July, 2024

TAX Bulletin

Volume - 163
01.07.2024

Special GST Day Edition

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

Headquarters:

CMA Bhawan, 12, Sudder Street, Kolkata - 700016

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Lodhi Road, New Delhi - 110003

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MISSION STATEMENT

"The CMA Professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting."

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Objectives of Taxation Committees:

1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
3. Submit representations to the Ministry from time to time for the betterment and financial inclusion of the Economy.
4. Evaluating opportunities for CMAs to make way for further development and sustenance of the opportunities.
5. Conducting and monitoring of Certificate Courses on Direct and Indirect Tax for members, practitioners and stake holders and also Crash Courses on GST for Colleges and Universities.

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Certificate Courses Offered by the Tax Research Department

1. Certificate Course on GST (CCGST)
2. Advanced Certificate Course on GST (ACCGST)
3. Advanced Certificate Course on GST Audit and Assessment Procedure (ACGAA)
4. Certificate Course on TDS (CCTDS)
5. Certificate Course on Filing of Returns (CCFOF)
6. Advanced Course on Income Tax Assessment and Appeals (ACIAA)
7. Certificate Course on International Trade (CCIT)

Admission Link - ***https://eicmai.in/advscc/DelegatesApplicationForm-new.aspx***

Modalities

Description	Course Name						
	CCGST	ACCGST	ACGAA	CCTDS	CCFOF	ACIAA	CCIT
Hours	72	40	30	30	30	30	50
Mode of Class	Offline/ Online	Online					
Course Fee* (₹)	10,000	14,000	12,000	10,000	10,000	12,000	10,000
Exam Fee* (₹)	1,000 per attempt						
Discounts	20% Discount for CMA Members, CMA Qualified and CMA Final Pursuing Students						

**18% GST is applicable on both Course fee and Exam fee*

Eligibility Criteria for Admission

- Members of the Institute of Cost Accountants of India
- Other Professionals (CA, CS, MBA, M.Com, Lawyers)
- Executives from Industries and Tax Practitioners
- Students including CMA Qualified and CMA Pursuing

On passing the examination with 50% marks a Certificate would be awarded to the participant with the signature of the President of the Institute

Course Details

https://icmai.in/TaxationPortal/OnlineCourses/index.php

Courses for Colleges & Universities by the Tax Research Department

Eligibility

- B.Com/ BBA pursuing or completed
- M.Com/ MBA pursuing or completed

Modalities

Description	Courses for Colleges and Universities	
	GST Course	Income Tax
Batch Size	Minimum 50 Students per Batch per course	
Course Fee* (₹)	1,000	1,500
Exam Fee* (₹)	200	500
Duration (Hrs)	32	32

For enquiry about courses, mail at: ***trd@icmai.in***

**18% GST is applicable on both Course fee and Exam fee*

Behind every successful business decision, there is always a CMA

सत्यमेव जयते

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प्रधान महानिदेशक
ANIL KUMAR GUPTA IRS
Principal Director General

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माल एवं सेवा कर आसूचना महानिदेशालय
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पश्चिम खण्ड-८, विंग सं. ६, द्वितीय तल, आर.के.पुरम, नई दिल्ली-११००६६

GOVERNMENT OF INDIA
DIRECTORATE GENERAL OF GST INTELLIGENCE
Ministry of Finance, Department of Revenue
Central Board of Indirect Taxes & Customs
West Block - VIII, Wing No. VI, IInd Floor, R.K. Puram, New Delhi-110066
Phone : 011-26108779, 20863683, E-mail : prdg.dggihqrs@gov.in

It gives me immense happiness to note that the Institute of Cost Accountants of India has been observing the GST Day on 1st July every year ceremoniously.

This year also the day is being celebrated by conduct of the seminar themed, "GST's Seventh Year - Driving India's Economic Renaissance". I have been a part of this grand celebration on the 1st of July, 2024 and would like to congratulate the Institute on such impeccable execution of this function.

To commemorate this occasion of GST day, the Institute organized a webinar and this would then transpire into a week-long observance through its Regional Councils and Chapters. On this occasion the Tax Research Department has also brought out the "Special GST Day Edition" of their Tax Bulletin, which I note is the 163rd Edition, a great job indeed.

As I browse through this publication, I see that it includes articles, press releases, notification, circulars, judgements and Tax calendars along with case citations, different judgements, practical examples and also advance rulings to extensively elaborate on any topic, both in Direct and Indirect Tax. I am sure that having such a publication at the disposal would help practitioners enrich their knowledge. I also got to know that in furtherance to this the department also undertakes various knowledge enrichment activities like courses, webinars etc for the members and stakeholders.

The Institute of Cost Accountants of India have been an important knowledge contributor in various aspects of GST and has been a partner in the smooth implementation of GST throughout the country. It gives me immense pleasure to meet the Institute representatives in this forum. I am a part of the Institute as a Fellow member and I am proud of the activities undertaken by them which are helping in nation building.

All the Best.

4/7/2024

(Anil Kumar Gupta)

President's Message

To speak of celebration of GST Day, I would like to start by quoting a quote by our PM Shri Narendra Modiji, who in appreciating the implementation of GST in India, stated that, 'Great Step by Team India, Great Step towards Transformation, Great Steps towards Transparency, this is GST'. GST was implemented in India on the 1st of July, 2017.

The Institute of Cost Accountants of India, in its endeavor to observe this Special occasion conducts various activities all across the country through its Regional Councils and Chapters. This year the theme of the observance of GST Month, 2024 would be having the theme, 'GST's Seventh Year - Driving India's Economic Renaissance'. It would be observed throughout the month of July by the conduct of Physical Seminar / Webinars/ Discussion Sessions during the period 01.07.2024 to 31.07.2024. Dignitaries and Government officials may also be invited for the said programs to share their views ahead.

On occasion of this Day, the Institute from the headquarters is also organizing a webinar which would have a thought provoking Technical session with the topic, 'Beyond Compliance - Adjudication, Appeals, Judicial Trends in GST' wherein eminent practitioners, advocates and stalwarts would have deliberations on topics.

I urge all our members and students to join this occasion and celebrate by observing GST day.

The department is also coming up with their Special GST 163rd Edition of the Tax Bulletin, released on 01.07.2024 for this occasion. The fortnightly Tax Bulletin is an important activity of the department wherein articles, press releases, notifications, circulars, judgements and Tax calendars are all placed together as a ready source of knowledge for both Direct and Indirect Tax. I appreciate the efforts of the TRD that they put into in bringing out this bulletin.

CMA Ashwinkumar G Dalwadi

President

The Institute of Cost Accountants of India

Vice President's Message

CMA Bibhuti Bhusan Nayak

Vice President

The Institute of Cost Accountants of India

I would like to congratulate the Tax Research Department for the activities that it undertakes in the pursuit of disseminating knowledge to our members, students and also the general masses.

The department undertakes various activities like conducting courses, both in Direct and Indirect Taxes, having new and updated publications conduct of webinars, seminars, webints and also lecture sessions on various Tax-related subjects. The annual activity which is celebrated with sincerity over the years is the "Observance of GST Day Celebration Week, 2024". It is celebrated throughout the country through various Regional Councils and Chapters.

Another important activity that is undertaken in this respect is the publication of the Special GST 163rd Edition of the Tax Bulletin. This bulletin is designed and the articles solicited are related to GST, including the observations and the understandings of various eminent industry stalwarts and officials who are working in close proximity with the implementation of GST across the country.

GST, this year is entering the eighth year of its implementation and while moving through various hiccups and issues the process is being streamlined over time and even the Tax payers are getting more comfortable in complying with the same. I convey my best wishes to all who have participated in this massive Tax reform in our country and helped the nation in taking steps towards transparency and better governance.

From The Desk Of Chairman

CMA (Dr.) V Murali
Chairman
Direct Taxation Committee

Esteemed Professional Colleague,

POINT TO PONDER

Ralph Waldo Emerson said " Enthusiasm is the mother of effort and without it nothing great was ever achieved." The future belongs to those who believe in the beauty of their dreams. All dreams can come true if we have the courage, persistence and enthusiasm to pursue them. Don't watch the clock, focus on your work and you can make your dreams tomorrow's reality.

ACTIVITIES AND PLAN OF ACTION – SPECIAL BULLETIN

The Tax Research Department has always been a fore runner in activities to spread knowledge among the members and stakeholders. It conducts various activities for the same, like conduct of courses, bringing out publications, webinars, workshops, quizzes and the Tax Bulletin which deserves special mention.

The Tax bulletin is a knowledge bouquet which is published every fortnight and includes articles, press releases, notifications, circulars, judgements and Tax compliance calendar, a compilation of the various updates that has undertaken for the

fortnight all served at one place. The Tax Bulletin also features special editions, like this one which addresses various special events and observation of the important days.

This Tax Bulletin, a Special 163rd Edition is being published in honour of observance of GST Day, 2024. Along with the publication of this bulletin the Institute through its various Regional Councils are also celebrating July, 2024 as GST month through conduct of webinars, seminars and discussion sessions. I am sure that these programmes would be a grand success. We are in line with the views of the Government – the mission to become a developed nation by 2047.

I wish the department, the Institute, the members and all the readers of this journal, a very happy GST day.

WRAP UP POINT

Vietnamese monk Thich Nhat Hanh said "Life can be found only in the present moment. The past is gone, the future is not yet here. If we do not go back to ourselves in the present moment we cannot be in touch with life."

Wishing each and every one of you a peaceful Life filled with joy, fulfilment, prosperity and bliss at home.

With Warm Professional Regards,

Forever, yours in service,

CMA (Dr.) V Murali

Chairman — Direct Taxation Committee,

The Institute of Cost Accountants of India

01.07.2024

From The Desk Of Chairman

CMA Rajendra Singh Bhati
Chairman
Indirect Taxation Committee

Celebrating the GST day has always been a grand event at the Institute of Cost Accountants of India and it has been religiously observed all through the last seven years. As we enter the eighth year of this special occasion, the Institute intends to celebrate GST day, all throughout the nation through its various Regional Councils.

Goods and Services Tax (GST) is India's biggest indirect tax reforms started on 1st July, 2017, founded on the notion of "One Nation, One Market, One Tax". The GST aims at free flow of goods and services and cuts the complex multiple-taxes that has been in existence since India's independence and this fits well in the Government's motto of `Maximum Governance, Minimum Government'.

