

GST UPDATE

Clarifications issued pursuant to 53rd GST Council Meeting Recommendations



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GST Council conducted 53rd meeting on 22.06.2024 and announced several changes both in respect of rate of tax and procedures. Currently, CBIC has issued several circulars clarifying various issues as per the recommendations of the GST Council. A gist of the clarifications issued is provided below:

Fixing monetary limits for filing appeals or applications by the Department before GSTAT, High Courts and Supreme Court:

Circular has been issued fixing the limit for filing the appeal by the GST department before appellate authorities and courts. As per the circular, the limit is set as under:

Appellate Forum	Monetary Limit (amount involved in Rs.)
GSTAT	20,00,000/-
High Court	1,00,00,000/-
Supreme Court	2,00,00,000/-

Monetary limits specified above for filing appeal or application by the department before GSTAT or High Court and for filing Special Leave Petition or appeal before the Supreme Court shall be applicable in all cases, except in the following circumstances where the decision to file appeal shall be taken on merits irrespective of the said monetary limits:

- i. Where any provision of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act has been held to be *ultra vires* to the Constitution of India.
- ii. Where any Rules or regulations made under CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act have been held to be *ultra vires* the parent Act.
- iii. Where any order, notification, instruction, or circular issued by the Government, or the Board has been held to be *ultra vires* of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act or the Rules made thereunder.
- iv. Where the matter is related to -
 - a. Valuation of goods or services; or
 - b. Classification of goods or services; or
 - c. Refunds; or
 - d. Place of Supply; or
 - e. Any other issue, which is recurring in nature and/or involves interpretation of the provisions of the Act /the Rules/ notification/circular/order/instruction, etc; or

- v. Where strictures/adverse comments have been passed and/or cost has been imposed against the Government/Department or their officers.
- vi. Any other case or class of cases, where in the opinion of the Board, it is necessary to contest in the interest of justice or revenue.

Circular No. 207/15/2024-GST

Clarifications on various issues pertaining to special procedure for the manufacturers of the specified commodities:

This clarification has been issued in respect of the special procedure that was notified vide Notification No. 30/2023-Central Tax dated 31.07.2023 to be followed by the registered persons engaged in manufacturing Pan Masala and Tobacco Products. Following clarifications have been issued:

- If the machine number is not available either on the machine or as per the available documents/ records, then the manufacturer may assign any numeric number to the said machine and provide the details of the same in Table 6 of FORM GST SRM-I.
- Where the electricity consumption rating of the packing machine is not available then the manufacturer may get such electricity consumption per hour of the said machine calculated through a Chartered Engineer and get the same certified by the said Chartered Engineer in the format prescribed in FORM GST SRM-III.
- In cases where there is no MRP of the package, then the sale price of the goods so manufactured shall be entered in Column 8 of Table 9 of FORM GST SRM-II.
- It is clarified that a Practicing Chartered Engineer having a certificate of practice from the Institute of Engineers India (IEI) is qualified to provide Chartered Engineer certificate.
- It is clarified that the special procedure as notified vide Notification No. 04/2024-CT dated 05.01.2024 is not applicable to the manufacturing units located in Special Economic Zone.
- It is clarified that the said special procedure notified vide Notification No. 04/2024-CT dated 05.01.2024 is not applicable in respect of manual seamer/ sealer being used for packing operations.
- It is clarified that in a manufacturing process there may be different machines being used such as one for filling of packages, another for putting seal on the packages and another for final packing. The detail of that machine is required to be reported in Table 6 of FORM GST SRM- I which is being used for final packing of the packages of the specified goods.
- It is clarified that the special procedure notified vide Notification No. 04/2024-CT dated 05.01.2024 shall be applicable to all persons involved in manufacturing process including a job worker / contract manufacturer. However, if the job worker/ contract manufacturer is

unregistered, then the liability to comply with the said special procedure will be of the concerned principal manufacturer.

Circular No. 208/15/2024-GST

Clarification on the provisions of clause (ca) of Section 10(1) of the Integrated Goods and Service Tax Act, 2017 relating to place of supply:

It is clarified that in cases where supplies are made to unregistered persons where billing address is different from the delivery address, then **the place of supply shall be the delivery address.**

Illustration: If the goods are sold to an unregistered person from Karnataka and as per the billing address is Chennai, Tamil Nadu and Delivery address is Hyderabad, Telangana, then, as per the clarification issued, the place of supply shall be the delivery address in Telangana.

