section 51.*”

The Central Government has been given powers to fix a time period within which a self-invoice needs to be issued by the recipient when tax is discharged on a reverse charge basis. Further, the Explanation to clause (g) clarifies that under the term of ‘individual who is not registered’ will also include the person who is registered only for the sole purpose of TDS deduction.

Amendment to Section 39

Old Section 39(3) of the CGST Act

Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.

New Section 39(3) of the CGST Act

Every registered person required to deduct tax at source under section 51 shall electronically furnish a return for every calendar month of the deductions made during the month in such form and manner and within such time as may be prescribed:

Provided that the said registered person shall furnish a return for every calendar month whether or not any deductions have been made during the said month.

A registered person is required to deduct TDS as per Section 51 and furnish the same vide its returns. The new amendment requires the registered person to furnish returns for every month even if there have been no TDS deductions for a particular month.

Amendment to Section 54

Following changes have been made to Section 54 of the CGST Act:

- In terms of Section 54(3), the second proviso has been omitted *~~“Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty.”~~*
- Insertion of a sub section (15) after Section 54(14) : *“Notwithstanding anything contained in this section, no refund of unutilised input tax credit on account of zero rated supply of goods or of integrated tax paid on account of zero rated supply of goods shall be allowed where such zero rated supply of goods is subjected to export duty.”*

The refund of unutilized ITC or Integrated Tax will not be allowed to assesseees in cases of zero rated supply of goods which attracts export duty

Amendment to Section 70: Power to summon persons to give evidence and produce documents

Sub-Section (1A) to Section 70 is inserted:

(1A) All persons summoned under sub-section (1) shall be bound to attend, either in person or by an authorised representative, as such officer may direct, and the person so appearing shall state the truth during examination or make statements or produce such documents and other things as may be required.

This enables an authorized representative to appear on behalf of the summoned person before the proper officer. Additionally, since it is stated that the person shall state the truth during the examination, the Assessee can't take a contention that the said statement was given under coercion unless the same is retracted.

Amendments to Section 73 and 74

Section 73

- **Changes in Marginal Heading:** Determination of tax pertaining to the period up to Financial Year 2023-24 not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts
- **Sub-section (12) inserted:** *the provisions of this Section shall be applicable for determination of tax pertaining to period up to Financial Year 2023-24.*

Section 74

- **Changes in Marginal Heading:** Determination of tax pertaining to the period up to Financial Year 2023-24 not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful-misstatement or suppression of facts.
- **Sub-section (12) inserted:** *the provisions of this Section shall be applicable for determination of tax pertaining to period up to Financial Year 2023-24.*

The applicability of the provisions of Section 73 and 74 is restricted for the Financial Year up to 2023-24

Insertion of Section 74A

Section 74A: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onwards.

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder:

Provided that no notice shall be issued, if the tax which has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised in a financial year is less than one thousand rupees.

(2) The proper officer shall issue the notice under subsection (1) within forty-two months from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within forty-two months from the date of erroneous refund.

A new provision is introduced which is applicable for Financial Year 2024-25 onwards wherein the time limit of 3.5 years from the due date for filing annual return is prescribed for issuing the demand notices and orders irrespective of whether the charges of fraud, wilful misstatement, or suppression of facts are invoked or not.

Insertion of Section 74A

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under subsection (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The penalty in case where any tax which has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised,—

(i) for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, shall be equivalent to ten per cent. of tax due from such person or ten thousand rupees, whichever is higher;

(ii) for the reason of fraud or any wilful-misstatement or suppression of facts to evade tax shall be equivalent to the tax due from such person.

A higher rate of penalty equivalent to tax is imposed for cases involving for cases involving fraud, wilful misstatement, or suppression of facts similar to the provisions contained in Section 73 and Section 74 of the CGST Act.

Insertion of Section 74A

(6) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(7) The proper officer shall issue the order under subsection (6) within twelve months from the date of issuance of notice specified in sub-section (2):

Provided that where the proper officer is not able to issue the order within the specified period, the Commissioner, or an officer authorised by the Commissioner senior in rank to the proper officer but not below the rank of Joint Commissioner of Central Tax, may, having regard to the reasons for delay in issuance of the order under sub-section (6), to be recorded in writing, before the expiry of the specified period, extend the said period further by a maximum of six months.

A new time limit of one year extendable up to additional 6 months is prescribed for adjudicating the show cause notices issued under sub-section (1) of Section 74A and the same is delinked with the time limit prescribed for issuing the Notice.

Insertion of Section 74A

(8) The person chargeable with tax where any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, may, --

(i) before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information shall not serve any notice under sub-section (1) or the statement under sub-section (3), as the case may be, in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder;

(ii) pay the said tax along with interest payable under section 50 within sixty days of issue of show cause notice, and on doing so, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

In case of payment of tax and interest voluntarily before issuance of the notice specified under sub-section (1) shall not be issued. If the payment is made within 60 days of issuance of the notice, the said notice shall be deemed to be concluded.

Insertion of Section 74A

(9) The person chargeable with tax, where any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, may,—

(i) before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder;

(ii) pay the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within sixty days of issue of the notice, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded;

(iii) pay the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within sixty days of communication of the order, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded.

An opportunity of voluntary payment is also introduced for cases involving fraud, or wilful misstatement or suppression of facts to evade payment of tax the proceedings are concluded if:

- If tax, interest and 15% of penalty is paid before service of notice
- If tax, interest and penalty of 25% is paid within 60 days of issuance of the notice
- If tax, interest and 50% penalty is paid within 60 days of issuance of the order

Insertion of Section 74A

(10) Where the proper officer is of the opinion that the amount paid under clause (i) of sub-section (8) or clause (i) of sub-section (9) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in subsection (1) in respect of such amount which falls short of the amount actually payable.

(11) Notwithstanding anything contained in clause (i) or clause (ii) of sub-section (8), penalty under clause (i) of subsection (5) shall be payable where any amount of self assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

(12) The provisions of this section shall be applicable for determination of tax pertaining to the Financial Year 2024- 25 onwards.

Explanation 1.--For the purposes of this section,--

(i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under this section, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded.

Explanation 2.--For the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder; or failure to furnish any information on being asked for, in writing, by the proper officer.

There seems to be an attempt to simplify the time limit for adjudication by prescribing uniform time limit in all proceedings. However, an additional time limit has been provided for cases initiated for reasons other than fraud, suppression or willful misstatement. (Presently, 3 years proposed is 42 months + 12 months).

Amendment to Section 75: General provisions relating to determination of tax

Insertion of Sub-Section 2(A) of Section 75:

(2A) Where any Appellate Authority or Appellate Tribunal or court concludes that the penalty under clause (ii) of sub-section (5) of section 74A is not sustainable for the reason that the charges of fraud or any wilful misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the penalty shall be payable by such person, under clause (i) of sub-section (5) of section 74A.