Moving in line with the same, the Tax Research Department has organized an online session on the theme "GST's Seventh Year - Driving India's Economic Renaissance" to mark the observance of GST Day and we consider it a privilege to have all our members and non-members to solicit their participation at the said event.

A Special 163rd Edition of the Tax Bulletin is also being released for this occasion. This is also a tribute which is being maintained over the last few years since the roll out of GST in India.

I wish a grand success to this endeavor of the department and urge all to come out and participate whole heartedly in this motion.

Thank You.

CMA Rajendra Singh Bhati
Chairman – Indirect Taxation Committee
The Institute of Cost Accountants of India
18.06.2024

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CONTENTS

Articles on the Topics of Direct and Indirect Taxation are invited from readers and authors. Along with the article please share a recent passport-sized photograph, a brief profile and the contact details. The articles should be the author's own original.

Please send the articles to

trd@icmai.in /trd.ad1@icmai.in

Note on e Invoice System

Dr. B. V. Murali Krishna

Rtd Additional Commissioner of Commercial Taxes, Karnataka

Introduction:

The fiscal year 2023-24 has witnessed a strong performance in GST collections, with total gross GST collection reaching an impressive ₹ 20.18 lakh Crore. This represents a notable 11.7% increase over the previous fiscal year. The highest GST collection of ₹ 2.1 lakh Crore for the Month of April 2024. The increase GST Collections, can be attributed to several factors, such as economic activity, where in the consumption of goods and services is increasing and also the increase in collections due to several administrative measures and adoption of technology. In that, introduction of e way bill system with effect from 01.04.2018 and e invoice system, with effect from 01.10.2020 is very significant. By introduction of these two electronic initiatives in the GST eco system as brought more transparency and accountability of the transactions, thereby it has helped in improvement of GST Collections.

Background for e invoice:

The project e UPaSS (electronic uploading of purchase and sales statements) by Commercial Taxes Department, Karnataka, which was implemented during 2014, become a prerequisite for e Invoice System developed by NIC Karnataka team to the GSTN. In VAT regime, both sales and purchase invoice details were uploaded on to the portal and later they were matched. Under the present e invoice system, the invoice details were uploaded on any one of the six Portals (IRP) and are duly registered, by getting authenticated IRN, QR Code and eSign.

What is e invoice:

e Invoice, is an acronym for electronic invoice, is generated and registered on government registered portal by uploading the invoice details by the mandated taxpayers. As per Rule 48(4) of GST Rules, notified person has to prepare invoice by uploading specified particulars in FORM GST INV-01 on e Invoice portal (https://einvoice1.gst.gov.in) and (https://einvoice2.gst.gov.in) and to obtain 64 alphanumeric character Invoice Reference Number (IRN), QR(Quick Reference) code and e Sign. In addition to these two Invoice registration portals, there are another four IRPs enabled from April 2023.(https://einvoice.gst.gov.in/einvoice/dashboard).With effect from 08.03.2024, all the six IRP portals are integrated with e way bill services, via NIC Network, enabling the tax payers to generate, e way bills alongside e invoice.

The websites of all the six IRP portals are, 1. https://einvoice1.gst.gov.in 2. https://einvoice4.gst.gov.in 3. https://einvoice2.gst.gov.in 4. https://einvoice5.gst.gov.in 5. https://einvoice3.gst.gov.in 6.https://einvoice6.gst.gov.in

Applicability of e invoice:

e-Invoice system came into force wef 01.10.2020 for those whose annual aggregate turnover(AATO) is more than 500 crores, later wef 01.01.2021 for those AATO is more than 100 crores and wef 01.04.2021 for the tax payers whose AATO is more than 50 Crore, later it was reduced 20 Crores wef 01.04.2022 and later to 10 Crores wef 01.10.2022. Now the taxpayers whose AATO more than 5 Crores have to generate e invoice wef 01.08.2023. if such annual aggregate turnover is more than, 5 Crore in the previous financial years, then such tax payers need to generate the e invoice mandatorily.

Aggregate turnover in GST can be described as the taxable value of supplies of goods and services, exempt supplies of goods and services, the export of goods and services and inter-state supplies. Hence, accumulated turnover for GST includes supplies of goods or services, supplies exempt from GST and exports. The Annual aggregate turnover, means, the annual turnover of the tax payer, based on the PAN, which is a part of GSTIN and computed based on the PAN India turnover of such GSTIN. In simple way, if the tax payer is registered with the same PAN in Karnataka, Tamil Nadu, Kerala and Maharashtra, and the aggregate turnover combined in all such states, for a financial year, is annual aggregate turnover.

e-Invoice is mandated for B2B (Business to Business), transactions, Export Invoices, Credit and Debit notes and the details of invoices needs to be uploaded on Invoice Reporting

Portal (IRP) for generation of e Invoice with a QR Code, e Sign and IRN (Invoice Reference Number). Business to Business means, between the two tax payers, who are duly registered under GST. The e invoice need not be generated by the registered tax payer, when he or she supplies to the consumers, who are not registered under the GST. The benefits of e Invoice System helps in auto generation of GSTR 1, GSTR 2B and auto population of GSTR 3B and for e Way Bill generation. It is economical and eco friendly(paper less) and helps to mitigate input tax credit for such tax payers. It has brought down the tax evasion by eliminating fictitious invoices and efficiency in tax administration.

Presently, e Invoicing is not applicable for business to consumers, Goods Transport Associations, Passenger Transport Services, Multiplexes, Banking and Financial institutions, Imports and SEZ units.

Modes of generation of e invoice:

The e invoice can be registered on the e invoice portal by the taxpayers by means of Application Programme Interface(API), By Bulk Generation Mode, and through GST Suvidha Providers and Mobile Based. Further, the NIC Karnataka has developed GePP off and GePP On(GST e Invoicing Preparing and Printing)Tools, which are offline as well as web based tools for the small tax payers ,which are simple to use and no cost involved and such tools are available on (https://einvoice1.gst.gov.in) and (https://einvoice2.gst.gov.in).

e Invoice System implementation in phased manner has brought, easy adaptability, acceptability, there by increased GST Collection over the period and has helped in easy administration and better compliance by the stake holders. Thus, it is a game changer in tax compliance and in administration.

Outreach Activities:

To ensure compliance and awareness among the stakeholder, GSTN, CBIC and State authorities in association with Trade Associations and NIC Karnataka, have organized webinars on e Invoice System and have created awareness among the stakeholders and tax Payers. Both offline and online programmers were conducted.

A word of Caution:

A word of caution, non generation of e invoice attracts penalty and not carrying of e invoice along with the e way bill, by the mandated tax payers attracts penal provisions under Section 129 and 130 of the GST Act, 2017. The time to generate the e invoice in a later part on IRP portal is only to increase the compliance, but the reporting and generation of e invoice in a real time on IRP portals is mandatory, as per the law. Further, non generation of e invoice may result in deny of input tax credit to such recipients, when such e invoice is not there during scrutiny, assessment, audit and adjudication under the GST.

GST on Charitable and CSR Activities

CMA (Dr) Sanjay R Bhargave

Co-opted Member

Indirect Taxes Committee

The Institute of Cost Accountants of India

GST on Supply by Charitable Organisations

GST is payable on the supply of goods, services or both. Specified services supplied by charitable organisations registered under section 12AA or 12AB of the Income Tax Act 1961 by way of charitable activities are exempt from GST under Sl. No. Sl. No.1 of Notification No. 12/2017-CT(Rate) dated 28.06.2017. Charitable trusts undertake various activities for the benefit of the society. Generally, CSR activities are done through charitable trusts.

The major sources of income for Charitable Organisations are.

i. By providing (supplying) services to organisations for CSR activities.

ii. Donations received for undertaking charitable activities.

Supply under GST

As per Sec 7(1) of the CGST Act 2017, the expression "supply" includes—

(a) all forms of supply of goods or services or

both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration

Explanation-For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;

(b) import of services for a consideration whether or not in the course or furtherance of business; and

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1) (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

Since the supply of goods or services or both include all forms of transactions such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business, the activities undertaken by charitable organisations for consideration would be treated as supply.

Business under GST

As per Sec 2(17) of the CGST Act, 2017 "business" includes—

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is

volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

(f) admission, for a consideration, of persons to any premises;

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

As per the general understanding, the activities undertaken by charitable organisations are not understood as business. However, due to the specific definition of "business" under GST, any activity whether or not it is for a pecuniary benefit or whether or not there is volume, frequency, continuity or regularity of such transaction would be treated as a business.

Consideration:

As per Sec 2(31) of the CGST Act,2017 "consideration" in relation to the supply of goods or services or both includes—

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

Therefore, the amount received by charitable organisations for providing any service is a consideration for the supply of that service.

Charitable activities as per GST law

As per definition (r) to Notification No.12/2017-CT(Rate) "charitable activities" means activities relating to

(i) public health by way of,-

(A) care or counselling of

(I) terminally ill persons or persons with severe physical or mental disability

(II) persons afflicted with HIV or AIDS

(III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

(B) public awareness of preventive health, family planning or prevention of HIV infection;

- Preventive health is the use of recognized proactive health screenings, counselling and maintenance to prevent future illness and treatment. Preventive health is also known as preventive medicine or prophylaxis.
- Preventive healthcare, or prophylaxis, consists of measures taken for disease prevention.[Disease and disability are affected by environmental factors, genetic predisposition, disease agents, and lifestyle choices, and are dynamic processes which begin before individuals realize they are affected. Disease prevention relies on anticipatory actions.

(ii) Advancement of religion, spirituality or yoga.

(iii) Advancement of educational programmes or skill development relating to –

- abandoned, orphaned, or homeless children.
- Physically or mentally abused and traumatised persons.
- Prisoners
- Persons over the age of 65 years residing in a rural area;

(iv) Preservation of environment including watershed, forests and wildlife.