Circular No. 209/15/2024-GST

Clarification on valuation of supply of import of services by a related person where recipient is eligible to full input tax credit:

The following clarifications have been issued in respect of the transactions between related persons:

- The clarification which has been issued vide Circular No. 199/11/2023-GST dated 17.07.2023 in respect of supplies of services between distinct persons in cases where full ITC is available to the recipient, is equally applicable in respect of import of services between related persons.
- It is clarified that in cases where the foreign affiliate is providing certain services to the related domestic entity, and where full input tax credit is available to the said related domestic entity, the value of such supply of services declared in the invoice issued under section 31 (3) (f) of the CGST Act by the said related domestic entity may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.
- Further, in cases where full input tax credit is available to the recipient, if the invoice is not issued by the related domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.

Our comments:

- *This clarification brings clarity on the scope of applicability of circular No. 199/11/2023-GST.*

- *The circular clarifies that the value of the supply reported by the recipient of the service by raising the self-invoice shall be deemed to be the open market value of the supply.*
- *It is also clarified that even if the invoice is not raised, the value shall be Nil where full input tax credit is available.*
- *This clarification is welcome a measure as it puts to rest for the issue of demand notices issued by considering the notional value for the import of services and related party transactions.*
- *The clarification would also be applicable for the related party transactions within India where full input tax credit is available. However, wherever full input tax credit is not available, such taxpayer is required to ascertain proper value for the supply and discharge GST.*
- *However, one aspect that may be open for debate is that where there is an agreed consideration for the supply between the related parties and whether in such case, still the recipient can raise a self-invoice for lesser amount and thereby take the benefit of the clarification. Though the plain reading of the provisions and the clarification implies that it can be done, it may have to be evaluated by the taxpayer before deciding.*

Circular No. 210/15/2024-GST

Clarification on time limit under Section 16(4) of CGST Act, 2017 in respect of RCM supplies received from unregistered persons:

Section 16 (4) of the GGST Act prescribes time limit for availing the ITC. CBIC has clarified the following in respect of the time limit applicable in cases where the supplies liable for RCM are received from unregistered persons:

- In case of supplies where the supplier is unregistered and recipient is registered and the tax has to be paid by the recipient on RCM basis, the recipient is required to issue invoice in terms of the provisions of section 31(3)(f) of CGST Act and pay the tax on the same incash under RCM.
- it is clarified that in cases of supplies received from unregistered suppliers, where tax has to be paid by the recipient under reverse charge mechanism (RCM) and where invoice is to be issued by the recipient of the supplies in accordance with section 31(3)(f) of CGST Act, the relevant financial year for calculation of time limit for availment of input tax credit under the provisions of section 16(4) of CGST Act will be the **financial year in which the invoice has been issued by the recipient under section 31(3)(f) of CGST Act**, subject to payment of tax on the said supply by the recipient and fulfilment of other conditions and restrictions of section 16 and 17 of CGST Act.

- The recipient issues the invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax. Further, in cases of such delayed issuance of invoice by the recipient, he may also be liable to penal action under the provisions of Section 122 of CGST Act.

Our comments:

- *This is a welcome clarification, which resolves the issue in several ongoing litigations.*
- *Irrespective of the financial year to which RCM liability pertains, the taxpayer can raise the self-invoice and avail the ITC in the year in which the payment of tax is made. However, the taxpayer shall be liable for interest from the date of receipt of the supplies till the date of raising the invoice, if there is any delay in raising the invoices.*

Circular No. 211/15/2024-GST

Clarification on mechanism for providing evidence of compliance of conditions of Section 15(3)(b)(ii) of the CGST Act, 2017 by the suppliers:

Clarification has been issued to clarify the documentary evidence to prove the fulfilment of section 15 (3) (b) (ii) of the CGST Act. Said section provided that in case where the credit notes have been issued for the post-sale discount, the supplier will be eligible to reduce the output tax on account of such credit notes provided the recipient of the supply reverses the corresponding input tax credit. However, currently, there is no facility to verify such reversal of ITC.