In cases where the notice is issued with the allegation of fraud or any wilful misstatement or suppression of facts to evade payment of tax and if subsequently Appellate Authority or Appellate Tribunal concludes that such allegation is not sustainable, the penalty of 10% of tax is applicable instead of penalty imposed equivalent to tax.

Amendment to Section 107 and 112

Section 107(6)(b)

- (b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, subject to a maximum of ~~twenty-five~~ **twenty** crore rupees, in relation to which the appeal has been filed.

Section 112(8)(b)

- (b) a sum equal to ~~twenty per cent~~ **ten per cent.** of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, subject to a maximum of ~~fifty crore rupees~~ **twenty crore rupees**, in relation to which the appeal has been filed.

The above amendment resulting in reduction of the maximum amount of pre-deposit before first Appellate Authority and percentage of pre-deposit before the second Appellate Authority is in line with the recommendations of the 53rd GST Council meeting.

Amendment to Section 112: Appeals to Appellate Tribunal

Section 112(1)

- (1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal, **or the date, as may be notified by the Government, on recommendations of the Council, for filing the appeal before the Appellate Tribunal under this Act, which ever is later.**

Section 112(3)

- (3) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed; **or the date, as may be notified by the Government, on the recommendations of the Council for the purpose of filing application before the Appellate Tribunal under this Act, which ever is later,** for determination of such points arising out of the said order as may be specified by the Commissioner in his order.

Section 112(6)

- (6) The Appellate Tribunal may admit an appeal within three months after the expiry of the period referred to in sub-section (1) **or permit the filing of an application within three months after the expiry of the period referred to in sub-section (3),** or permit the filing of a memorandum of cross-objections within forty-five days after the expiry of the period referred to in sub-section (5) if it is satisfied that there was sufficient cause for not presenting it within that period.

New timeline for filing the Appeal before the Appellate Tribunal is prescribed in view of Tribunal not being functional. The above amendments will come into effect from 01.08.2024.

Amendment to Section 109: Constitution of Appellate Tribunal and Benches thereof

Section 109(1)

- (1) The Government shall, on the recommendations of the Council, by notification, establish with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority, **or for conducting an examination or adjudicating the cases referred to in sub-section (2) of Section 171, if so notified under the said section.**

Proviso to Section 109(5)

- Provided further that the matters referred to in sub-section (2) of Section 171 shall be examined or adjudicated only by the principal Bench:
- Provided also that the Government may, on recommendations of the Council notify other cases or class of cases which shall be heard only by the principal bench.

Section 109(6)

- (6) ~~The President~~ Subject to the provisions of sub-section (5), the President shall, from time to time, by a general or special order, distribute the business of the Appellate Tribunal among the Benches and may transfer cases from one Bench to another.

The Appellate Tribunal is empowered to examine the matters or adjudicate the cases referred to in sub-section (2) of section 171, if so notified under the said section. Such matters are proposed to be examined or adjudicated only by the Principal Bench.

Amendment to Section 122: Penalty for certain offences

With effect from 01.10.2023, following amendment is made in Section 122(2B) of the CGST Act:

(1B) ~~Any electronic commerce operator who~~ Any electronic commerce operator, who is liable to collect tax at source under Section 52, -

(i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;

(ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or

(iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher.

The scope of penalty prescribed under the said Section is restricted and is applicable only to the electronic commerce operator who is liable to deduct TCS under Section 52.

Insertion of new section 128A of CGST ACT, 2017

128A. Waiver of interest or penalty or both relating to demands raised under section 73, for certain tax periods.

Notwithstanding anything to the contrary contained in this Act, where any amount of tax is payable by a person chargeable with tax in accordance with,—

- (a) a notice issued under sub-section (1) of section 73 or a statement issued under sub-section (3) of section 73, and where no order under sub-section (9) of section 73 has been issued; or*
- (b) an order passed under sub-section (9) of section 73, and where no order under sub-section (11) of section 107 or sub-section (1) of section 108 has been passed; or*
- (c) an order passed under sub-section (11) of section 107 or sub-section (1) of section 108, and where no order under sub-section (1) of section 113 has been passed,*

pertaining to the period from 1st July, 2017 to 31st March, 2020, or a part thereof, and the said person pays the full amount of tax payable as per the notice or statement or the order referred to in clause (a), clause (b) or clause (c), as the case may be, on or before the date, as may be notified by the Government on the recommendations of the Council, no interest under section 50 and penalty under this Act, shall be payable and all the proceedings in respect of the said notice or order or statement, as the case may be, shall be deemed to be concluded, subject to such conditions as may be prescribed:

This section has been inserted in line with the recommendation made in 53rd GST Council Meeting for the purpose of waiving interest and penalties for demand notices issued under Section 73 for FY from 2017 till 2020.

Insertion of new section 128A of CGST ACT, 2017

Provided that where a notice has been issued under sub section (1) of section 74, and an order is passed or required to be passed by the proper officer in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court in accordance with the provisions of sub-section (2) of section 75, the said notice or order shall be considered to be a notice or order, as the case may be, referred to in clause (a) or clause (b) of this sub-section:

Provided further that the conclusion of the proceedings under this sub-section, in cases where an application is filed under sub-section (3) of section 107 or under sub-section (3) of section 112 or an appeal is filed by an officer of central tax under sub-section (1) of section 117 or under sub-section (1) of section 118 or where any proceedings are initiated under sub-section (1) of section 108, against an order referred to in clause (b) or clause (c) or against the directions of the Appellate Authority or the Appellate Tribunal or the court referred to in the first proviso, shall be subject to the condition that the said person pays the additional amount of tax payable, if any, in accordance with the order of the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority, as the case may be, within three months from the date of the said order:

Provided also that where such interest and penalty has already been paid, no refund of the same shall be available.

The said provision is not applicable in cases of demand where the notice has been issued under Section 74 or order passed vide directions of Appellant Tribunal or Authority or Court vide Section 75(2).

In cases where an appeal is filed against an order mentioned in sub-section (1) of the section, then in such a case the proceedings would be considered as concluded in situations where the assessee pays the additional amount of tax as mentioned within the order of Appellant Authorities within three months from the date of the order.

Insertion of new section 128A of CGST ACT, 2017

(2) Nothing contained in sub-section (1) shall be applicable in respect of any amount payable by the person on account of erroneous refund.

(3) Nothing contained in sub-section (1) shall be applicable in respect of cases where an appeal or writ petition filed by the said person is pending before Appellate Authority or Appellate Tribunal or a court, as the case may be, and has not been withdrawn by the said person on or before the date notified under sub-section (1).

