



Clarifications pursuant to the 50th GST Council Meeting

Pursuant to the 50th GST Council Meeting held on July 11, 2023, the Central Board of Indirect Taxes & Customs (**CBIC**) has issued a series of Circulars and Notifications to clarify various issues have been a bone of contention between the taxpayer and the Department.

Circular No. 199/11/2023-GST dated July 17, 2023: Taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons

The captioned Circular has provided clarifications with respect to taxability of supply of services between distinct persons in terms of Section 25(4) of the Central Goods and Services Tax Act, 2017 (**CGST Act**). In case of common input services procured from a third party but attributable to both Head Office (**HO**) and Branch Office (**BO**) or exclusively to one or more BO's, it has been clarified that:

- HO has an **option** to distribute Input tax credit (**ITC**) in respect of common input services by following Input Service Distributor (**ISD**) mechanism.
- It has been clarified that HO can also issue tax invoice to the concerned BO's **qua** common input services procured from a third party and the BO's can then avail ITC on the same (subject to the provisions of Section 16 and 17 of CGST Act).
- In respect of internally generated services from HO to BO for which full ITC is available:
 - Cross charge value shall be considered as the deemed Open Market Value (**OMV**) in terms of Proviso to Rule 28 of the Central Goods and Services Tax Rules, 2017 (**CGST Rules**) irrespective of whether cost of any component such as salary cost is included or not in the value of service;
 - In case a tax invoice is not issued for any specific service rendered by HO to BO, the value of such service can be deemed as NIL by the HO to BO which may be deemed as OMV in terms of Proviso to Rule 28 of the CGST Rules.
- In respect of internally generated services from HO to BO for which full ITC is not available:
 - Cost of employee salary is not required to be included in the value of service by the HO to BO.



ELP Comments

The Circular is a welcome move which will resolve tax disputes arising on account of cross charge and ISD. This no doubt brings certainty to taxpayers regarding the ISD mechanism being optional in nature. However, the valuation of cross charge services wherein full ITC is not available remains unaddressed in this Circular. Overall, the clarification is progressive and is expected to provide a significant relief to taxpayers. The said Circular is in line with the Appellate Authority of Advance Ruling in the case of M/s Cummins India Limited which ruled that the valuation towards services between distinct persons can be determined as per proviso to Rule 28 of the CGST Rules

Circular No. 196/08/2023-GST dated July 17, 2023: Taxability of shares held in a subsidiary company by the holding company

- The said Circular states that 'Shares' are a form of 'securities' and are excluded from the definition of 'Goods' and 'Services' for the purpose of CGST Act. Accordingly, , sale or purchase of shares in itself is neither a supply of goods nor of services.

- It has thus been clarified that in absence of any underlying 'supply', mere sale or purchase of shares cannot be treated as a 'supply' solely due to the existence of a Service Accounting Code ('SAC') which covers services of holding securities of companies for the purpose of controlling interest.



ELP Comments

The Circular puts to rest the ambiguity with respect to taxability of shares held by the holding company in a subsidiary company.

Circular No. 195/07/2023-GST dated July 17, 2023: Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period

A circular has been issued clarifying the GST implications with respect to replacement of parts and/or repair services, undertaken by an Original Equipment Manufacturer ("OEM") and Distributor during the warranty period:

- GST is not payable, neither is ITC required to be reversed by OEM and Distributor in case of free supply of replacement of parts and/ repair services provided to a customer during the warranty period. However, GST would be payable if separate consideration is charged.
- GST is payable if the distributor provides parts/ services to customer and charges the same to the OEM. Further, ITC would be required to be reversed by the Distributor if GST Credit note is given by OEM to the Distributor.
- If an extended warranty is supplied at the time of original supply of goods, it becomes a part of composite supply and GST is payable on extended warranty charges as per principal supply of goods.
- If an extended warranty is supplied after the original supply of goods, it becomes a separate supply and GST is payable accordingly.



ELP Comments

The clarification provided in the Circular provides relief to the assesseees who will now not be required to reverse ITC under Section 17(5)(h) in case of replacing parts or providing repair services during the warranty period.

Circular 192/04/2023-GST dated July 17, 2023: Interest under Section 50(3) of the CGST Act, in case of wrong availment of IGST credit and reversal thereof

- In cases of **wrong availment and utilization of IGST credit**, the balance under the heads of IGST, CGST and SGST credit shall be cumulatively considered while calculating interest liability as per Rule 88B of the CGST Rules.
- It has been clarified that interest on reversal of wrongly availed ITC of IGST shall become payable only when the wrongly availed and utilized IGST credit exceeds the cumulative balance of IGST, CGST and SGST ledger (during the period of availment of wrong IGST credit). It has been clarified that interest under Section 50(3) of the CGST Act shall be applicable from the date of utilization of IGST credit.
- It has also been clarified that the balance of Compensation Cess available in the electronic credit ledger shall not be considered for calculation of interest under Rule 88B (3) of CGST Rules.



ELP Comments

*The Circular puts to rest the ambiguity on calculation of interest in case of wrong availment **and** utilization of IGST credit. The Circular clarifies the issue of charging interest on wrongly utilised IGST after taking in to account unutilised CGST and SGST balances during the relevant period.*

Circular 193/05/2023-GST dated July 17, 2023: Difference in ITC availed in Form GSTR 3B as compared to GSTR 2A for the period April 01, 2019 to December 31, 2021

There have been continuous changes in the ITC provisions with regards to mismatch since the inception of GST. To align the verification of ITC with Section 16(2)(c) of the CGST Act and amendments made from time to time in Rule 36(4) of the CGST Rules, it has been clarified that:

S. No	Period	Eligibility
1	April 01, 2019 to October 08, 2019	Guidelines provided by Circular 183/15/2022-GST dated December 27,2022 shall apply in totality.
2	October 09, 2019 to December 31,2019	Verification for difference is allowed by providing requisite certificates for difference of up to maximum 20% of eligible credit.
3	January 01, 2020 to December 31, 2020	Verification for difference is allowed by providing requisite certificates for difference of up to maximum 10% of eligible credit.
4	January 01, 2021 to December 31, 2021	Verification for difference is allowed by providing requisite certificates for difference of up to maximum 5% of eligible credit.
5	January 01, 2022 onwards	ITC eligible shall be restricted to the amounts reflected in Form GSTR-2B.