Charitable Activities under Income Tax Act

The expression "charitable purpose" has been defined under Section 2(15) of the Income Tax Act 1961 to include:

a. relief of the poor,

b. education,

c. medical relief,

d. preservation of environment (including water sheds, forests and wild life

e. preservation of monuments or places or objects of artistic or historic interest and

f. any other object of public utility

CSR Activities under the Companies Act 2013

As per the 8th schedule of the Companies Act 2013, following activities are qualified for CSR :

1. Eradicating Hunger, Poverty and Malnutrition
2. Promoting Education
3. Promoting Gender Equality
4. CSR initiatives related to the environment
5. Protection of national heritage, art and culture
6. Measures can be taken for the benefit and support of armed forces veterans, war widows and families
7. Training to stimulate rural sports, nationally recognized sports, Paralympic sports and Olympic sports.
8. Contributions to the Prime Minister's National Relief Fund or any other fund set up by the central government, for welfare, development and relief of the scheduled

caste, tribes, other backward classes, women and minorities.

8. Contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by the Central Government, State Government, Public Sector Undertaking or any agency of the Central Government or State Government.

9. Contributions to public funded Universities, IITs, National Laboratories and autonomous bodies established under DAE, DBT, DST, Department of Pharmaceuticals, Ministry of AYUSH, Ministry of Electronics and Information Technology and other bodies, namely DRDO, ICAR, ICMR and CSIR, engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).

10. Contributions can be made towards rural development projects and slum area development.

11. Disaster management, including relief, rehabilitation and reconstruction activities.

On comparison of the definitions/concepts of charitable activities under the Income Tax Act, Companies Act and GST, it can be seen that the meaning of charitable activities under GST is very restricted as compared to Income Tax and Companies Act. Therefore the exemption under GST is not available to all charitable activities under the Income Tax Act or CSR Activities under the Companies Act, except as mentioned in Notification No.12/2017-CT(Rate) dated 28.06.2017. Obviously, GST is payable on charitable activities or CSR activities that are not treated as charitable activities under Notification No. 12/2017-CT(Rate) dated 28.06.2017. However, under the same notification, separate exemptions are prescribed for various activities. Therefore to find out taxability under GST, a detailed study of Notification No. 12/2017-CT(Rate)dated 28.06.2017 is very important. The exemptions are provided on various activities under different serial numbers under No. 12/2017-CT(Rate) dated 28.06.2017.

GST on Donations

Donation means money, etc. that is given to a person or an organization such as a charity, in order to help people or animals in need. A donation is a gift - usually one of a charitable nature. A donation is transfer of property (often money) from the transferor (donor) to the transferee (donee) with no exchange of value (consideration) on the part of the recipient (donee). The recipient gives nothing in exchange for the donated money. When a donor knowingly, intentionally, and unconditionally donates to a donee, the donation goes into effect and becomes irrevocable upon the donee's acceptance thereof. It is pertinent to note that donation is a voluntary activity and anything given as an obligatory act under the name of donation cannot be treated as donation and would be taxable.

Vide C.B.E & C Flyer No. 40 dt. 01-01-2018, it has been clarified that

- Donations without any instructions for its use are not subject to GST.
- When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's

act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for consideration (in the form of donation).

- Where there is no obligation (quid pro quo) on the part of recipient of the donation or gift to do anything (supply a service), it is not consideration. Hence no GST.
- However, if the advertisement or promotion of business is the result of a donation then GST would be payable.

Donations and grants received without any condition are not subject to GST as they are not "consideration ". However, if the donor is getting some business advantage by putting his name as donor, that will be treated as consideration. In that case, it will be "Sponsorship" and donor will be liable to pay GST under reverse charge if the donor is body corporate or partnership firm located in a taxable territory. In other cases, the recipient receiving sponsorship will be liable to pay GST under forward charge.

Input Tax Credit should not be denied..... order is set aside.

CMA Anil Sharma

Co-opted Member

Indirect Taxes Committee

The Institute of Cost Accountants of India

Section 16 of CGST Act, 2017 makes taxable persons eligible and also imposes certain conditions to avail ITC under GST. Such provisions are narrated as under:

- Every registered person, subject to such conditions and restrictions as may be prescribed, shall be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.
- no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless:
    - he is in possession of a tax invoice or debit note issued by a supplier of goods and services

- the details of such invoice or debit note has been furnished by the supplier in the statement of outward supplies (GSTR-1) and such details have been communicated to the recipient of such invoice or debit note through GSTR-2A/2B.
- he has received the goods or services or both.
- the details of input tax credit in respect of the said supply communicated to such registered person has not been restricted under section 38
- the tax charged in respect of such supply of goods and services has been actually paid to the Government by the supplier, either in cash or through utilisation of input tax credit
- Recipient of goods and services has furnished the return under section 39
- A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Further, Rule 37A of CGST Rules, 2017 mentions to reverse the Input Tax Credit in GSTR-3B return on or before the 30th day of November of the next financial year during which such Input Tax Credit has been availed by the recipient, if supplier does not file his GSTR-3B for that particular tax period.

Here, Rule 37A is not aligned with sections of 16(2)(c) and Section 41 of the CGST Act, 2017 which are its parent sections. Filing of the GSTR-3B return by the supplier doesn't prove that taxes have been paid by the supplier of said invoices and debit Notes as GSTR-3B is a summary statement. It does not carry invoice-wise or buyer-wise entries. It gives the total amount of tax payable and paid after adjustment of eligible ITC.

From plan reading of Section 16, Section 38 and Section 41, one can make out that all these sections could have been merged.

In the recent past adjudicating authorities have scrutinized the returns for the FY 2017-18, 2018-19 and 2019-20 and issued hundreds of show cause notices (SCN) and orders u/s 73 of CGST Act, 2017 for which due dates were as under:

Financial Year	Due date for Annual Return	Time period for issue of Order	Extended Time to issue order
2017-18	05.02.2020& 07.2.2020	05.02.2020& 07.2.2020	31.12.2023* (SCN:30.9.2023)
2018-19	31.12.2020	31.12.2023	30.04.2024*(SCN:31.01.2024)
2019-20	31.12.2021	31.03.2024	31.08.2024*(SCN:31.05.2024)
2020-21	28.02.2022	28.02.2025	----- (SCN: 30.11.2024)

For the issue of SCN and orders under Section 74 for fraudulent activities adjudicating authorities still have time and can issue SCNs and orders as under:

Financial Year	Due date for Annual Return	Time period for issue of Order	Show Cause Notice dates
2017-18	05.02.2020 & 07.02.2020	05.02.2025& 07.2.2025	06.12.2024
		31.12.2025	08.12.2024
2018-19	31.12.2020	31.12.2026	30.09.2025
2019-20	31.12.2021	28.02.2027	30.09.2026
2020-21	28.02.2022		30.11.2026
			NA30.09.202

In SCNs issued or orders passed so far, adjudicating authorities have mentioned various grounds or points for which notices have been issued. Some of the major issues raised in SCN and order passed are as under:

a. Mismatch of GSTR-1 with GSTR-3B

b. Non-availability of invoices in GSTR-2A/2B

c. Mismatch of GSTR-2A/B with GSTR-3B

d. Mismatch of GSTR-1 with e-way bills

e. Short payment of taxes, interest, fee etc

f. Cancellation of registration of supplier with retrospective date

g. Non-filing of returns by the taxable person or his supplier

h. Non-payment of taxes by the suppliers to the government

i. Supplier has filed returns after the due date

j. Not claiming ITC before Sept of next year return or 30th of Nov, of next year

k. Availment of ITC wrongly or ITC for transactions under block credits have been availed

l. Availment of ITC for transactions where POS is in the supplier's state

m. Availment of ITC for transactions that are not in furtherance of business.

n. Non-filing of reply by a taxable person for GST FORM ASMT-10 Or intimation issued u/s 73(5)

o. Non-payment of late fees for delay in filing monthly/quarterly/annual returns

p. Non-compliance of rule 86B of CGST Act, 2017- usage of ITC up to 99% of tax liability

Taxable persons to whom SCNs issued or orders passed have either paid the amount mentioned in SCNs/orders (along with DRC-01 Or DRC-07) or filed appeals. During the proceedings in appeals also taxable persons lost their viewpoints and were asked to pay the same amount as per the order or amount get amended. So some of the taxable persons paid taxes, interest and penalties after having orders passed by Appellate Authorities. But some of the taxable persons filed appeals at High Courts with confidence that their viewpoints are genuine and they will get justice. So, hon'ble courts have taken the cases on merits and have delivered landmark judgments against the orders passed by the adjudicated/appellate authorities.

Out of the grounds given above on which SCNs have been given by the authorities, some of the judgments passed in favour of the taxable persons are discussed here under:

1. Gargo Traders v/s. Joint Commissioner Commercial Taxes (State Tax) [2023]

Subject matter: ITC denied to the recipient because of cancellation of registration of supplier with retrospective effect.

In the matter of Gargo Traders v. Joint Commissioner Commercial Taxes (State Tax) [2023] Hon'ble Calcutta High Court held that input tax credit cannot be denied to the recipient of goods because the supplier's registration has been cancelled retrospectively where the recipient are in the possession of the relevant tax paying documents and all other conditions for claiming ITC u/s section 16 have been fulfilled.

Hon'ble High Court has noted that the supplier's name existed and the portal was showing it as an active taxable person and recipient has done transactions genuinely and has paid the amount for goods purchased through bank transactions. So, the hon'ble court concluded that the recipient has complied with all provisions of GST laws and there is no reason to deny Input Tax Credit (ITC).

Further, the Court also mentioned that it is not the case of the respondents that there is a collusion between the petitioner and supplier Thus, **without proper verification, it cannot be said that there was any failure on the part of the petitioner in compliance of any obligation required under the statute.**

Hon'ble Court also mentioned that authorities have only considered the cancellation of registration with a retrospective date as the reason for denying the ITC without considering the documents available with the recipient.

In view of the above, the impugned orders are set aside.

2. Suncraft Energy Private Limited and Another (supra) v. The Assistant Commissioner (State Tax)

Subject matter: No automatic reversal of ITC, if no action is taken against supplier.

The Hon'ble Calcutta High Court in the matter of Suncraft Energy Private Limited and Another (supra) v/s. The Assistant Commissioner (State Tax) has pronounced that no reversal of ITC unless action against the supplier is taken. The adjudicating authority must take action against the supplier if it is found that he has not deposited the tax paid by the buyer.

Hon'ble court also rely upon the press release dated 18.10.2018, where it was clarified that furnishing of outward details in Form GSTR-1 by the corresponding supplier(s) and the facility to view the same in Form GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of Section 16 of the Act.