(4) Notwithstanding anything contained in this Act, where any amount specified under sub-section (1) has been paid and the proceedings are deemed to be concluded under the said sub-section, no appeal under sub-section (1) of section 107 or sub-section (1) of section 112 shall lie against an order referred to in clause (b) or clause (c) of sub-section (1), as the case may be.”

The said section won't be applicable in cases of erroneous refund.

The provision won't be applicable in case of assessee who had filed an appeal against the demand before the Appellant Authority, Tribunal or Court and has not withdrawn the same before the prescribed date.

In case of payment of demand mentioned under Sub-section (1) the proceedings are deemed to be concluded and no appeal against the said demand can be raised against the same.

Amendment to section 140 of CGST ACT, 2017

Section 140(7)- Transitional arrangements for input tax credit

- (7) Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as credit under this Act, within such time and in such manner as may be prescribed, ~~even if the invoices relating to such services are received on or after the appointed day~~ whether the invoices relating to such services are received prior to, on or after, the appointed day.

The Provision has been enacted to enable the availment of transitional credit of eligible CENVAT credit received by an ISD prior to the appointed day, for which invoices were also received prior to the appointed date.

Amendment to section 171 of CGST ACT, 2017

A proviso and an Explanation has been inserted to Sub-Clause(2) of Section 171.

Sec 171. Anti-profiteering measure:-

(2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

'Provided that the Government may by notification, on the recommendations of the Council, specify the date from which the said Authority shall not accept any request for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

Explanation.--For the purposes of this sub-section, "request for examination" shall mean the written application filed by an applicant requesting for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.'

The Proviso has been inserted to provide power to the Government to specify the date within which the authority would stop accepting of applications of the Anti-profiteering cases and the explanation provides for the definition of the term "request for examination".

Insertion to Schedule III of CGST Act

Two additional Paragraphs have been inserted in the Schedule after Paragraph 8 and prior to Explanations .

Schedule III of CGST Act- Activities Or Transactions Which Shall Be Treated Neither As A Supply Of Goods Nor A Supply Of Services

- *9. Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in coinsurance agreements, subject to the condition that the lead insurer pays the central tax, the State tax, the Union territory tax and the integrated tax on the entire amount of premium paid by the insured.*
- *10. Services by insurer to the reinsurer for which ceding commission, or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, subject to the condition that the central tax, the State tax, the Union territory tax and the integrated tax is paid by the reinsurer on the gross reinsurance premium payable by the insurer to the reinsurer, inclusive of the said ceding commission or the reinsurance commission.”*

Both these insertions are with an intention to avoid multiple taxes on the same amount, i.e. when tax has been paid at the first instance on the entire consideration, then subsequent apportionment of the same amounts between multiple service-providers, who have come together to provide the service is not required under. This entries specifically pertain to insurance industry, wherein, either co-insurer or re-insurer is involved.

Amendment to IGST Act, 2017

Section 5(1) - Levy and collection

- Similar amendment as undertaken in CGST Act
- No tax leviable on *undenatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption* along with liquor for human consumption.

6A. Power not to recover Goods and Services Tax not levied or short-levied as a result of general practice.

- *Similar provision to CGST Act.*
- This section has been inserted to empower the Government to regularize non levy or short levy of integrated tax where it is found that such non levy or short levy was a result of general practice.

Amendment to “Section 16 of IGST Act, 2017”

Insertion of Section
16(4) (i) of the IGST
Act, 2017

- *The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify--*
- *(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid in accordance with the provisions of section 54 of the Central Goods and*
- *Services Tax Act or the rules made thereunder;*

Substitution of
Section 16(4)(ii) of
the IGST Act, 2017

- *The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify--*
- *(ii) a class of goods or services ~~which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid~~ or both, on zero rated supply of which, the supplier may pay integrated tax and claim the refund of tax so paid, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder*

Both the clauses of Section 16(4), which provide for export on payment of duty and claiming IGST refund thereof is now proposed to be subjected to Section 54 of the CGST Act.

Amendment to “Section 16 of IGST Act, 2017”

Sub-Section (5) shall be inserted after Sub-Section 4 of Section 16.

Sec 16. Zero rated supply:-

.
.

“(5) Notwithstanding anything contained in sub sections (3) and (4), no refund of unutilised input tax credit on account of zero rated supply of goods or of integrated tax paid on account of zero rated supply of goods shall be allowed where such zero rated supply of goods are subjected to export duty.”

Sub-section (5) is being inserted in the said Section so that no refund of unutilized input tax credit or of integrated tax paid on account of zero rated supply of goods shall be allowed in cases where the zero-rated supply of goods is subjected to export duty.

Amendment to section 20 of IGST Act, 2017”

In section 20 of IGST Act, for the fifth proviso has been substituted

Fifth Proviso Se 20. of IGST Act, 2017
(Pre-Amendment)

Provided also that where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be fifty crore rupees and one hundred crore rupees respectively.

Fifth Proviso Se 20. of IGST Act, 2017
(Post-Amendment)

Provided also that a maximum amount of forty crore rupees shall be payable for each appeal to be filed before the Appellate Authority or the Appellate Tribunal.”

The provision has been amended, to reduce the maximum amount of pre-deposit payable for filing appeal before appellate authority from rupees fifty crores to rupees forty crores of integrated tax and to reduce the maximum amount payable as pre-deposit for filing appeal before the Appellate Tribunal from rupees hundred crores to rupees forty crores of integrated tax.

Amendments to Input Service Distributor (ISD) provisions vide Finance Act, 2024 (Act No. 8 of 2024) dated 15.02.2024

Amendment to Section 2 (61) of CGST Act, 2017

The definition of ISD was substituted in the CGST Act, 2017, to the following:

‘(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, 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;’

Amendment to Section 20

For section 20 of the CGST Act, 2017, the following section shall be ***substituted***, namely: -

“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, 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.

(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 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.

(3) The credit of central tax shall be distributed as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit, in such manner as may be prescribed.”

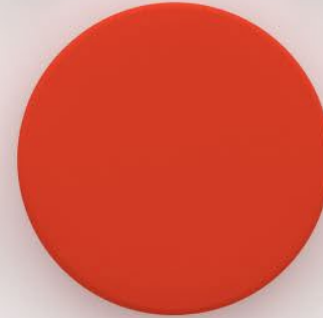
In terms of this amendment, it is now mandatory to avail ISD registration for the distribution of ITC. Further, ISD can also distribute the ITC pertaining to RCM invoices. The definition of ISD provided under Section 2 (61) has also been amended in line with the amendments made to this Section.