It is clarified that till the time a functionality/ facility is made available on the common portal to enable the suppliers as well as the tax officers to verify whether the input tax credit attributable to such discounts offered through tax credit notes has been reversed by the recipient or not, the supplier may procure **a certificate from the recipient of supply, issued by the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that the recipient has made the required proportionate reversal of input tax credit at his end in respect of such credit note issued by the supplier.**

The said CA/CMA certificate may include details such as the details of the credit notes, the details of the relevant invoice number against which the said credit note has been issued, the amount of ITC reversal in respect of each of the said credit notes along with the details of the FORM GST DRC-03/ return / any other relevant document through which such reversal of ITC has been made by the recipient.

In cases, where the amount of tax (CGST+SGST+IGST and including compensation cess, if any) involved in the discount given by the supplier to a recipient through tax credit notes in a Financial Year is not exceeding Rs 5,00,000 (rupees five lakhs only), then instead of CA/CMA certificate, the said supplier may procure an undertaking/ certificate from the said recipient that the said input tax credit attributable to such discount has been reversed by him, along with the details mentioned in Para 2.5 above.

Circular No. 212/15/2024-GST

Seeking clarity on taxability of re-imbursement of securities/shares as SOP/ESPP/RSU provided by a company to its employees:

It is clarified that no supply of service appears to be taking place between the foreign holding company and the domestic subsidiary company where the foreign holding company issues ESOP/ESPP/RSU to the employees of domestic subsidiary company, and the domestic subsidiary company reimburses the cost of such securities/shares to the foreign holding company on cost-to-cost basis. However, in cases where an additional amount over and above the cost of securities/shares is charged by the foreign holding company from the domestic subsidiary company, by whatever name called, GST would be leviable on such additional amount charged as consideration for the supply of services of facilitating/ arranging the transaction in securities/ shares by the foreign holding company to the domestic subsidiary company. The GST shall be payable by the domestic subsidiary company on reverse charge basis in such a case on the said import of services.

Circular No. 213/15/2024-GST

Clarification on the requirement of reversal of input tax credit in respect of the portion of the premium for life insurance policies which is not included in taxable value:

It is clarified that the amount of the premium for taxable life insurance policies, which is not included in the taxable value as determined under rule 32(4) of CGST Rules, cannot be considered as pertaining to a non-taxable or exempt supply and therefore, there is no requirement of reversal of input tax credit as per provisions of Rule 42 or rule 43 of CGST Rules, read with sub-section (1) and sub-section (2) of Section 17 of CGST Act, in respect of the said amount.

Circular No. 214/15/2024-GST

Clarification on taxability of wreck and salvage values in motor insurance claims:

In cases where due to the conditions mentioned in the contract itself, general 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. However, in cases, where the insurance claim is settled on full claim amount, without deduction of value of salvage/wreckage (as per the terms of the contract), the salvage becomes the property of the insurance company, and the insurance company will be obligated to discharge GST on supply of salvage to the salvage buyer.

Circular No. 215/15/2024-GST

Clarification in respect of GST liability and input tax credit (ITC) availability in cases involving Warranty/ Extended Warranty, in furtherance to Circular No. 195/07/2023-GST dated 17.07.2023:

Clarification regarding GST liability as well as liability to reverse input tax credit in respect of cases where goods as such or the parts are replaced under warranty:

- It is clarified that the clarification provided in Para 2 of the Circular No. 195/07/2023-GST dated 17.07.2023 is also applicable in case where the goods as such are replaced under warranty.
- Accordingly, wherever, 'any part,' 'parts' and 'part(s)' has been mentioned in Para 2 of Circular No. 195/07/2023-GST dated 17.07.2023, the same may be read as 'goods or its parts, as the case may be'.
- Clarification in respect of cases where the distributor replaces the parts/ goods to the customer as part of warranty out of his own stock on behalf of the manufacturer and subsequently gets replenishment of the said parts/ goods from the manufacturer. It is clarified that in such a case, no GST is payable on such replenishment of goods or the parts, as the case may be. Further, no reversal of ITC is required to be made by the manufacturer in respect of the goods or the parts, as the case may be, so replenished to the distributor.