Further, reference of the Press release dated 04.05.2018, where it was clarified that "there shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In caseof

default in payment of tax by the seller, recovery shall be made from the seller however, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc." was also taken on record.

Finally, the Court held that the department without resorting to any action against the supplier of goods and/ or services has ignored the tax invoices produced by the appellant. Such action is arbitrary in nature. There shall not be any automatic reversal of input tax credit from the buyer on non-payment of tax by the supplier. In case of a default in payment of tax by the supplier, recovery shall be made from the seller.

The Calcutta High Court set aside orders of the Assistant Commissioner, State Tax.

Later on Department filed Special Leave Petition (SLP) against Hon'ble High Court order in Supreme Court where in Hon'ble Supreme court held that considering the facts, circumstance of the case and the extent of demand raised, SLP is dismissed and order of Hon'ble High court upheld.

3. Diya Agencies vs. State Tax Officer, WP(C) No. 29769 of 2023

Subject matter: Invoices are not depicted in GSTR-2A

In the said case, the hon'ble Court observed that, that the recipient's claim for ITC has been denied only on the ground that the said amount was not mentioned in the GSTR 2A,

Hon'ble Court also considered the CBIC press release dated 18 October 2018 which clarified that GSTR-2A is like facilitation and does not impact the ability of the taxpayer to avail ITC on a self-assessment basis as per Section 16 of the CGST Act.

The court also considered the plea of the buyer that he does not have any control over the information given in GSTR-2A.

The hon'ble court remanded back the matter to the Adjudicating Authority to give opportunity to the buyer of goods to claim for ITC.

Apart from the above, many such cases are still pending in courts and provisions of availing ITC have been challenged by the recipients for denying ITC for reasons beyond their control. We are of the view that at least the grounds on which Hon'ble courts have already delivered judgments must be dealt with accordingly by the adjudication authorities as litigation has its cost to the departments. GST council in its 53rd meeting dated 22nd June 2024 also realised that there is excessive litigation on unreasonable grounds.

In the 53rd GST council meeting held on 22.06.2024, the Council has given various guidelines and issued instructions for stakeholders. So, in our views based on said instructions/declarations made by the Council, all such SCNs and orders passed by the authorities must be dropped with immediate effect.

As per the Press release dated 22.06.2024, some of the such announcements are as under:

- GST Council has recommended waiving interest and penalties for demand notices

issued under Section 73 of the CGST Act (i.e. the cases not involving fraud, suppression or wilful misstatement, etc.) for the fiscal years 2017-18, 2018-19 and 2019-20, if the full tax demanded is paid up to 31.03.2025- a big relief to the taxable person.

- GST Council has recommended the time limit to avail input tax credit w.r.t. any invoice or debit note under Section 16(4) of CGST Act, through any GSTR- 3B return filed up to 30.11.2021 for FY 2017-18, 2018-19, 2019-20 and 2020-21, may be deemed to be 30.11.2021.
- Council has recommended monetary limit of ₹ 20 lakh for GST Appellate Tribunal, ₹ 1 crore for the High Court and ₹ 2 crore for the Supreme Court, for filing of appeals by the Department, to reduce litigation.
- GST Council has recommended amending provisions of the CGST Act to provide that the three-month period for filing appeals in the GST Appellate Tribunal will start from a date to be notified by the Government
- To ease the interest burden of the taxpayers, the GST Council has recommended to not levy interest u/s 50 of the CGST Act in case of delayed filing of return, on the amount which is available in the Electronic Cash Ledger (ECL) on the due date of filing of the said return – a very big relief to taxable person as it will improve his financial health.

Conclusion

The protection of revenue and payment of taxes is the prime responsibility of every citizen. But only enhancing the revenue should not be the motive.

Behind the Veil

The Realities of Fake Invoicing and Enforcement Strategies

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Indirect Taxes Committee

The Institute of Cost Accountants of India

One of the most significant challenges confronting global economies today is the issue of fraudulent invoicing, which results in billions of dollars in revenue losses for governments annually. Such losses imply reduced financial capacity for governments to invest in vital sectors including social welfare programs, infrastructure development, and national defense. Furthermore, the funds siphoned off through these illicit activities often remain outside the formal economic systems, raising the risk that they might be utilized to finance harmful activities such as terrorism. This not only deprives society of essential public services but also poses a broader threat to social stability and security.

To combat the pervasive issue of fake invoicing, the Indian government has implemented several strategic measures aimed at tightening controls and enhancing transparency in financial transactions. These initiatives include the introduction of electronic waybills (e-waybills) and electronic invoicing (e-invoice), which facilitate real-time tracking of goods movement and invoicing, respectively. Introduction of GSTR -2Bm making it mandatory for availing

the input tax credit. Additionally, the requirement for Aadhar authentication for GST registrations and biometric verification for GST Registration ensures more secure and verified business transactions.

The problem of fake invoicing is a critical concern as it enables taxpayers to wrongfully claim input tax credits (ITC) and subsequently obtain refunds on zero-rated supplies. This fraudulent activity not only leads to substantial revenue loss for the government but also undermines the integrity of the tax system. By using counterfeit invoices to simulate transactions, unscrupulous entities manage to extract undue tax benefits and refunds, particularly on exports and other zero-rated goods, where taxes should not be levied. Such practices pose a significant challenge to tax authorities, necessitating rigorous verification and monitoring processes to detect and prevent these illegal activities.

Moreover, the government has implemented stricter penalties, both monetary and non-monetary, targeting not only the dealers involved in such fraudulent activities but also the recipients who claim input tax credits illegitimately, and those who abet these transactions. These measures are intended to deter tax evasion, promote compliance, and maintain the integrity of the tax system, thus ensuring that revenue is available for critical public services and development projects.

Though the term "fake invoice" is not explicitly defined under the GST Act of 2017, it generally refers to an invoice issued without any actual supply of goods or services. In some scenarios, an invoice might be issued to one party (X), but the actual goods or services are supplied to another (Y), who then claims the input tax credit (ITC) necessary for his output supplies. This fraudulent mechanism is typically orchestrated through a complex network of dummy entities.

These fictitious entities are often established using stolen or misused identities, such as Aadhar and PAN numbers, of unsuspecting or complicit individuals who receive minor financial incentives to participate or remain silent. The masterminds behind these operations use these dummy entities to issue invoices for non-existent goods or services, thereby facilitating the transfer of fraudulent ITC to the ultimate beneficiaries. To conceal their activities and evade detection by tax authorities, these schemes involve sophisticated and extensive layering across multiple GST jurisdictions, involving a chain of non-existent firms. This structured deception not only undermines the tax system but also poses significant challenges to legal enforcement and regulatory oversight.

Q1: What constitutes a "fake invoice" under the CGST Act?

A fake invoice is a tax invoice issued without any actual supply of goods or services. These are often used to enable recipients to fraudulently avail and utilize input tax credit (ITC).

Q2: If a registered person "A" issues a tax invoice to another registered person "B" without any actual supply of goods or services, is this transaction considered a "supply" under Section 7 of the CGST Act?

No, such an activity does not meet the definition of "supply" under Section 7 of the CGST Act. Therefore, no tax liability arises, and no demand or recovery is required from "A" under Sections 73 or 74 of the CGST Act.

Q3: Can any penal action be taken against "A" for issuing a fake invoice without

actual supply?

Yes, "A" will be liable for penal action under Section 122(1)(ii) of the CGST Act for issuing tax invoices without the actual supply of goods or services.

Q4: If "B" avails ITC based on a fake invoice issued by "A" and utilizes it for paying tax on his outward supplies, what are the consequences for "B"?

Since "B" has availed and utilized fraudulent ITC without receiving goods or services, he will be liable for the demand and recovery of the ITC, along with penal action under Section 74 of the CGST Act, and applicable interest under Section 50.

Penalty under section 74

Section 74(5)

The person chargeable with tax may, 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.

Section 74(8)

Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

Section 74(11)

Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Q5: Can "B" be penalized under other sections of the CGST Act for the same act of fraudulent ITC utilization?

No, as per Section 75(13) of the CGST Act, if penal action is taken under Section 74 for fraudulent ITC utilization, no penalty for the same act can be imposed under any other provisions of the CGST Act, including Section 122.

Q6: If "B" passes on the fraudulent ITC to "C" by issuing invoices without underlying supply, what are the repercussions for "B"?

"B" will not be liable for demand and recovery under Sections 73 or 74 for the fraudulent ITC availed. However, "B" will face penal action under Sections 122(1)(ii) and 122(1)(vii) for issuing invoices and utilizing ITC without actual receipt of goods or services.

Sections 122(1)(ii)

issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;

Sections 122(1)(vii)

takes or utilizes input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

Q7: What principles should be used to determine the nature of demand and penal action against a person involved in such unscrupulous activities?

The principles outlined above should be adopted, and the specific facts and circumstances of each

case should guide the actual actions taken. Persons who benefit from these fraudulent transactions will also be liable for penal action under Section 122(1A) of the CGST Act.

Q8: What are the additional legal implications for wrongful or fraudulent availment or utilization of ITC or issuance of invoices without supply?

In such cases, the provisions of Section 132 of the CGST Act may be invoked, which includes severe penalties based on the specifics of each case.

Q9: What steps should be taken to ensure compliance with these clarifications?

Suitable trade notices should be issued to publicize the contents of this circular, ensuring that all stakeholders are aware of the legal implications and the required compliance measures.

Q10: What is the amount of penalty a person is liable to pay under section 122 of the CGST Act 2017?

A penalty of ten thousand rupees or an amount equal to the tax evaded, tax not deducted or short deducted under section 51, tax deducted but not paid to the Government, tax not collected or short collected under section 52, tax collected but not paid to the Government, input tax credit wrongly availed or passed on, or fraudulently claimed refund, whichever amount is higher, will be imposed.

shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

Q.11 What will be the penal provisions for availing refund by suppression of facts or misstatement or availing input tax credit wrongly?

The penalty is levied under section 122(2) of the CGST Act 2017 and the penalty is ₹ 10,000 or tax due from such person whichever is higher.

Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,—

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

(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

Q.12 What happens if someone aids or abets in committing any of the specified offenses?

If a person aids or abets any of the offenses listed in clauses (i) to (xxi) of sub-section (1) of Section 122 of the CGST Act, they will be held liable and penalized accordingly. Penalty will be liable up to ₹ 25,000.