Notification No. 12/2024- Central Tax dated 10.07.2024 – Amendment to CGST Rules, 2017

Prior to the amendment to Section 20 of the CGST Act, the manner of distribution of credit by Input Service distributor was prescribed in the Section along with Rule 39 of CGST Rules, 2017 which provides for the procedure for distribution of input tax credit by Input Service Distributor

For clarity and concision, the major portion of the section and the rule have been subsumed into the new rule which has been inserted vide the said Notification.

RECENT
CIRCULARS



Monetary Limits for filing appeal by Department under GST

**Circular No. 207/1/2024-
GST dated 26.06.2024**

Court	Monetary Limit
GST Appellate Tribunal	Rs. 20,00,000/-
High Court	Rs. 1,00,00,000/-
Supreme Court	Rs. 2,00,00,000/-

Following principles are to be considered for determining if a case falls within the monetary limits:

Dispute pertains to	Monetary limit consideration
Demand of tax (with or without penalty and/or interest)	Aggregate amount of tax in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess)
Demand of interest only	Amount of interest
Imposition of penalty only	Amount of penalty
Imposition of late fee only	Amount of late fee
Demand of interest, penalty and/or late fee (without disputed tax amount)	Amount of interest, penalty and late fee
Erroneous refund	Amount of refund in dispute (including CGST, SGST/UTGST and Compensation Cess)
Appeal or application that is contemplated to be filed	Disputed amount of tax/interest/penalty/late fee, as the case may be
Composite order	Total amount of tax/interest/penalty/late fee and not on the amount in individual appeal or demand notice.

Monetary Limits for filing appeal by Department under GST

Exclusions for the monetary limit

Any provision of the CGST or SGST/UTGST or IGST Act or GST (Compensation to States) Act is ultra vires to the Constitution of India;

Any Rules or Regulations made under CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act is ultra vires the Parent Act;

Any order, notification, instruction, or circular issued by the Government or the Board is ultra vires of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act or Rules made thereunder.

The matter related to Valuation of goods or services; or Classification of goods or services; or Refunds; or Place of Supply; or Any other issue which is recurring and/or involves interpretation of the provisions of the Act/Rules/notification/circular/order/instruction; etc.

Where strictures/adverse comments have been passed and/or cost has been imposed against the Government/Department or their officers.

Any other case or class of cases, where it is necessary to contest in the interest of justice or revenue in the opinion of the Board.

Whether prescription of monetary limits in filing of appeal would lead to increase in identifying cases for Rectification or Revision Proceedings?

- The aspect of rectification and Revision is available to the department in all cases.
- Specifically on issues, where the Courts have decided the question of law against the assessee but the adjudication order is issued in favour of the assessee, there is a higher possibility of initiation of proceedings by invoking these powers, if the amount is below the appeal threshold.
- But it is unlikely that unlikely that the Department would consider revision, as the amount of revenue involved in such cases is less.
- Further, for rectification, the department must essentially prove that there was an

Special procedure for manufacturers of the specified commodities

Circular No. 208/2/2024-GST dated 26.06.2024

1. Non availability of make, model number and machine number

- Make and model number are optional. Year of purchase of machine may be declared in absence of make and Machine number. If it is mandatory to be filled up, the manufacturer may assign any number to the machine.

How to declare electricity consumption rating of the machine in absence of the same

- Electricity consumption is per hour of the machine calculated through a Chartered Engineer and certified by him.

1. Value to be reported in Column 8 of Table 9 of FORM GST SRM-II in case of no MRP on goods

- Sale price of the goods so manufactured shall be entered.

1. Qualification and eligibility of the Chartered Engineer for providing the certificate

- A Practicing Chartered Engineer having a certificate of practice from the Institute of Engineers India (IEI).

1. Is the special procedure in Notification 04/2024-CT applicable to manufacturing units in Special Economic Zone?

- The procedure is not applicable to manufacturing units in Special Economic Zone.

1. Is the special procedure in Notification 04/2024-CT applicable to manual processes using electric operated heat sealer and seamer?

- The procedure is not applicable to manual processes using electric operated heat sealer and seamer. Special procedure is not applicable in respect of manual packing operations.

1. Where multiple machines are required for filling, capping and packing, the Serial no. of which machine is declared?

- The detail of the machine being used for final packing of packages of the specified goods is required to be reported.

1. Who is required to comply with the special procedure in case of job work or contract manufacturing?

- Applicable to all persons involved in manufacturing process. However, if unregistered, liability to comply will be of principal manufacturer.

Place of supply to unregistered Customers will be based on delivery address

Circular No. 209/3/2024 dated 26.06.2024

Scenario-

- Section 10(1)(ca) of the IGST Act provides that where the supply of goods is made to an unregistered person, the place of supply would be the location as per the address of the said person recorded in the invoice and the location of the supplier where the address of the said person is not recorded in the invoice.
- However, there was a confusion regarding place of supply where the goods were to be delivered by a supplier at a location other than the address on record.

Clarification-

- In supply of goods to unregistered persons, where the billing address is different from the shipping address (address of delivery), the place of supply of goods shall be the address of delivery of goods recorded on the invoice.

Comments

- This clarification was issued to address the ambiguity in the place of supply provision under the IGST Act, specifically in case of supply of goods made to an unregistered person, where billing address is different from the address of delivery of goods, especially in the context of supply being made through e-commerce platforms.

Would this result in tax wars between States for allocation of taxes?

- GST being consumption based tax, the State in which goods are delivered is the State rightfully eligible for taxes.

Is this prospective or would this have retrospective effect?

- Though the department may state that this is a mere clarification in respect of existing law, the position indicated therein being different from the common understanding, this should be applied prospectively.

If entire ITC is available, value of import from related person can be 'Zero'

Circular No. 210/4/2024-GST dated 26.06.2024

Scenario-

- In case of import of services by a registered person from a related person located outside India, it would be deemed to be a supply even without consideration in terms of Entry 4 of Schedule I of the CGST Act.
- Hence, the importer is liable to pay tax under RCM by determining the value of supply by applying Rule 28 of the CGST Rules.

Clarification-

- In light of the Circular No. 199/11/2023-GST dated 17.07.2023, wherein clarification regarding taxability of services between distinct persons was provided, the Second Proviso to Rule 28(1) of CGST Rules is applicable in all the cases involving supplies between distinct as well as related persons, where full ITC is available to the recipient. Hence, the value declared in the invoice will be the open market value
- If the invoice is not issued by the related domestic entity, the open market value of such services may be deemed to be declared as Nil.

Comments

- This clarification was issued in the light of the demands raised by the Revenue authorities against the registered persons seeking tax on RCM in respect of certain activities undertaken by their related persons based outside India, based on an expansive interpretation of the deeming fiction in Sl. No. 4 of Schedule I of the CGST Act. For ex. Secondment transaction, Trademark licensing, etc.

