



Notifications and Circulars issued by Central Board of Indirect Taxes and Customs (CBIC)

Pursuant to the 53rd Goods and Service Tax Council meeting held on June 22, 2024, CBIC had earlier issued sixteen circulars on June 26, 2024, to give effect to the recommendations and proposals made by the GST Council. In continuation of this, another series of Notifications and Circulars have been issued on July 10 & 11, 2024.

Notification No. 12/ 2024- Central Tax dated July 10, 2024 ('Notification No. 12')

Introduction of Form GSTR-1A

- Form GSTR-1A is a mechanism for amending and furnishing details of outward supplies that were missed to be reported in Form GSTR-1, except amendment of GSTIN of recipient.
- This facility shall be available after filing of Form GSTR-1 (even in case of quarterly returns) upto the due date of filing of Form GSTR-3B for the same tax period. The details of Form GSTR-1A, along with Form GSTR-1 shall be auto-populated in Form GSTR-3B.
- Any amendments or additions made in GSTR-1A will be reflected in the subsequent month's Form GSTR-2B of the recipient. For instance, invoice no. ABC01 added through Form GSTR-1A of June 2024 will reflect in Form GSTR-2B of July 2024.
- Requisite amendments have been made under the CGST Rules and associated forms in order to include incorporation of Form GSTR-1A to ensure uniformity and consistency in GST provisions.

ELP Comments

Taxpayers can file Form GSTR-1A after the deadline for GSTR-1 (but before filing GSTR-3B) to synchronize GSTR-1 and GSTR-3B. However, revised outward supplies won't reflect in the recipient's GSTR-2B for the same period. Therefore, in terms of Input Tax Credit ('ITC'), Form GSTR-1A's introduction doesn't offer immediate advantages to the recipient.

Input Service Distributor ('ISD')

- Rule 39(1) is substituted to include the conditions and manner of distribution of ITC as follows:
 - ITC distributed shall not exceed the amount available for distribution.
 - ITC attributable to specific recipient unit is distributed only to that unit.
 - ITC attributable to more than one recipient unit, is distributed amongst those units, basis on their previous year's turnover, provided they are operational in the current year.
- A new sub-rule (1A) is inserted in Rule 39, whereby registered person with the same State of ISD can issue invoice/ debit note/ credit note to the ISD for transferring credit of common input services on which GST is paid under reverse charge mechanism ('RCM'), which will then be distributed by the ISD. *(effective from the date to be notified)*

ELP Comments

Earlier, such conditions and manner of distribution of ITC were part of Section 20 of Central Goods and Service Tax Act, 2017 ('CGST Act'), which was later omitted by an amendment vide the Finance Act, 2024.

Return for tax deducted at source ('TDS')

- The TDS return has been amended to furnish invoice-wise details of the tax deducted. Consequent changes have also been made to Form GSTR-7, which shall take effect from the date to be notified.

Valuation of Corporate Guarantee

- Notification No. 12 amended Rule 28(2)¹ of the CGST Rules retrospectively w.e.f. October 26, 2023, and Circular 225, has furnished various clarifications in relation to valuation of corporate guarantee provided to related persons.

Position prior to October 26, 2023

- It has been clarified that GST was always applicable to the provision of corporate guarantee however the specific mechanism for determination of value would be applicable w.e.f. October 26, 2023. For the period prior to October 26, 2023, the valuation shall be determined on the basis of the provisions as it existed then.
- In case the recipient is eligible to avail full ITC, benefit of second proviso to Rule 28 would be available and accordingly, the value declared in the invoice could be accepted as the open market value.

ELP Comments

- As per Circular No. 199/11/2023-GST dated July 17, 2023 ('Circular 199'), if HO provides some internally generated services to a BO (who is eligible to avail full ITC) without issuing a tax invoice, the value of services is deemed to be declared as Nil by HO, using open market value.*
- It becomes interesting to analyse whether the aforesaid analogy can also be applied to provision of corporate service to a related person and accordingly, where an entity has provided corporate guarantee to a related party (who is eligible for full ITC) without issuance of a tax invoice. Whether such transaction would also be covered within ambit of Circular 199 and accordingly, the liability to discharge GST on corporate guarantee would not arise in such case.*

- In case the recipient is not eligible to avail full ITC, the value of consideration shall be determined on the basis of provisions of Rule 28 (as it existed then).

ELP Comments

Whether Arm's Length Price ('ALP') of the corporate guarantee commission, determined for Transfer Pricing purposes, can be considered as a reasonable mechanism for determination of the value of supply of corporate guarantee?