Section 122(1)

Where a taxable person who—

(i) supplies any goods or services or both without issue of any invoice or issues an

incorrect or false invoice with regard to any such supply;

(ii) ssues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;

(iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;

(vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;

(vii) takes or utilizes input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

(viii) fraudulently obtains refund of tax under this Act;

(ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;

(x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;

(xi) is liable to be registered under this Act but fails to obtain registration;

(xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;

(xiii) obstructs or prevents any officer in discharge of his duties under this Act;

(xiv) transports any taxable goods without the cover of documents as may be specified in this behalf

(xv) suppresses his turnover leading to evasion of tax under this Act;

(xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;

(xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;

(xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;

(xix) issues any invoice or document by using the registration number of another registered person;

(xx) tampers with, or destroys any material evidence or document;

(xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act,

shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

Q.13 What penalties apply to someone involved with the supply of services that violate the CGST Act?

If a person receives, supplies, or deals with services that they know or have reasons to believe are in contravention of the CGST Act or its rules, they will be subject to penalties under section 122(3) of the CGST Act 2017.

Q.14 What are the consequences of failing to issue or account for invoices as required by the CGST Act?

If a person fails to issue an invoice as required by the CGST Act or fails to account for an invoice in their books of account, they will be penalized according to the provisions of the Act.

Q.15 Can a person be arrested for issuing a tax invoice without the supply of goods or services or availing input tax credit on fake invoices?

Yes, a person can be arrested for issuing a tax invoice without the supply of goods or services or availing input tax credit on fake invoices as per provisions of Section 69 of the CGST Act 2017.

Section 69

(1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.

Section 132

(1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely:—

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;

Q.15 Is there imprisonment in case of issue of tax invoice without the supply of goods or services or availing input tax credit on those invoices?

Yes, the taxpayer can be imprisoned based on the amounts along with the fine, which differs based on the threshold specified in section 132(1)(l) of the CGST Act 2017.

Sr. No	Particulars	Penalty
1	Above rupees one crore and less than rupees two crores	Imprisonment up to one year and fine
2	Above rupees two crores and less than rupees five crores	Imprisonment up to three years and fine
3	Above rupees five crores	Imprisonment up to fiveyears and fine

Q16: Will the waiver of penalty and interest announced in the recently concluded 53rd GST Council Meeting apply to these cases?

No, it should not be applicable the relief is given only for the trade facilitation measures not for cases of fake invoices or using it for availing input tax credits.

Q17. What is the opinion of the Courts in the case of Fake invoicing?

M/s. Jayachandran Alloys (P) Ltd (Madras High Court) [2019 105 taxmann.com 245 (Madras)]

The Hon'ble Madras High Court granted relief to the petitioner by providing interim protection to prevent the department from invoking the powers under Section 69 of the Act (arrest provision) in conjunction with Section 132 (offences provision). Additionally, the Court emphasized that the commission of an offence must be established before any punishment is imposed. The Court also instructed the department to complete the adjudication process following the proper legal procedures.

Amit Dua (Patiala House Courts) [2021 (9) TMI 111]

In this case, the petitioner was alleged to have availed credit from non-existing firms based on fake invoices and was arrested on July 23, 2021. The petitioner applied for bail, but the court held that the grant of bail depends on complex facts and factors. Since the other co-accused persons were still absconding and the petitioner's role was similar to theirs, the court found the allegations against the petitioner to be serious. Given that the investigation was still ongoing, the court believed that releasing the petitioner could hinder the investigation, as he might protect the absconding accused. Consequently, the bail application was dismissed.

Pawan Goel and Anr (Delhi High Court) [2021-TIOL-1318-HC-DEL-GST]

The petitioners were accused of availing Input Tax Credit (ITC) using fake invoices, leading to the cancellation of their anticipatory bail by the Patiala House Court. However, the Hon'ble Delhi High Court granted bail, noting that the petitioners were cooperating with the investigation and were not habitual offenders.

Sapna Jain vs. Union of India (Bombay High Court) [2019-TIOL-1146-HC-MUM-GST]

Anticipatory bail was granted, with the court ordering that no coercive action be taken against the petitioner until the next date.

SLP Filed by the Government in Supreme Court [(2019) 106 taxmann.com 212 (SC)]

The Hon'ble Supreme Court decided not to interfere with the High Court's order granting pre-arrest bail. However, the Court noted that while entertaining pre-arrest bail applications, High Courts should consider that the Supreme Court had previously dismissed a Special Leave Petition (SLP) against an order from the Telangana High Court in a similar case, where protection against arrest was not granted.

Director General of GST Intelligence Annual Report : 2022

During its nationwide investigations, the Directorate General of GST Intelligence (DGGI) has uncovered various methods used by firms to illicitly avail input tax credit (ITC) based on fraudulent invoices. The identified modus operandi includes:

1. Unwarranted ITC Claims: Firms are found to be claiming substantial amounts of ITC despite having no corresponding inward supply of goods or services, effectively passing on non-existent ITC.
2. Clandestine Supply Chains: Existing businesses, known as seeding firms, are discovered to be passing off their fraudulently accumulated excess ITC through the supply of goods or services in B2C transactions. These sales often go unrecorded as retail customers typically do not demand invoices.
3. Use of Dummy Entities: Fraudsters are registering GST under the names of unsuspecting individuals. These entities are wholly controlled and operated by criminal masterminds, making it challenging to trace the actual perpetrators.
4. Sophisticated Layering: A complex and extensive layering of transactions is employed across multiple GST jurisdictions. This strategy is designed to obscure the fraudulent activities and avoid detection by the authorities, complicating efforts to trace back to the orchestrators.

These findings highlight the sophisticated techniques used to exploit the GST system, necessitating advanced investigative approaches and stronger enforcement actions to combat such widespread tax evasion.

According to the annual report from the Directorate General of GST Intelligence (DGGI), a significant number of cases involving GST fraud have been detected. Legal proceedings are currently underway in these cases, aiming to address and rectify these discrepancies. Additionally, the report details the amounts recovered through these efforts, underscoring the agency's commitment to maintaining the integrity of the tax system and safeguarding public revenue. Detailed figures and further insights are provided below, illustrating the scope of the enforcement actions and the impact of these measures on curbing tax evasion during the FY 2022-23.

Sr. No	Entity	No. of Cases	Amount Detected (₹ Cr.)	Voluntary Payment (₹ Cr.)	No. of persons arrested
1	DGGI	1,940	13,175	1,597	68
2	CGST Zones	6,303	10,965	887	85
	Total	8,243	24,140	2,484	153

Case Studies from DGGI Annual Report

Total Unawareness of Misuse of KYCs

The proprietor of a fictitious firm was discovered operating a simple flour mill ("Atta-Chakki") and was completely unaware that his personal identification details had been misused. Additionally, it was

found that numerous firms had been established by an individual who then sold these entities to a criminal mastermind. These firms were specifically set up for the purpose of issuing fake invoices, highlighting a sophisticated network of fraud that manipulates identities and corporate structures to facilitate tax evasion.

Total Detection in the subject Case was ₹ 370 Crore.

Greed

One firm was discovered to be receiving a monthly commission as compensation for providing their identification details to a criminal mastermind. This mastermind exploited these IDs to establish fake firms under the names of his family members, including his wife and son, as well as his employees. This scheme illustrates a deliberate and organized attempt to manipulate the system by creating a network of fraudulent entities to facilitate illicit activities.

Total Detection in the instant case was Rs.1,435 crore.

Connivance of Bank Employee

A bank employee was found to be involved in providing KYC (Know Your Customer) documents to a criminal mastermind, facilitating the creation of fake firms. This breach highlights a serious vulnerability within the banking system, where trusted insiders misuse their access to sensitive information, thereby enabling fraudulent activities and contributing to the larger network of tax evasion schemes.

Total Detection in the instant case was Rs.90 crore.

Misuse of Data Sharing Platform

The masterminds behind this scheme obtained a vast array of personal data from a Data Sharing Platform, which included a large number of individual PANs (Permanent Account Numbers). Leveraging these PANs along with other digitally forged documents, such as rental agreements and electricity bills, they successfully registered bogus firms. This method not only illustrates the sophistication of the fraud but also highlights significant vulnerabilities in the data protection mechanisms that should safeguard personal and financial information.

Total Detection in the subject case was Rs.3,000 Crore

Sector Analysis

Iron and Steel industry

The iron and steel industry in India has been traditionally prone to tax evasion, attributed to the complex nature of its operations, prevalence of cash transactions, and potential manipulations within the supply chain. This industry can utilize either iron ore or scrap metal as raw materials, employing distinct manufacturing processes like the blast furnace/basic oxygen furnace (BF-BOF) route for primary steelmaking and the electric arc furnace (EAF) route for secondary steelmaking.

Primary Steelmaking (BF-BOF route): Iron is first produced from iron ore and then converted into steel using basic oxygen furnaces.

Secondary Steelmaking (EAF route): Recycled scrap is melted in an induction furnace, then the molten metal is cast into ingots. These ingots are reheated and rerolled into various shapes, forming intermediate products like billets, blooms, and slabs, which are subsequently turned into final products such as bars, rods, plates, sheets, wires, and structural shapes.

Common Evasion Tactics in the Industry:

1. **Trading of Scrap:** The largely unorganized scrap market involves numerous small groups and individual dealers who trade and supply metal scrap to steel manufacturers. To evade the 18% GST on scrap supplies, fictitious firms are created, and fraudulent GST invoices are issued to facilitate the illegal passing of Input Tax Credits (ITC), resulting in significant tax revenue losses.
2. **Clandestine Clearance:** Iron and steel products like TMT bars, MS bars, and various construction materials are often manufactured from uninvoiceed ferrous scrap purchased with cash. These finished products are also sold for cash without proper invoicing, complicating the tracking of actual production and sales, and evading GST.
3. **Misclassification of Slag:** During the manufacture of Direct Reduced Iron (DRI), a substantial amount of slag (commonly known as Dolochar), which contains iron and carbon, is generated. This by-product should be classified under HSN 2706 (attracting 18% GST), but is often misclassified as coal under HSN 2701, thereby incurring a lower GST rate of 5%, leading to a considerable loss to the government exchequer.
4. **Misuse of Compensation Cess:** Although coal, used as a raw material, attracts compensation cess, the finished iron and steel products do not. However, some taxpayers improperly claim this cess, contravening the specific provisions of the GST framework which restrict such claims.
5. **CAMPA Fees:** Steel plants may pay fees to the Compensatory Afforestation Planning and Management Authority (CAMPA) for non-forest use approvals. These payments are technically for the taxable service of agreeing to tolerate an act or a situation but are frequently not treated as taxable supplies.