- Further there is also a clarification that instructions will only apply to ongoing/pending proceedings in scrutiny/ audit/ adjudication/ appeal/ investigation etc. for the period April 01, 2019 to December 31, 2021 and not to completed proceedings.



ELP Comments

*The Department has been issuing various notices denying ITC on account of mismatch of credit. The aforesaid clarification is a welcome step and is in line with the judgment of Hon'ble High Court of Karnataka in the case of **Wipro Limited India (2023 (1) TMI 499- HC)** wherein relief allowed by the circular for FY 2017-18 and 2018-19 was extended to the subsequent periods as well.*

Circular No. 194/06/2023-GST dated July 17, 2023: TCS liability under Section 52 of CGST Act in case of multiple E-commerce Operators ('ECO') in one transaction.

- It has been clarified that compliances under Section 52 of CGST Act, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply made by him.
- It is further clarified that the Buyer-side ECO will neither be required to collect TCS nor will be required to undertake other compliances in accordance with Section 52 of CGST Act with respect to this particular supply.
- However, where the Supplier-side ECO is himself the supplier, TCS is to be collected by the Buyer-side ECO while making payment.



ELP Comments

Different practices were followed prior to the clarification issued by the Circular. This Circular gives more certainty on fixation of liability for collection of TCS.

Circular 197/09/2023-GST: Clarification on refund related issues

- In terms of the amendment made in Section 16(2) of the CGST Act - with effect from January 1, 2022, an assessee can claim ITC only to the extent of invoices appearing in GSTR-2B. Consequently, it has been clarified that availability

of refund of the accumulated ITC under section 54(3) of CGST Act shall be restricted to ITC as per the invoices which are reflected in GSTR-2B. This shall be applicable for refund filed for a tax period January 2022 onwards.

- On account of deletion of Section 42 of the CGST Act and amendment in Section 41 of the CGST Act pertaining to deletion of GSTR-2 and GSTR-3 as well as the concept of provisionally ITC acceptance, the undertaking in Form GST RFD-01 has undergone a change. Corresponding modifications have also been made to the **Circular No. 125/44/2019-GST dated November 18, 2019**.
- The value of goods exported out of India shall be included while calculating “adjusted total turnover” for the purpose of Rule 89(4) of CGST Rules.
- Exporters would be entitled to collect refund of unutilized ITC in terms of Section 54(3) of the CGST Act even if the goods are exported or payment against export of services have been received (after the prescribed time in Rule 96A(1) of CGST Rules). In such scenarios, exporters can also claim refund of IGST paid in terms of compliance of Rule 96A. However, refund of interest would not be allowed.



ELP Comments

The Circular will curtail the divergent practices being adopted by the Department in processing refund claims and shall further reduce the deficiencies/ notices issued to genuine taxpayers claiming refunds. Entitling exporters to claim a refund in case of delayed export of goods or late realization of foreign exchange in case of export of services is a much-needed respite for the taxpayers and shall provide a buffer to their working capital requirements.

Circular No. 198/10/2023-GST dated July 17, 2023: Clarification on issues pertaining to e-invoice.

It has been clarified that the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, is required to issue an e-invoice for the supplies made to Government Departments or establishments/ Government agencies/ local authorities/ PSUs.

Notifications issued pursuant to the 50th GST Council Meeting:

S. No	Reference	Particulars
1	Notification No. 19/2023- Central Tax dated July 17, 2023	Due date for furnishing GSTR-3B for the month of April, May and June, 2023 has been extended till July 31, 2023 for registered persons whose principal place of business is in Manipur.
2	Notification No.20/2023 – Central Tax dated July 17, 2023	Due date for furnishing GSTR-3B for the quarter ending June, 2023 has been extended till July 31, 2023 for the registered persons whose principal place of business is in Manipur.
3	Notification No.21/2023 – Central Tax dated July 17, 2023	Due date for furnishing GSTR-7 for the month of April, May and June, 2023 has been extended till July 31, 2023 for registered persons whose principal place of business is in Manipur.
4	Notification No.22/2023 – Central Tax dated July 17, 2023	Extension of time limit for waiver of late fees on filling of Form GSTR-4 for FY 2019-20 to 2021-22 from June 30, 2023 to August 31,2023.
5	Notification No. 23/2023 Central tax dated July 17, 2023	Extension of time limit for application for revocation of cancellation of registration under Section 30 of CGST Act from June 30, 2023 to August 31, 2023.
6	Notification 24/2023 Central tax dated July 17, 2023	Extension of time limit for special procedure allowed for furnishing of return by non-filer from June 30, 2023 to August 31, 2023 failing

		which the proper officer shall make assessment under Section 62 of CGST Act.
7	Notification 25/2023 Central tax dated July 17, 2023	Extension of waiver of late fees for furnishing of annual return from June 30, 2023 to August 31, 2023.
8	Notification 26/2023 Central tax dated July 17, 2023	Extension of waiver of late fees for furnishing of Form GSTR-10 from June 30, 2023 to August 31, 2023.

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com or write to our authors:

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