Time Limit for availing ITC on RCM transactions received from unregistered persons.

Circular No. 211/5/2024 dated 26.06.2024

Scenario-

- In case of supplies received from unregistered suppliers where the tax has to be paid by the recipient of the services under RCM, the recipient is liable to issue an self invoice under Section 31(3)(f).
- In certain scenarios, there may be a delay in payment of tax.

Clarification-

- The relevant date for availment of credit in the aforesaid scenario will be the date of invoice and not the date of actual receipt of service.

Comments

- This specific Circular refers to a liability under RCM which became payable as a result of clarification or judgment, indicating scenarios of Secondment, Corporate Guarantee, etc. and hence provides an opportunity to assesseees to pay and claim ITC.
- This Circular however indicates that interest is payable for delayed payment of tax.

In case, the Companies have made payment of taxes belatedly with interest, but not availed credit in the past, can they avail the ITC now?

- The RCM credit has not been delinked to the invoice date, but the understanding has been brought in line with the plain reading of the provision, as the department has been consistently taking a view that the date of underlying supply and not the document is relevant for availing ITC.
- Hence, if ITC has not been availed within November 30th succeeding the end of the Financial Year, then ITC may still not be eligible in such cases.

Mechanism for providing evidence of reversal of ITC for post sale discounts

Circular No. 212/6/2024-GST dated 26.06.2024

Scenario

- Section 15(3)(b)(ii) casts an obligation on the supplier to prove that the ITC pertaining to the discount value has been reversed by the Recipient for reduction of such discount from the value of supply

Clarification

- Supplier may procure a certificate issued by a CA (Chartered Accountant) or the CMA (Cost Accountant) containing the following details from the recipient of supply certifying that the recipient has reversed the proportional ITC pertaining to the discounts offered- (1) Details of credit note, (2) Relevant invoice number, (3) Amount of ITC reversed along with FORM GST DRC-03, (4) UDIN number
- In case of Discounts not exceeding 5 Lakh rupees in a FY, an undertaking from the recipient would suffice containing the particulars mentioned above.

Comment

- Though this clarification burdens the Suppliers with additional documentation requirement, the same also ensures that due deduction in transaction value is not denied to eligible suppliers.

ESOP/ESPP/RSU provided by a company to its employees through its overseas holding company are not taxable

Circular No. 213/07/2024-GST dated 26.06.2024

Scenario

- As per terms of contract of employment, Indian companies provide the option to their employees for allotment of securities/shares of their foreign holding company as part of the compensation package under Employee Stock Purchase Plan (ESPP) or Employee Stock Option Plan (ESOP) or Restricted Stock Unit (RSU)
- In such cases, on exercising the option by the employees of Indian subsidiary company, the securities/shares of foreign holding company are allotted directly by the holding company to the concerned employees of Indian subsidiary company, and the cost of such securities/shares is generally reimbursed by the subsidiary company to the holding company.

Clarification

- ‘Securities’ being neither goods or services, no GST is payable on the stock value involved in such schemes.
- The transaction of extending stocks under the scheme being covered under Entry 1 of [Schedule III](#) of the CGST Act , i.e. the services by an employee to the employer in the course of or in relation to his employment are treated neither as supply of goods nor as supply of services.
- In case additional amounts are paid towards services of facilitating/ arranging the transaction in securities/ shares by the foreign holding company to the domestic subsidiary company, then GST is payable.

Comment

- With many MNCs engaging in this kind of arrangement to retain employees, this is a much awaited clarification as the department had started demanding tax from the Indian entities, considering these transactions to be in the nature of import of services.

Reversal of ITC not to be computed on investment portion on Life Insurance Premium

Circular No. 214/8/2024-GST dated 26.06.2024

Scenario

- Life insurance companies offer multiple kinds of policies, including those wherein premium amount includes amount towards investment.
- Further for the purpose of determining taxable value of such premiums, Rule 32(4) of the CGST Rules has been notified, which provides that the value of supply of services in respect of life insurance business is to be determined by deducting the amount of premium allocated for investment/savings on behalf of the policy holder. The said sub-rule also provides for determination of value of supply of such services based on certain percentage of the gross premium in other situations.

Clarification

- In terms of Section 2(47) of the CGST Act, the portion of premium which is not included in the taxable value is neither nil-rated, nor wholly exempted and also not a non-taxable supply. Hence, non-inclusion of certain portion premium in value of taxable supply per se will not make such portion of the consideration attributable to non-taxable or exempt supply.
- There is no requirement of reversal of ITC under Section 17 of the CGST Act as the amount for taxable life insurance policies which is not included in the taxable value cannot be considered as pertaining to non-taxable or exempt supply.

Comment

- Reversal on investment portion by Life Insurance Companies would lead to a huge burden and hence this clarification will enable to reduce cost of insurance premiums.

Liability of the Insurance company to pay GST on salvage/wreck value

Circular No. 215/9/2024-GST dated 26.06.2024

Scenario

- The motor vehicles insurance companies insure the cost of repairs and damages of motor vehicles. In some cases, where the vehicle is completely damaged, the insurance company either pays-
 - Insured's Declared Value (IDV) less salvage value, where the ownership for such wreckage/ salvage remains with the insured; or
 - Entire IDV, where the ownership for such wreckage/ salvage is transferred to the Insurance Company.

Clarification

- In case the insurance companies are deducting the value of salvage as deductibles from the claim amount, the salvage remains the property of insured and insurance companies are not liable to discharge GST liability on the same.
- In cases where the insurance claim is settled on full claim amount, without deduction of value of salvage, the salvage becomes the property of Insurance company, and they are obligated to discharge GST on supply of salvage to the salvage buyer.

Comment

- This clarification correlates the liability with ownership for a specific scenario, which is in line with provisions of GST Law.

GST liability and ITC in cases involving Warranty/ Extended Warranty

Circular No. 216/10/2024-GST dated 26.06.2024

Scenario

- GST liability and availability of ITC in respect of warranty replacement of parts and repair services during the warranty period wherein the goods as such are replaced.
- In certain situations, the extended warranty is extended by Manufacturer or third party, who is not the supplier of goods and such extended warranty may be opted either at the time of supply or any time thereafter.