These evasion methods indicate the need for stricter regulatory oversight and more robust enforcement mechanisms to ensure compliance and safeguard tax revenues within this vital sector of India's economy.

No. Of cases detected – 504

Amount Detected – ₹ 3,916 Crores

Voluntary Payment – ₹ 1,237 Crores

Tobacco, Pan Masala & Cigarettes

India grapples with severe health challenges attributed to the widespread consumption of Pan Masala, cigarettes, and other tobacco products. To mitigate these health risks, the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) advocates for tobacco taxation as the most effective strategy to curb tobacco use. By implementing a higher tax rate, often referred to as a "Sin Tax," the goal is to discourage consumption and alleviate the health burden on society.

Taxation and Regulatory Measures:

Tobacco products are subject to a Goods and Services Tax (GST) at 28% along with a compensation cess ranging from 60% to 290% on an ad-valorem basis, with specific rates applying to certain products like cigarettes,

which can be as high as ₹ 4,170 per thousand. These products also attract additional levies such as Central Excise Duty and National Calamity and Contingency Duty.

The high taxation rates, combined with sales through unorganized retail channels, encourage manufacturers to engage in clandestine production and distribution activities.

Manufacturing and Distribution Challenges:

The production of Pan Masala and tobacco products primarily involves natural raw materials like betelnut, raw tobacco, katachu, perfume, menthol, and various packaging materials. These are often procured informally, making them prone to evasion of formal accounting and taxation. The cost of raw materials constitutes a significant portion of the total manufacturing costs, leading to substantial unrecorded transactions.

Modus Operandi of Tax Evasion:

(i) Manufacturers often record only a fraction of actual purchases, production, and sales in official records, paying taxes on this limited disclosed amount. The majority of their production and supplies remain unaccounted for.

(ii) An intricate system of unrecorded transactions spans from purchases to production to transportation and sales, facilitated by carrying and forwarding (C&F) agents and dealers. Temporary "kuccha" records are maintained for these transactions, making it difficult to prosecute the offenders.

(iii) To disguise illegal activities, manufacturers sometimes issue fraudulent invoices and e-way bills indicating distant destinations. These documents are used to justify multiple delivery trips for goods that are actually distributed nearby, allowing them to evade detection more readily.

The Directorate General of GST Intelligence (DGGI) has taken action against several well-known brands based on evidence gathered from transporters, packaging suppliers, and premises of C&F agents, highlighting the ongoing efforts to clamp down on these fraudulent practices.

The intricate network of evasion, facilitated by the informal trade of raw materials and the complexity of the supply chain, poses significant challenges to regulatory enforcement in India's tobacco sector.

No. Of cases detected – 97

Amount Detected – ₹ 2,491 Crores

Voluntary Payment – ₹ 296 Crores

CAG Audit Report - Indirect Taxes – Goods and Services Tax) Report No. 5 of 2022

The Comptroller and Auditor General of India highlighted a significant issue in the annual audit report regarding the misuse of the Input Tax Credit (ITC) system. The Office of the Directorate General of Analytics and Risk Management (DGARM) released a report in July 2020, which identified 9,757 taxpayers who had capitalized on fake ITC, alongside a list of 3,208 taxpayers responsible for issuing fake invoices. During the financial years 2018-19 and 2019-20, the total estimated ITC fraud amounted to ₹23,193.66 crore. The situation escalated in the financial year 2020-21, with approximately 8,000 cases

involving more than ₹35,000 crore in fraudulent ITC detected. A notable example was in Nagpur, where three firms were found to have passed fraudulent ITC amounting to ₹214 crore and claimed refunds on this amount.

The audit noted that while there is a mechanism to match the ITC claimed by taxpayers with the GSTR-1 returns filed by their suppliers, and to flag fraudulent cases through data analytics, these measures only take effect after refunds have been sanctioned. The report criticized the existing systems for their inadequacy in using real-time or near-real-time data analytics to prevent such fraud before the refund approval stage. The Central Board of Indirect Taxes and Customs (CBIC) acknowledged these issues in a circular, noting that many cases of monetization of fraudulently obtained or ineligible credits were detected, particularly involving refunds of IGST on exports. Upon further investigation, many exporters involved were found to be non-existent, having used fake ITC to pay IGST on exports.

In its report, the Comptroller and Auditor General (CAG) has recommended several measures to enhance the integrity of the GST system. Many of these recommendations have been implemented by the GST Network (GSTN) on the common portal. Additionally, the government has introduced changes to the GST legislation and issued Standard Operating Procedures (SOPs) and circulars to field formations. These documents guide the detection of fraudulent cases and outline the procedures for handling them, ensuring a more robust and vigilant regulatory environment.· Implement a comprehensive taxpayer profiling by integrating data from internal and external sources such as Income Tax, Directorate General of Foreign Trade, and Ministry of Corporate Affairs. Introduce real-time or near-real-time red-flagging in refund modules to prevent fraudulent Input Tax Credit (ITC) refunds.

1. Integrate the e-BRC module with the GST network to scrutinize cases where export proceeds have not been received within the prescribed timeframe, helping to identify and prevent potential refund frauds on fictitious exports.
2. Establish a robust red flag system by linking databases like ICEGATE, e-BRC, and XOS statement to alert officers about non-compliant taxpayers, enabling them to block refunds and recover ineligible refunds already issued.
3. Implement necessary validations in the refund module to ensure that refunds are processed in the correct sequence.
4. Conduct a comprehensive verification of Public Financial Management System (PFMS) data from the pre-automation era across all Commissionerates to detect any cases of double payment due to reconciliation failures.
5. Develop a detailed post-audit system including a codified manual of instructions, checklists, and SOPs, and introduce a dedicated post-audit module in the GST system for enhanced monitoring.
6. Amend the provisions for interest on delayed refunds to exclude delays caused by taxpayers, such as late responses to Show Cause Notices or incorrect banking details.
7. Modify the GST system to automatically calculate interest owed to claimants for delays in refund processing beyond the set timeline, with reasons for non-payment of interest being recorded and monitored in the system.
8. Implement an effective monitoring system to ensure timely issuance of deficiency

memos for incomplete refund claims.

9. Establish a system to identify and monitor taxpayers with a significant volume of non-taxable or exempt supplies to ensure timely ITC reversals and prevent improper refund claims.
10. Introduce a mechanism for timely re-credit of rejected refund amounts to the Electronic Cash Ledger (ECL), ensuring that in cases where an appeal is successful, the amount is refunded after being debited from the ECL.

Source *- https://cag.gov.in/uploads/download_audit_report/2022/Goods%20and%20Services%20Tax%202022%20English%20%20(31-03-2022)%20Final%20for%20Printing-062f0e3be13e397.79281451.pdf*

Tackling GST Frauds: Key Measures and Risk Profiling

To effectively combat GST frauds, it is essential to establish a system that can identify suspect entities at the initial stage and detect GST frauds as early as possible. Early identification is crucial because many fraudsters operate using the identities of dummy persons with no real assets, making it nearly impossible to recover any amounts if the fraud is detected later. To address these challenges, the following safeguards are suggested as key elements of risk profiling:

Suggested Safeguards:

1. Scrutiny and Verification: Implement risk profiling and verification of registered taxpayers to identify fraudsters engaging in fake invoices early. This is particularly important in historically tax-evasion-prone sectors.
2. Offence Database: Maintain a database of individuals involved in frauds to prevent their re-entry into the system.

Risk Indicators:

- Multiple registrations using the same PAN.
- Common email addresses, mobile numbers, addresses, authorized signatories, and promoters.
- Individuals whose registration applications were rejected or whose registrations were canceled may reapply for registration.
- Active registrations against the same PAN in CGST jurisdictions where offenses have been booked by SGST authorities.

By implementing these measures, the identification of high-risk entities can be significantly improved, reducing the incidence of GST fraud.

Handling of Fake invoices menace by the Department – Identification & Investigation

The following standard operating procedure outlines the steps for identifying and addressing "fake invoice" fraud under GST.

Identification: The first step in combating fake invoice fraud is to identify entities involved in generating and using fake invoices. The following risk parameters can help identify the generators of fake invoices:

- Multiple GSTIN Registrations: Multiple GSTINs registered for the same address.
- Multiple GSTINs for a Single PAN: A single PAN having multiple GSTINs.
- Incomplete or Incorrect Addresses: GSTINs using incomplete or wrong addresses.

- Sensitive Commodities: Taxpayers dealing in sensitive commodities.
- Common Contact Information: Common email addresses, mobile numbers, addresses, authorized signatories, or promoters for multiple GSTINs.
- Premises and Transaction Volume Mismatch: Discrepancy between the declared premises and the volume of goods transacted.
- E-way Bill Discrepancies: Mismatch between the quantity of transactions and the e-way bills generated. Few or no e-way bills generated compared to the details in GST returns.
- Fraudulent PAN Involvement: PAN involved in any fake invoice fraud or other GST frauds appearing in GSTR-1A or GSTR-2A.
- Abnormal ITC Utilization: High ITC utilization (e.g., above 95%).

Identifying users of fake invoices is equally important, as they utilize fraudulent credit for payment of goods or services. Items "h" and "i" above can help identify potential users of credit accumulated through fake invoices.

Investigation: The primary goal of the investigation is to establish that no actual supply of goods or services occurred, proving the issuance of fake invoices. This involves the following steps:

- Search Premises: Search all declared premises to prove the lack of or inadequacy of manufacturing facilities for the declared goods.
- Utility Consumption: Check for mismatches between the consumption of electricity, water, etc., and the declared quantum of goods manufactured.
- Facility Space: Verify the lack of facility and space to handle the quantum of goods traded.
- Nonexistent Premises: Confirm that suppliers of invoices do not have any premises for dealing with the goods.
- Missing Inputs and Services: Ensure the inputs and input services required for certain services do not exist.
- Missing Clearances: Verify the lack of valid clearances, licenses, or permissions required to handle inputs, final products, intermediate products, input services, or output services.
- Lack of Agreements: Check for the absence of required agreements between entities.
- Missing E-way Bills: Verify the absence of e-way bills.
- Fake Vehicle Numbers: Identify fake vehicle numbers shown in e-way bills or invoices.
- Cross-Agency Comparison: Compare details with other agencies like Income Tax and Registrar of Companies.
- RTO Mismatch: Check for mismatches with vehicle details available from the RTO office.