Position w.e.f. October 26, 2023

- In case the corporate guarantee is issued or renewed on or after October 26, 2023, provisions of Rule 28(2) would be applicable to determine value of supply.
- Proviso to Rule 28(2) has been inserted whereby it has been specified that in case the recipient is eligible to avail full ITC, the value declared in the invoice would be deemed as value of supply.
- In case the recipient is not eligible to avail full ITC, the value of supply shall be higher of 1% of corporate guarantee offered **per annum** (on a proportionate basis) or the actual consideration. For instance, in case a guarantee has been issued for 2.5 years, the value of supply shall be 2.5% of the value of guarantee offered (or actual consideration, if higher) and GST has to be discharged at the time of issuance of such guarantee.
- In case corporate guarantee is issued for one year and thereafter renewed each year, the tax liability shall arise at the time of renewal for each year.
- Rule 28(2) does not apply to the export of services.
- In the case of takeover of underlying loan by another financial institution, no tax implication will arise with respect to corporate guarantee except in case of issuance of a fresh corporate guarantee or renewal of corporate guarantee.
- The fact that the full amount of loan has not been disbursed will not affect the value of supply of corporate guarantee as the service of corporate guarantee is not linked with the actual disbursement of the loan.

¹ Rule 28(2) was inserted vide Notification No. 52/ 2023 – CT dated October 26, 2023.

- If multiple co-guarantors are involved in a corporate guarantee transaction, the tax liability of each co-guarantor will be determined in proportion to the amount guaranteed by such co-guarantor.

ELP Comments

- *An intriguing question that remains unanswered is whether tax liability can be adjusted if a corporate guarantee is withdrawn before the agreed tenure (eg: guarantee given for 5 years is withdrawn after 3 years) and the time period for issuance of credit note under Section 34 of the CGST Act has lapsed.*
- *Further, currently, there are writ petitions challenging the constitutionality of Rule 28(2) of the CGST Rules and the Circular² on Corporate Guarantee. Illustratively, the Hon'ble Punjab and Haryana High Court³ have stayed the effect and operation of the Circular related to Corporate Guarantee. Similarly, the Hon'ble Karnataka High Court⁴ have stayed the investigation proceedings initiated related to corporate guarantee.*

Amendment to Rule 142 pertaining to payments either suo moto or in pursuance of order issued by the proper officer

- Rule 142(2) has been amended to state that if payment has been made by the taxpayer prior to issuance of order vide Form GST DRC-03, such taxpayer is required to inform the proper officer. Thereafter, an intimation in Form GST DRC-04 would be made available through portal instead of an acknowledgment being issued by the proper officer.
- Rule 142(2A) has been amended whereby the proper officer shall be required to intimate the taxpayer vide Part C of Form GST DRC-01A if either the payment or submissions made by the taxpayer has been accepted by the proper officer. Accordingly, Form GST DRC-01 A has been substituted to include Part C for intimation of acceptance of payment or submissions to the taxpayer.
- Rule 142(2B) has been introduced whereunder it has been stated that in case a taxpayer makes payment in pursuance of an order in Form GST DRC-03, the taxpayer may file an application in Form GST DRC-03A electronically on the common portal and thereafter, an acknowledgment in Form GST DRC-04 will be generated. Further, the payment made vide Form GST DRC-03 shall be credited in the Electronic Liability Register in Form GST PMT-01 against the debit entry for demand raised in pursuance of order. Form GST DRC-03A has been recently introduced for adjustment of the amount paid through FORM GST DRC-03 against the order of demand.
- Application in Form GST DRC-03A cannot be filed in case an order has been issued in Form GST DRC-05 intimating conclusion of proceedings.

Amendment in Rule 96A with respect to payment of GST and interest

- In terms of Rule 96A of the CGST Rules, failure to receive payment for export of services in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India ('RBI') entails taxpayer to make payment of applicable GST. Additionally, applicable interest under Section 50 of the CGST Act is also required to be paid.
- The taxpayer is required to make the aforesaid payments within 15 days after expiry of 1 year from the date of invoice or such further period as may be allowed by the Commissioner.
- Additionally, the said payments can be made within 15 days after expiry of the period allowed under the Foreign Exchange Management Act, 1999 ('FEMA') including any extension of such period as permitted by the RBI, whichever is later.

ELP Comments

By considering the time limits prescribed by FEMA and RBI for receipt of export proceeds, litigation with respect to time limit for making applicable payments will reduce.

² Circular no. 204/ 16/ 2023 dated October 27, 2023.