- It is clarified that the supply of extended warranty shall be treated as a supply of services distinct from the original supply of goods, and the supplier of the said extended warranty shall be liable to discharge GST liability applicable on such supply of services.

Circular No. 216/15/2024-GST

Entitlement of ITC by the insurance companies on the expenses incurred for repair of motor vehicles in case of reimbursement mode of insurance claim settlement:

It is clarified that ITC is available to Insurance Companies in respect of motor vehicle repair expenses incurred by them in case of reimbursement mode of claim settlement.

It is further clarified that if the invoice for full amount for repair services is issued to the insurance company while the insurance company makes reimbursement to the insured only for the approved claim cost, then, the input tax credit may be available to the insurance company only to the extent of reimbursement of the approved claim cost to the insured, and not on the full invoice value.

It is further clarified that input tax credit will not be available to the insurance company in respect of the invoice for the repair of the vehicle is not in name of the insurance company

Circular No. 217/15/2024-GST

Clarification regarding taxability of the transaction of providing loan by an overseas affiliate to its Indian affiliate or by a person to a related person:

It is clarified that in the cases, where no consideration is charged by the person from the related person, or by an overseas affiliate from its Indian party, for extending loan or credit, other than by way of interest or discount, it cannot be said that any supply of service is being provided between the said related persons in the form of processing/ facilitating/ administering the loan, by deeming the same as supply of services as per clause (c) of sub-section (1) of section 7 of the CGST Act, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act. Accordingly, there is no question of levy of GST on the same by resorting to open market value for valuation of the same as per rule 28 of Central Goods and Services Tax Rules, 2017.

In cases of loans provided between related parties, wherever any fee in the nature of processing fee/ administrative charges/ service fee/ loan granting charges etc. is charged, over and above the amount

charged by way of interest or discount, the same may be considered to be the consideration for the supply of services of processing/ facilitating/ administering of the loan, which will be liable to GST as supply of services by the lender to the related person availing the loan.

Circular No. 218/15/2024-GST

Clarification on availability of input tax credit on ducts and manholes used in network of optical fiber cables (OFCs) in terms of section 17(5) of the CGST Act, 2017:

It is clarified that availment of input tax credit is not restricted in respect of such ducts and manhole used in network of optical fiber cables (OFCs), either under clause (c) or under clause (d) of sub-section (5) of section 17 of CGST Act.

Circular No. 219/15/2024-GST

Clarification on place of supply applicable for custodial services provided by banks to Foreign Portfolio Investors:

It is clarified that the custodial services provided by banks or financial institutions to FPIs are not to be treated as services provided to 'account holder' and therefore, the said services are not covered under Section 13(8)(a) of the IGST Act. Therefore, the place of supply of such services is not to be determined under Section 13(8)(a) of the IGST Act but has to be determined under the default provision i.e., sub-section (2) of section 13 of the IGST Act. Accordingly, the place of supply of the services shall be the location of the recipient of the services.

Circular No. 220/15/2024-GST

Circular no 221- Time of supply on Annuity Payments under HAM Projects:

It is clarified that the tax liability on the concessionaire under the HAM contract, including on the construction portion, would arise at the time of issuance of invoice, or receipt of payments, whichever is earlier, if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract, as applicable. If invoices are not issued on or before the specified date or the date of completion of the event specified in the contract, tax liability would arise on the date of provision

of the said service (i.e., the due date of payment as per the contract), or the date of receipt of the payment, whichever is earlier.

It is also clarified that as the installments/annuity payable by NHAI to the concessionaire also includes some interest component, the amount of such interest shall also be includible in the taxable value for the purpose of payment of tax on the said annuity/installment in view of the provisions of section 15(2)(d) of the CGST Act.

Circular No. 221/15/2024-GST

Time of supply in respect of supply of allotment of Spectrum to Telecom companies:

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 instalments, GST would be payable as and when the payments are due or made, whichever is earlier.

It is also clarified that the similar treatment regarding the time of supply may apply in other cases also where any natural resources are being allocated by the government to the successful bidder/ purchaser for right to use the said natural resource over a period of time, constituting continuous supply of services as per the definition under section 2(33) of the CGST Act, with the option of payments for the said services either through an upfront payment or in deferred periodic instalments over the period of time.

Circular No. 222/15/2024-GST

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