By following these steps, GST authorities can effectively identify and tackle fake invoice fraud, ensuring the integrity of the tax system.

What actions will be department take after the identification?

Once a thorough investigation has been completed and a Show Cause Notice (SCN) or other penal actions have been issued, it is crucial to take steps to prevent the same entities from engaging in fraud again. The following measures can be implemented to achieve this:

(a) Creation of an Offence Database:

Establish a module in the GST application to flag GSTINs of entities involved in fake invoice frauds or other fraudulent activities. This will enable automatic identification of buyers from these flagged entities and generate alerts for further verification by officers.

(b) Enhanced Re-registration Process:

Post-cancellation of registration, re-registration of such individuals should follow a different process. Applications for re-registration should be flagged to alert the concerned officers, and no deemed registration should be allowed in these cases. Physical verification must be mandatory.

(c) Identification and Recovery from Beneficiaries:

Identify entities that have availed ITC based on fake invoices and recover the amount as per law. Additionally, review their previous transactions with other entities on a sample basis to assess their propensity for fraud.

(d) Provisional Attachment of Property:

Invoke the provisions of Section 83 of the CGST Act, 2017, read with Rule 159 of the CGST Rules, 2019, to provisionally attach properties, including bank accounts, of the involved entities.

(e) Action Against Directors:

If there is prima facie evidence of criminal involvement by directors in GST evasion, invoke Section 89 of the CGST Act, 2017, read with Section 83, to attach bank accounts/properties of the directors.

(f) Blocking of ITC:

Block the ITC of the involved persons, including their beneficiaries, to prevent them from availing undue credit. This measure should be coordinated across jurisdictions to ensure comprehensive enforcement.

By implementing these steps, GST authorities can effectively deter repeat offenses and enhance the integrity of the GST system.

Conclusion

The issue of fake invoicing represents a significant threat to the economic stability and tax integrity of nations worldwide. By enabling the wrongful claim of input tax credits and facilitating illicit refunds, these fraudulent activities drain vital public resources, undermine social programs, and potentially fund harmful operations, including terrorism. The Indian government's strategic measures, such as the introduction of e-waybills, e-invoicing, and stringent authentication requirements, demonstrate a robust commitment to combating this pervasive fraud.

Additionally, the implementation of comprehensive risk profiling, enhanced scrutiny, and a dedicated offense database are critical steps toward early detection and prevention of these frauds. By imposing severe penalties and ensuring rigorous verification processes, the government aims to safeguard public revenue and maintain the integrity of the tax system.

Through continued vigilance and adaptation of advanced enforcement strategies, it is possible to mitigate the impacts of fake invoicing. Collaborative efforts between regulatory bodies and technological innovations will play a crucial role in closing the gaps exploited by fraudsters. As we move forward, these concerted efforts will be essential in fostering a transparent and accountable economic environment, ensuring that resources are available for the development and welfare of society at large.

Job work Returns & Records – GST ERA

(Form GST ITC-04)

CMA T K Jaganathan

Practicing Cost Accountant

Recommendations of 53rd GST Council Meeting

Measures for streamlining compliances in GST:

Time limit for filing of FORM GST ITC-04 for the quarters from July, 2017 to March, 2024 extended up to 30.09.2024.

Before we go into the reasons for the delay in filing Form GST ITC-04 and find a solution to the issue let us have a brief understanding of the Job work provisions under GST

Form GST ITC-04 is a declaration form to be furnished by registered persons (Principal), showing the details of inputs or capital goods dispatched to or received from a job worker in an applicable tax period.

Job work means processing or working on raw materials or semi-finished goods supplied by the

principal manufacturer to the job worker. This is to complete a part or whole of the process which results in the manufacture or finishing of an article or any other essential operation.

The principal manufacturer will be allowed to take credit for tax paid on the purchase of goods sent on job worker directly. However, there are certain conditions.

The principal manufacturer must receive the goods back within the following period:

- Capital Goods – 3 years from effective date: As per section 55(4), where the capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for job-work are not received back by the principal or are not supplied from the place of business of the job worker as aforesaid within a period of three years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job-worker on the day when the said capital goods were sent out.
- Input Goods – 1 year from effective date

In case goods are not received within the period mentioned above, such goods will be deemed as supply from the effective date i.e the data on which the goods have sent to by the principal to the job worker. The principal manufacturer will have to pay tax on such deemed supply. The challan issued will be treated as an invoice for such supply

Form GST ITC-04 is required to be filed on a quarterly basis for tax periods until September 2021. However, with effect from 1st October 2021, it is required to be filed on a yearly or annual basis depending upon the aggregate turnover of the taxpayer during the preceding financial year:

(1) Those with an annual aggregate turnover of more than Rs.5 crore – Half-yearly from April-September- and October-March.

(2) Those with an annual aggregate turnover of up to Rs.5 crore – Yearly from FY 2022-23

There are no specific penalties or late fees prescribed for the delay in filing GST ITC-04. However, Section 125 of the GST Act provides for a general penalty of up to ₹ 25,000 for contravention of the provisions of the Act and rules made thereunder.

Details of goods/capital goods sent to job worker and received back is reported in Form GST ITC 04 as below:

Table 4. Details of inputs/capital goods sent for job work (includes inputs/capital goods directly sent to place of business /premises of job worker)

Table 5A. Details of inputs/ capital goods received back from job worker to whom such goods were sent for job work; and losses and wastes

Table 5B. Details of inputs/capital goods received back from job worker other than the job worker to whom such goods were originally sent for job work; and losses and wastes

Table 5C. Details of inputs/ Capital goods sent to job worker and subsequently supplied from premises of job worker; and losses and wastes.

The major reason for the non-filing of Form GST ITC-04 is difficulty in tracking the movement of the materials sent and received back from job workers in the absence of the Job work register as was prevalent under the erstwhile Central Excise Law.

Extract of Circular No. 265/99/96-CX

Separate stock register should be maintained by the manufacturer in revised Annexure IV

attached herewith and by the job worker in Annexure V (Annexure V of Board Circular date 4th May, 1994) for the movement of goods under Rule 57F(3)/ Notification 214/86 and or Rule 57J.

Stock Register of Goods sent for Processing/ Job Working

Removal of inputs or partially processed goods under Rule 57F(2) and/ or Notification No. 214/86-CE dated 25.3.86 (to be maintained by assessee who sends raw materials/ semi-finished goods).

SL No.	Date of Issue	Description of Goods	Tarrif Classification chapter heading / sub Heading	Quantity Removed	Identification marks. If any	Premises/ Factory to which removed
a	1	2	3	4	5	6

Challan No. Date	Nature of Prosessing	Declared value of inputs cleared	Rate and Amount of credit reversed	Sl. No. & date of Dedit entry in PLA / RG 23 A Part- II	Initials of supplier / manufacturer	Date of receipt of processed inputs
7	8	9	10	11	12	13

Date of Clearance of processed inputs from factory of job worker	Quantity of processed / finished goods received/ cleared by job worker Wt./ Length/ pieces/ units	Difference between Col. 4 and 15	Quantum of waste materials received back/ cleared by job worker	Invoice No. & date & particulars of payment of duty	Particulars of Payment of duty on shortage/ waste if any or their mode of disposal	Sl. No. and date of entry in PLA / RG 23A part- II
14	15	16	17	18	19	20

Amount of recredit taken	Initials of manufacturer
21	22

Above format is only for reference and the Job work Register can be suitable modified to suit the GST Law and to be mandatorily maintained by the Principal sending the goods for job work.

Suggested format of Job work register under GST:

Trade and Industry should maintain the Job Work Register without fail and evidence the same to the GST officials whenever required. This will ensure control of material movement and also comply with the GST Law requirement. Though Section 35(1) (b) talks about the maintaining for the inward and outward supply of goods or services, this document can be treated as sub set of the same and will facilitate in the filing of the ITC-04. For ease of tracking of the Delivery Challans sent on job work, it is recommended to maintain a separate series for job work.

1. GSTIN 29AAECTxxxxxxx
2. (a) legal name -
'(b) Trade name, if any -

Job Work Register

Details of goods/Capital goods sent to job worker and received back

3. Details of inputs/capital goods sent for job-work														4. Details of inputs/capital goods received back from job worker or sent out from business place of job-work											5
GSTIN/Name of Job worker if unregistered	Challan no.	Challan date	Sl. NO	Item/ Part No.	'Description	UQC	Type of goods (Inputs/ capital goods)	HSN	Quantity	Taxable value	Rate of tax			Original challan No.	Invoice / Delivery Challan details of Job worker		Nature of Job done	Sl.NO	Item No. / Part No.	Description of Goods received	UQC	Quantity (Processed item)	Quantity (Loss / Wastage)	Equivalent Quantity of Original Item	Balance qty
											CGST Rate (%)	SGST Rate (%)	IGST Rate (%)		No.	Date									
									(a)															(b)	(a-b)
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Analysis of Important Recommendations of 53rd GST Council Meet –

CMA Rohit Kumar Singh

Partner - Taxmarvel Consulting Services LLP

The much-awaited GST Council met for the 53rd time under the Chairpersonship of Union Minister for Finance & Corporate Affairs Smt. Nirmala Sitharaman in New Delhi on 22nd June 2024. The meeting was attended by various finance ministers and senior officers from the Ministry of Finance and States/UTs.

The GST Council inter alia made the following recommendations relating to changes in GST tax rates, measures for facilitation of trade and measures for streamlining compliances in GST:

A. Changes in GST Rates –

a. Increase in GST Rates -

All milk cans (of steel, iron and aluminium) – GST Rate enhanced to 12% irrespective of their use

b. Reduction of GST Rates -

Reduction pf GST rate from 18% to 12% on **'cartons, boxes and cases of both corrugated and non-corrugated paper or paper-board' (HS 4819 10; 4819 20)**

c. Exemption from GST -

1. Imports for MRO Activities: Uniform rate of 5% IGST on parts, components, testing equipment, tools,

and tool-kits of aircrafts to support Maintenance, Repair, and Overhaul (MRO) activities

2. **SEZ Imports:** Exemption of Compensation Cess on imports by SEZ Unit/developers for authorized operations from July 1, 2017.