³ ACME Cleantech Solutions Pvt Ltd. [TS-258-HC(P&H)-2024-GST].

⁴ KSW Energy Limited [WP 11681/ 2024].

Refund of additional tax paid due to upward revision in export price

- Rule 96 of the CGST Rules provides the procedure for automatic refund of integrated tax paid on goods exported out of India. In certain cases, there may be an upward revision in the export price after the sanction of the refund. However, no mechanism exists for processing the refund of additional tax paid on upward revision.
- To address this, Rule 89 and Rule 96 of the CGST Rules have been amended and Circular⁵ has been issued to clarify the mechanism to claim refund. In order to establish the eligibility of refund, the supporting documents required to be filed along with the refund application are prescribed. For this purpose, statement 9A and 9B have been introduced in Form GST RFD-01. The application may be filed before expiry of the relevant date, determined based on the mode of exporting goods. If the relevant date was prior to July 10, 2024, then the relevant date shall be July 10, 2024.
- Based on the scrutiny and verification of details and disclosures, the proper officer shall issue a payment order in FORM GST RFD-05 and a detailed and speaking refund sanction order in FORM GST RFD-06.
- With respect to downward revision in the export price after sanction of refund, Circular clarified that the exporter is required to repay the differential refund of IGST received along with applicable interest. Additionally, the proper officer shall verify whether the exporter has deposited the excess refund amount in case there is any downward revision during the relevant tax period.

ELP Comments

In absence of specific provisions, the Hon'ble Madras High Court⁶ had directed the GST authorities to refund the additional IGST paid by the taxpayer due to change in the value of goods exported.

Pursuant to the amendment and Circular, a detailed mechanism for processing refund of additional tax paid due to upward revision in export prices is prescribed. This will ensure proper documentation and verification. The procedure for handling refunds in case of a downward revision in export prices is also clarified.

Interest calculation: Exclusion of balance lying in Electronic Cash Ledger ('ECL')

- A proviso under Rule 88B has been inserted to exclude any amount from the ECL that was available on the due date of filing of Form GSTR-3B and debited during the filing of return for calculating the interest upon delayed filing of Form GSTR-3B.

ELP Comments

Prior to amendment, courts held divergent views on this issue. Illustratively, the Hon'ble Madras Court in Eicher Motors⁷ held that the interest is not applicable if the taxpayer maintains a sufficient balance in the electronic cash ledger. Similar views were also held by Hon'ble Gujarat High Court in case of Arya Cotton Industries⁸. Conversely, the Hon'ble Patna High Court in Sincon Infrastructure⁹ ruled that interest is leviable in case of delayed filing of returns, regardless of payment method. The instant amendment clarifies and resolves this discrepancy in the GST position.

Key amendments made under Form GSTR-9

- Disclosure by e-commerce operator *qua* the supplies on which e-commerce operators are required to pay tax (including amendments, if any). Table No. 15 and 15A of FORM GSTR-1 may be referred for filling up these details.
- Disclosure by the supplier *qua* the supplies on which e-commerce operators are required to pay tax (including amendments, if any). Table 14(b) and 14A(b) of FORM GSTR-1 may be referred for filling up these details.

⁵ Circular No. 226/ 20/ 2024-GST dated July 11, 2024

⁶ Vedanta Limited [2019-VIL-563-MAD]

⁷ Eicher Motors [2024 (81) G. S. T. L. 418 (Mad.)]

⁸ Arya Cotton Industries [(2024) 20 Centax 8 (Guj.)]

⁹ Sincon Infrastructure Pvt. Ltd. vs. UOI & Ors [TS-216-HC(PAT)-2024-GST]

Key amendments for filing of appeal/ cross objection before the Appellate Tribunal

- An option is made available to file an appeal/ cross objection before the Appellate Tribunal manually, along with the relevant documents, if the Registrar gives permission through a special or general order, subject to the conditions and restrictions specified in that order.
- If the order appealed against is not uploaded on the common portal, the Appellant should submit or upload a self-certified copy of the order within seven days from filing the appeal and accordingly, the date of provisional acknowledgment shall be considered as the date of filing the appeal, otherwise the date of submission or uploading will be considered as the date of filing the appeal.
- The capping of minimum fees of INR 5,000 has been prescribed for filing or restoration of appeal.

Withdrawal of appeal filed before the Appellate Tribunal

- Rule 113A is inserted to provide procedure for withdrawal of appeal filed in Form GST APL-05 before the Appellate Tribunal.