Clarification

- It has been clarified that the manufacturer is not required to reverse the input tax credit in respect of the said replacement parts or on the repair services provided.
- Where distributor replaces goods as part of warranty out of his own stock on behalf of manufacturer and subsequently gets replenishment of the same, no GST is payable on such replenishment of goods/parts and no reversal of ITC is required to be made by the manufacturer.
- Where supplier of extended warranty is different from the supplier of goods at the time of original supply it cannot be treated as the composite supply. The supply of extended warranty will be treated as a separate supply from the original supply of goods, and GST will be paid accordingly.
- Where supply of extended warranty is made subsequent to the original supply of goods the supply of extended warranty shall be treated as a supply of services distinct from the original supply of goods, and the supplier of extended warranty shall be liable to discharge GST liability applicable on such supply of services.

Comment

- The present Circular provides additional clarity in furtherance to Circular No. 195/07/2023-GST dated 17.07.2023, including 'goods' instead of earlier coverage only to 'parts'. It also provides clarity on extended warranty, which is a welcome move.

Whether the judgement of Supreme Court in Tata Motors which stated that replenishment of stock maintained by the dealer used for warranty would not be eligible for deduction from Sale value for the purpose of VAT continue to apply in GST?

- The Circular clarifies that where distributor replaces goods as part of warranty out of his own stock on behalf of manufacturer and subsequently gets replenishment of the same, no GST is payable on such replenishment of goods/parts and no reversal of ITC is required to be made by the manufacturer.

Availability of ITC for motor vehicle repair expenses

Circular No. 217/11/2024-GST dated 26.06.2024

Scenario- The insurance companies, which are engaged in providing general insurance services in respect of insurance of motor vehicles, insure the cost of repairs/ damages of motor vehicles incurred by the policyholders and settle the claims in two modes i.e., Cashless or Reimbursement mode. Under the latter mode, the payment is first made by the Insured to the Non-Network Garage, which is subsequently reimbursed by the insurance company to the Insured, to the extent of approved repair/ claim cost.

Issue	Clarification
Whether ITC is available to Insurance Companies for repair expenses reimbursed by Company in reimbursement mode of settlement.	Irrespective of payment for the repair services being first made by the insured to the garage, which is then reimbursed, liability to pay for the repair service lies with the insurance company, which qualifies them as a “recipient” under section 2(93) of CGST Act, to the extent of approved repair liability and hence is eligible to ITC on such expenses.
Where insurance company only pays for the approved claim amount and any amount over and above the same is to be borne by the insured, what is the extent of the ITC available to insurance company?	Where garage issues two separate invoices for approved claim and for the excess amount, ITC is available to insurance company on the invoice value if the claim is reimbursed by the Company to the insured. However, if the invoice for full amount is issued to Insurance Company while insurance Company makes reimbursement to insured only for the approved amount, ITC is available only to the extent of approved cost and not full amount.
Whether ITC is available where invoice is not in the name of Insurance Company.	Section 16(2)(a) and 16(2)(aa) of CGST Act is not satisfied. ITC is not available.

The said clarification shall settle the objections raised by the authorities where ITC was being denied to insurance companies on repair invoices by stating that the payment for such invoice was made by the insured under the reimbursement claim of settlement. This would bring both reimbursement and cashless scheme at par, insofar as ITC is concerned.

Taxability of loan provided by overseas affiliate to Indian affiliate

Circular No. 218/12/2024-GST dated 26.06.2024

Scenario

- Loan is provided by overseas entity to Indian entity or by a person to related person, is taxable when no consideration in the form of processing fee, etc. is charged.

Clarification

- In terms of the Notification No. 12/2017-CT(R), the supply of services of granting loans/ credit/ advances, in so far as the consideration is represented by way of interest or discount, is fully exempt under GST.
- In case of loans provided between related parties, no 'processing' fee is charged and no administrative cost may be involved in granting such a loan, since the same is only charged by financial institutions. Even between unrelated parties, there may not be any processing fee charged basis the relationship between the lender and the person taking the loan.
- In the absence of consideration being charged between related persons, or by an overseas affiliate from its Indian entity, for extending loan or credit, other than by way of interest or discount the same does not amount to supply of service.

Comment

- The same comes as a relief to various related entities where loans can be provided seamlessly by merely collecting an interest amount or providing discount.

ITC on ducts and manholes used in network of optical fiber cables (OFCs).

Circular No. 219/13/2024-GST

- Ducts and manholes are basic components for OFC network used in providing telecommunication services. They are covered under the definitions of “plant and machinery” for which the credit is available, as they are used as parts the OFC network for making outward supply of transmission.
- The Ducts and manholes are neither in the nature of land, building or civil structures nor are in nature of telecommunication towers or pipelines laid outside the factory premises as per the Explanation to Section 17.
- Therefore, availment of ITC is not restricted.

This will avoid Authorities from denying the credit on the ground that the same is blocked as per Section 17(5) of the CGST Act. A similar analogy is required to be adopted for determining eligibility of ITC of Air Handling Unit, Heating, ventilation, and air conditioning and any other cabling used in buildings.

Place of Supply for custodial services provided by banks to Foreign Portfolio Investors (FPIs)

Circular No 220/14/2024-GST

Clarification was sought whether the place of supply of custodial services is determined by applying Section 13(8)(a) as the location of service provider.

Relying on the Education Guide under the services tax regime, it has been clarified that custodial services cannot be covered under services provided by bank to account holder in terms of explanation to Section 13(8) of the IGST Act and therefore the place of supply for custodial services would be location of recipient as per Section 13(2).

This provides clarity since a view has been taken by Authorities that place of supply in case of 'custodial service' would be as per Sec 13(8)(a) of IGST Act

The last 2 paragraphs of this circular categorically refers to education guide of the Service tax regime and provides clarification using the same. Can the understanding provided in the Guide be applied to other fact patterns – specifically where one has immovable property in multiple States, why a separate registration would be required in each State ?

- To the extent concepts are same in Finance Act, 1994 and GST, viz. intermediary, agreeing to obligation to do an act or tolerate an act, etc. the analogy of Education Guide may be applied. However, where the legal position is different, it would be advisable to take independent views based on the provisions.

GST on Supply of services of construction of road and maintenance thereof of National Highway Projects in Hybrid Annuity Model

Circular No. 221/15/2024-GST dated 26.06.2024

Scenario

- Supply of services of construction of road and maintenance thereof of National Highway Projects of National Highways Authority of India (NHAI) in Hybrid Annuity Mode (HAM) model where some portion of Bid Project Cost is received during construction and the rest through deferred payments spread over years.

Clarification

- In case of HAM contract, the payments are in installments upon completion of stages as per the contract and therefore the same amounts to continuous supply of services.
- Therefore, in terms of Section 13(2) read with Section 31(5) of the CGST Act, time of supply of services under HAM contract including the construction and O&M With regard to construction and O & M stages would be the date of issuance of invoice or date of receipt of payment, whichever is earlier if invoice is issued. If invoice is not issued, then time of supply will be the date of provision of service or date of receipt of payment, whichever is earlier.
- Additionally, it is also clarified that if such installments includes interest, such interest will be part of taxable value of supply as per Section 15(2)(d) of the CGST Act.

GST Payable at time of payment of instalment towards spectrum usage charges by telecom operators

Circular No. 222/16/2024-GST dated 26.06.2024

Scenario

- In spectrum allocation transactions, the successful bidding telecom operator opts for making payments in instalments under deferred payment option as per Frequency Assignment Letter (FAL) issued by Department of Telecommunication (DoT), Government of India.
- These spectrum allocation charges are subjected to GST under RCM in the hands of the telecom operators.
- Department has raised GST demands on the entire bid amount by considering the date FAL as the document the time of supply.

Clarification

- The present supply would be construed to be a continuous supply of service.
- In light of above, it is clarified that in case where full upfront payment is made by the telecom operator, GST would be payable when the payment of the said upfront amount is made or is due, whichever is earlier, whereas in case where deferred payment is made by the telecom operator in specified installments, GST would be payable as and when the payments are due or made, whichever is earlier

Comment

- Multiple scenarios where the contract is with government, the assessee is required to make payment in instalments and is liable to RCM, similar disputes have been raised by the department. This clarification would now resolve this issue.

Guidelines for recovery of outstanding dues, in cases wherein first appeal has been disposed of, till Appellate Tribunal comes into operation

Circular No. 224/18/2024-GST dated 11.07.2024

Scenario

- This is a scenario where the first Appellate Authority has confirmed the demand, and the Assessee cannot file an Appeal to the Tribunal to non-operation of the GST Tribunal. As per Section 78 of the CGST Act, the department has initiated the recovery proceedings, if the demand is not paid within 3 months.

Clarification

- In terms of Section 122(8) of the CGST Act, if the assessee pays the pre-deposit, the recovery proceedings for the remaining amount is deemed to be stayed. Accordingly, if the assessee pays the amount equivalent to the pre-deposit and provides an undertaking to the officer that he will file an Appeal, the said payment will be mapped against the demand and the recovery of the remaining amount will be stayed.
- In case, the assessee does not pay the amount equivalent to the amount of pre-deposit or fails to provide declaration, the department can initiate the recovery proceedings.
- In case where the Assessee has already paid the pre-deposit amount in Form DRC-03, the Assessee in terms of Rule 142(2B) of the CGST Rules can file Form GST DRC-03A and adjust the said amount towards the demand.

Comment

- The assessee has to pay an amount equivalent to the pre-deposit in order to avoid the recovery proceedings being initiated by the department.
- In order to track the payments made towards the demand, the new form is introduced wherein the amount already paid can be adjusted towards the demand and the department will not initiate the recovery proceedings.

Taxability and valuation of corporate guarantees between related parties under GST

Circular No. 225/19/2024-GST dated 11.07.2024

Scenario

- Application of sub-rule (2) of CGST Rules to the corporate guarantees issued prior to the insertion of the said sub-rule on 26th October 2023 and the valuation of intra-group corporate guarantees issued before 26th October 2023.
- Valuation of supply of services providing corporate guarantee and eligibility of recipient to avail full Input Tax Credit.
- Applicability of GST on assignment of already issued corporate guarantee and proportionate GST liabilities for more than one guarantor.

Clarification

- The Circular clarified that the valuation of the supply of services of providing a corporate guarantee, if issued or renewed before 26.10.2023, is to be done in accordance with Rule 28 of the CGST Rules. The valuation of the supply of services providing a corporate guarantee, issued or renewed after 26.10.2023, is to be evaluated as per Rule 28(2) of the CGST Rules.
- The value of the supply of services by providing a corporate guarantee is to be calculated solely on the basis of the amount guaranteed in such services and not on the actual loan amount disbursed to the recipient of the services. Recipient of services shall be eligible to avail of full ITC irrespective of the actual disbursement of the loan or total amount of disbursement.
- The takeover of the existing loans by another banking /financial institution other than the banking/financial institution which had issued such loan falls outside the scope of providing a corporate guarantee to any banking/ financial institution and therefore, such takeover will have no impact on GST. Whereas suppose there is an issuance of a fresh corporate guarantee or renewal of a previously issued corporate guarantee at the time of the takeover. In that case, it will attract GST under Rule 28(2) of the CGST Rules.
- When more than one guarantor is providing the services of corporate guarantee, then the value of such services will be the sum of actual consideration paid/payable to the co-guarantors if it is higher than 1% of the corporate guarantee, whereas if the sum of actual consideration is less than the 1% of the corporate guarantee then each co-guarantor will be entitled to pay GST on 1% of the guarantee provided by them.

Taxability and valuation of corporate guarantees between related parties under GST

Circular No. 225/19/2024-GST dated 11.07.2024

Scenario

- Mechanism in which GST is to be paid in case Intra-Group Corporate Guarantee is issued by domestic corporates, the recipient may not be able to claim ITC as there is no actual invoice and payment
- Frequency of the discharge of tax liability on corporate guarantee and valuation of when the recipient is entitled to ITC.

Clarification

- When the domestic corporate entity issues intra-group corporate guarantees, GST is to be paid under the forward charge mechanism, whereas if the foreign/ overseas entity provides such guarantee for a related entity in India, GST is to be paid under the reverse charge mechanism by the recipient of the service of corporate guarantee, i.e., the related entity in India.
- After the amendment vide Notification dated 10.07.2024, the value of the supply of services of providing corporate guarantee to banking/ financial institutions on behalf of the recipient shall be 1% of the amount guaranteed per annum or the actual consideration, whichever is higher. Moreover, if the guarantee is provided for multiple years, the total GST payable is 1% of the guaranteed amount multiplied by the number of years the guarantee lasts or the actual consideration, whichever is higher. Further, if the guarantee is for less than one year, the tax will be calculated proportionately for that period or actual consideration, whichever is higher.
- As per the Notification dated 10.07.2024 if a corporate guarantee is issued or renewed on or after 26.10.2023, the valuation of the supply must be done as per the amended Rule 28(2) of the CGST Rules, i.e., the value mentioned in the invoice will be considered the value of the supplied service.
- As per the Notification, Rule 28(2) of the CGST Rules will not apply if the recipient of service of providing corporate guarantee between related persons is located outside India.

Mechanism for refund of additional Integrated Tax (IGST) paid on account of upward revision in price of the goods subsequent to exports

Circular No. 226/20/2024-GST Dated 11.07.2024

Scenario-

- In situations where the price of export goods needs to be revised subsequent to their exports, due to various reasons such as linking of the prices of the export commodities to some international index or as per the terms of contract between the two parties etc., the exporter is required to pay additional IGST on account of upward price revision along with applicable interest, the circular provides for additional information and mechanism for claiming refund of the IGST Paid.