Generation of e-way bills by unregistered persons ('URD')

- A fourth proviso to Rule 138(3) of the CGST Rules is inserted wherein an option is given to URD for generation of e-way bill on the GST Portal. For this purpose, URD is required to submit the details electronically on the GST Portal under FORM GST ENR-03 and upon validation of such details, a unique enrolment number shall be generated and communicated to URD. *(effective from the date to be notified)*

Others

- An application for GST registration filed by a person who has not opted for Aadhaar authentication shall be considered complete only after successful verification of the following:
 - Photograph of the applicant (in case of an individual) or such other individuals related to the applicant as may be notified under Section 25(6C) (in case of applicants other than individuals).
 - Original copies of the documents uploaded along with Form GST REG-01. *(effective from the date to be notified)*
- The threshold limit for classifying B2C (Large) for reporting in GSTR-1 and GSTR-5 has been reduced from INR 2.5 lakhs to INR 1 lakh. Consequent changes have been made to Form GSTR-1 and GSTR-5, which will take effect from August 01, 2024. *(effective from August 1, 2024)*
- Form GSTR-2B and Form GSTR-3B have been amended to ensure uniform reporting and transparency.

Notification No. 13/ 2024- Central Tax dated July 10, 2024

- Following the 53rd GST Council recommendation qua biometric based Aadhaar authentication on all-India basis, the Central Government has rescinded the Notification No. 27/2022 – Central Tax, dated December 16, 2022 which specified that the proviso to Rule 8(4A) would not apply to any state or Union Territory except Andhra Pradesh, Gujarat and Puducherry.

Notification No. 14/ 2024- Central Tax dated July 10, 2024

- A registered person with an aggregate turnover of up to INR 2 crores in FY 2023-24 are exempted from filing of Annual Return (Form GSTR-9/ 9A).

Notification No. 15/ 2024- Central Tax dated July 10, 2024

- The effective rate of tax collected at source by e-commerce operator has been reduced from 1% to 0.50%.

Circular No. 224/18/2024 GST dated July 11, 2024

- This Circular outlines the guidelines for recovery of outstanding dues in cases where the first appeal has been disposed of, until the Appellate Tribunal becomes operational. Key aspects clarified vide the said Circular are as follows:
 - Stay of proceedings: Taxpayers can stay the recovery of the balance amount of confirmed demand by paying the requisite pre-deposit.
 - Payment mechanism: Taxpayers can navigate to '*services >> ledgers>>payment towards demand*' on the GST dashboard to make payment of pre-deposit.
 - Submission of undertaking before the jurisdictional officer: Taxpayers are required to submit an undertaking before the jurisdictional officer to file an appeal once the Appellate Tribunal is functional.

- Adjustment of payments made through Form DRC-03: Payments made through Form DRC-03 can be adjusted towards pre-deposit amounts using Form DRC-03A. The Circular further clarifies that until the Form DRC-03A functionality is available on the GST Portal, taxpayers can inform the jurisdictional officer of payments made through Form DRC-03 to prevent the initiation of any recovery proceedings.

Lastly, the Circular also clarifies that payments made via Form DRC-03 cannot be adjusted in cases where proceedings are concluded with the issuance of Form DRC-05.

ELP Comments

The Hon'ble Patna High Court¹⁰ and Calcutta High Court¹¹ have granted the stay on depositing 20% of the disputed demand due to the absence of constitution of the Appellate Tribunal. Similar view has also been expressed by other High Courts.

Similarly, the State GST Authorities of Maharashtra¹² and Kerala¹³ have issued circulars requiring the taxpayer to file declaration before their respective jurisdictional GST authorities, stating that they intend to file an appeal before Tribunal and consequently, no recovery proceedings shall be initiated.

The above amendment is in line with the views expressed by the High Courts and provides relief to taxpayers intending to file an appeal before the Appellate Tribunal by staying recovery actions.

Further, in numerous instances, the GST authorities did not accept the pre-deposit payment made through Form DRC-03, contending that the mechanism provided in Form APL-01 to make pre-deposit payment needs to be followed. This Circular clarifies that pre-deposit can be paid through DRC-03.

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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¹⁰ Angel Engicon Private Limited vs State of Bihar [2023 (73) G.S.T.L. 641 (Pat)] & Life Insurance Corporation of India vs UOI [2023 (75) G.S.T.L. 200 (Pat)]

¹¹ Deputy Commissioner vs Nidhi Madhogaria [MAT 1331 of 2021]

¹² Trade Circular 9T of 2020 dated May 26, 2020

¹³ Circular No. 01/2024, File No. SGST/6681/2023-PLC11, dated January 11, 2024