Clarification-

- In light of the Circular No. 226/20/2024-GST Dated 11.07.2024, in order to claim refund of the IGST paid, the Appellant needs to file an application through FORM GST RFD-01 and the said form would be verified by the proper officer before granting the refund.
- The proper officer while granting the refund shall verify whether the exporter has deposited the excess refund amount in the cases where there is a downward revision in price of goods subsequent to exports, during the relevant tax period. No refund is allowed when the amount claimed is less than one thousand rupees.

Comments

- The said amendment has resolved the existing issues regarding refund claims in situation of an Upward Revision along with the same the department have also provided authority to the proper officer to cross check the refund application regarding any downward revision which in-turn provides them the power to demand the refund which was previously collected by the assessee.

Processing of refund applications filed by Canteen Stores Department (CSD)

Circular No. 227/21/2024-GST Dated 11.07.2024

Scenario-

- The Central Government, vide Notifications No. 06/2017-Central Tax (Rate), No. 06/2017 Integrated Tax (Rate) and No. 06/2017-Union territory Tax (Rate), all dated 28th June 2017, had specified that CSD, shall be entitled to claim a refund of fifty per cent of the applicable tax paid by the CSD on all inward supplies of goods for the purposes of subsequent supply of such goods to their Unit Run Canteens or to their authorized customers.
- In line with the same a new functionality has been introduced in the Common portal which allows CSD to apply for such refund and in regards with the same Rule 96B has been inserted along with FORM GST RFD-10A.

Clarification-

- In light of the Circular No. 210/4/2024-GST dated 26.06.2024, wherein the CSD is required to apply for refund once in every quarter and CSD will also be allowed to file the refund application for multiple quarters, clubbing multiple FYs.
- A refund application form must be accompanied by
 - (i) An undertaking that the goods on which refund is claimed has been received for the purposes of subsequent supply to its Unit Run Canteens or its authorized customers; and
 - (ii) A declaration that no refund has been claimed earlier against the invoices on which the refund is being claimed
- The proper officer may scrutinize the details contained in FORM RFD-10A, FORM GSTR-3B and FORM GSTR-2B, for processing the said refund claim. The proper officer shall verify the details of the invoices for which refund has been claimed by the CSD, have been furnished by the concerned supplier in his FORM GSTR-1 and the said supplier has furnished in FORM GSTR-3B for the concerned tax period.

Circular No. 228/22/2024-GST Dated 11.07.2024

Scenario-



GST exemption on the outward supplies made by the Ministry of Railways (Indian Railways).

- The services provided by Ministry of Railways to public such as sale of platform tickets, facility of retiring rooms etc. and supply of services made between various zones/ divisions of Railways are exempted and would be regularized on '*as is where is*' basis from 20.10.2023 to 14.07.2024.



GST exemption on the transactions between Special Purpose Vehicles (SPVs) and Ministry of Railways (Indian Railways).

- On basis of the recommendation by the 53rd GST Council, GST on the supply of services by SPVs to Ministry of Railways by way of allowing to use infrastructure built and owned by them and maintenance services supplied by Ministry of Railways to SPVs such as use of infrastructure built and owned by SPVs is exempted from taxation and regularized for the period from 01.07.2017 to 14.07.2024 on '*as is where is*' basis.



Applicability of GST on retrocession services.

- It has been clarified that the term '*reinsurance*' as mentioned in Sl. No. 36A of notification No. 12/2017-CT(R) dated 28.06.2017 includes '*retrocession*' services.

Circular No. 228/22/2024-GST Dated 11.07.2024

Scenario-



GST liability on the reinsurance of specified general and life insurance schemes.

- GST liability on the services by way of reinsurance of the insurance schemes specified in Sl. Nos. 35 and 36 of notification No. 12/2017-CT(R) dated 28.06.2017 is exempted and regularized for the period from 01.07.2017 to 24.01.2018 on 'as is where is' basis.



GST liability on the reinsurance of insurance schemes for which total premium is paid by the Government

- Services provided to the Government under any insurance scheme for which total premium is paid by the Government are exempt from GST under Sl. No. 40 of notification No. 12/2017-CT(R) dated 28.06.2017. Vide entry at Sl. No. 36A of the said notification, re-insurance of the aforesaid insurance schemes has been prospectively exempted w.e.f. 27.07.2018.



GST liability on certain accommodation services

- Accommodation services having value of supply of accommodation up to Rs. 20,000/-per month per person subject to the condition that the accommodation service is supplied for a minimum continuous period of 90 days has been exempted and regularized on 'as is where is' basis for the period from 01.07.2017 to 14.07.2024.

Circular No. 228/22/2024-GST Dated 11.07.2024

Scenario-



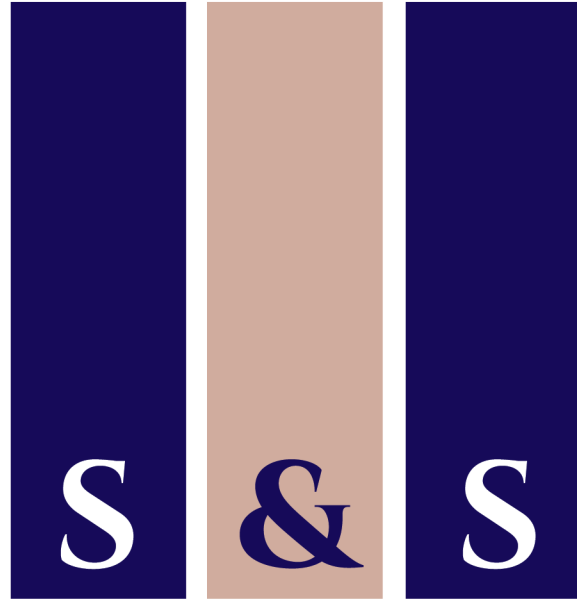
Applicability of GST on the statutory collections made by RERA) in accordance with the Real Estate (Regulation and Development) Act, 2016

- On basis of the 53rd GST Council meeting it is clarified that statutory collections made by RERA are covered under the Sl. No. 4 of notification No. 12/2017-CT(R) dated 28.06.2017.



Applicability of GST on the incentive amount shared by acquiring banks with other stakeholders in the digital payment ecosystem under the notified Incentive Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions.

- On the basis of the recommendations by the 53rd GST Council, it is clarified that further sharing of the incentive amount by the acquiring bank with other stakeholders, to the point where the incentive is distributed in the proportion as decided by NPCI under the notified Incentive Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions, shall be in the nature of a subsidy and is thus, not taxable.



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