3. **Defence Imports:**

   (i) Extension of IGST exemption on imports of specified items for defence forces for five more years, till June 30, 2029.

   (ii) Ad-hoc IGST exemption on imports of technical documentation for AK-203 rifle kits for the Indian Defence forces.

4. **Indian Railways:**

   (i) Exemption of services provided by Indian Railways to the general public, including platform tickets, retiring rooms, waiting rooms, cloakroom services, and battery-operated car services

   (ii) Exemption for services provided by Special Purpose Vehicles (SPVs) to Indian Railways, allowing use of infrastructure during the concession period.

5. **Accommodation Services:** Exemption for accommodation services up to ₹ 20,000 per month per person, provided for a minimum continuous period of 90 days. This is recommended with an aim for providing relief to Students and working professionals.

6. **Insurance Sector –**

   (i) Co-Insurance Premium: Declaration of co-insurance premium as 'no supply' under Schedule III of the CGST Act, 2017

   (ii) Reinsurance Services: Declaration of ceding commission/re-insurance commission between insurer and reinsurer as 'no supply' under Schedule III of the CGST Act, 2017.

   (iii) Reinsurance Services for Specified Insurance Schemes: Regularization of GST liability on reinsurance services of specified insurance schemes.

7. Statutory Collections by RERA: Exemption of statutory collections made by the Real Estate Regulatory Authority (RERA) under GST

8. Incentive Sharing in RuPay Debit Cards and BHIM-UPI Transactions: Clarification that further sharing of incentives among stakeholders as per NPCI-defined scheme is not taxable

B. Biometric-based Aadhaar Authentication for GST Registrations:

Pan-India rollout of biometric-based Aadhaar authentication for registration applicants in a phased manner.

I. Context and Purpose: The GST Council has recommended the roll-out of biometric-based Aadhaar authentication for GST registration applicants on a pan-India basis. This measure aims to enhance the authenticity of registrations and curb fraudulent activities such as fake billing and bogus registrations.

II. Key Features:

i. Implementation:

Biometric-based Aadhaar authentication is proposed to be implemented in phases

across all states and Union Territories (UTs). Initially, a pilot project was conducted in Gujarat, Andhra Pradesh, and Puducherry, which was significantly successful in reducing fraudulent registrations.

ii. Process:

The process involves risk-based biometric authentication for high-risk applicants identified through data analytics and risk parameters. This includes capturing the photograph and verifying the original documents at designated GST Suvidha Kendras (GSKs).

For those opting for Aadhaar authentication, the date of submission of the application will be considered the date of Aadhaar authentication or fifteen days from the application submission, whichever is earlier.

iii. Legislative Changes:

Amendments have been made to Rule 8 of the CGST Rules, 2017 to mandate biometric-based Aadhaar authentication for high-risk applicants. This includes the insertion of a second proviso to sub-rule (4A) making it mandatory for those not opting for Aadhaar authentication to visit GSKs for photo capturing and document verification.

Sub-rule (4B) has been introduced to provide for exemption from biometric-based Aadhaar authentication in states/ UTs where the pilot is not undertaken.

iv. Facial Recognition:

In addition to fingerprint and iris scans, an advanced system of facial recognition-based Aadhaar authentication is also being developed to provide flexibility in the biometric authentication process.

v. Practical Implications:

a. For Taxpayers:

Ensures that only genuine businesses are granted GST registration and reduces the chances of identity theft and fraudulent activities.

b. For Authorities:

Helps in the early detection and prevention of fraudulent registrations. Streamlines the verification process through the use of technology and data analytics.

C. Return related Amendments –

1. New Optional Facility in FORM GSTR-1A:

Introduction of FORM GSTR-1A to allow taxpayers to amend or declare additional details before filing FORM GSTR-3B.

I. Introduction and Purpose: The introduction of FORM GSTR-1A is a new optional facility provided to taxpayers. It is intended to enhance the accuracy and completeness of the data reported in the GST returns. The key purpose is to allow taxpayers to:

- Add any missed details of outward supplies for the current tax period.
- Amend any details already declared in FORM GSTR-1 for the same period.

II. Key Features:

i. Optional Nature:

FORM GSTR-1A is optional and can be filed without any late fees. It allows for a one-time submission for each return period.

ii. Availability Period:

The form is available on the GST portal after the due date of filing FORM GSTR-1 or the actual date of filing FORM GSTR-1, whichever is later.

For quarterly taxpayers, it will be available after filing FORM GSTR-1 (Quarterly) or its due date, whichever is later, till the filing of FORM GSTR-3B of the same tax period.

iii. Auto-population in GSTR-3B:

Tax liabilities declared in both FORM GSTR-1A and GSTR-1 for a tax period will be auto-populated in FORM GSTR-3B for that period.

For taxpayers under the QRMP (Quarterly Return Monthly Payment) scheme, the tax liability from FORM GSTR-1A along with details furnished in FORM GSTR-1 and IFF (Invoice Furnishing Facility) of Month M1 and M2 will be reflected in FORM GSTR-3B (Quarterly).

iv. Restrictions on Amendments:

Amendments related to changing the recipient's GSTIN are not allowed in FORM GSTR-1A

v. Integration with GSTR-2B:

In addition to the GSTR-2B already generated, GSTR-2B will also include all supplies declared by the respective suppliers in FORM GSTR-1A. Supplies declared or amended in FORM GSTR-1A will be made available in the next open FORM GSTR-2B.

vi. Example for Clarification:

If a supplier issues two invoices, IN01 and IN02, in January 2024, and furnishes the details of IN01 in FORM GSTR-1 on February 8, 2024, but misses IN02.

The details of INV2 can be furnished in FORM GSTR-1A on February 15, 2024

1. IN01 will be reflected in the recipient's FORM GSTR-2B for January available on February 14, 2024,
2. while IN02 will be reflected in FORM GSTR-2B for changes made after 11th February will be available on March 14, 2024.

2. Exemption for Annual Return Filing for FY 2023-24:

Exemption for filing annual return in FORM GSTR-9/9A for taxpayers with an aggregate annual turnover of up to ₹ 2 crores for FY 2023-24

The exemption is in line with previous relaxations where the filing of annual returns was made optional for taxpayers with an aggregate turnover of up to ₹2 crores for the financial years 2017-18, 2018-19, and 2019-20.

Notifications such as No. 47/2019-CT, No. 31/2021-CT, No. 10/2022-CT, and No. 32/2023-CT have successively extended this exemption for FY 2020-21, 2021-22, and 2022-23.

D. Measures for Facilitation of Trade:

1. Conditional Waiver of Interest and Penalty:

Insertion of Section 128A in CGST Act, 2017 to provide for conditional waiver of

interest or penalty or both, for demands raised under Section 73 for FY 2017-18 to 2019-20, if full tax is paid by March 31, 2025.

I. Objective –

The primary objective of inserting Section 128A is to offer relief to taxpayers who faced challenges during the initial years of GST implementation (FY 2017-18, 2018-19, and 2019-20). Such waiver is to acknowledge the difficulties in compliance due to frequent changes in the GST framework and the impact of the COVID-19 pandemic.

II. Conditional waiver –

This proposed waiver provides for a conditional waiver of interest and penalties related to demands raised under Section 73 (dealing with tax not paid, short paid, or erroneously refunded, excluding fraud or wilful misstatement). The waiver is applicable for the financial years 2017-18, 2018-19, and 2019-20

III. Applicability of Waiver –

The waiver of interest and penalties is applicable on payment of the full amount of tax demanded in the notice issued under Section 73 by March 31, 2025. If the taxpayer pays the tax dues within the specified period, interest or penalties are exempted.

IV. Exclusion of Fraud Cases:

The waiver does not apply to cases involving fraud, suppression of facts, or wilful misstatement as enumerated under Section 74, which has different provisions for penalties and interest.

2. Relaxation in Section 16(4) of CGST Act:

Amendment to extend the time limit for availing input tax credit for invoices or debit notes under Section 16(4) retrospectively from July 1, 2017.

I. Context:

Section 16(4) of the Central Goods and Services Tax (CGST) Act, 2017, prescribes the time limit for availing input tax credit (ITC) in respect of any invoice or debit note pertaining to a financial year. The GST Council, during its 53rd meeting, recommended amendments to relax these provisions, especially for the initial years of GST implementation.

II. Existing Provision:

As per Section 16(4) of the CGST Act, a registered person can avail ITC for any invoice or debit note for the supply of goods or services by the earlier of the following dates:

(i) The due date for filing the return under Section 39 for the month of September following the end of the financial year to which such invoice or invoice relating to such debit note pertains.

(ii) The date of furnishing of the relevant annual return, whichever is earlier

III. Proposed Relaxations:

i. Initial Years of GST Implementation:

Scope: This relaxation applies to the financial years 2017-18, 2018-19, 2019-20, and 2020-21.

Extended Deadline: The time limit for availing ITC in respect of any invoice or

debit note under Section 16(4) of the CGST Act, for these initial years, is deemed to be extended up to November 30, 2021, through any return filed in FORM GSTR-3B.

Retrospective Effect: The GST Council recommended amending Section 16(4) of the CGST Act retrospectively, with effect from July 1, 2017, to implement this extension.

ii. Returns Filed After Revocation of Registration:

Scope: This applies to cases where returns have been filed after the revocation of cancellation of registration.

Condition: The relaxation is applicable where the returns for the period from the date of cancellation of registration or the effective date of cancellation till the date of revocation of such cancellation are filed by the registered person within thirty days of the order of revocation.

IV. Retrospective Amendment:

The Council recommended a retrospective amendment to Section 16(4) of the CGST Act, effective from July 1, 2017, to include this conditional relaxation.

V. Rationale Behind the Amendment:

i. **Challenges in Initial Years:** The initial years of GST implementation were marked by frequent changes in regulations, technical issues with the GST portal, and a general lack of familiarity among taxpayers. These factors contributed to delays in compliance and filing.

ii. **Encouraging Compliance:** By extending the deadlines retrospectively, the government aims to encourage taxpayers to rectify past non-compliance without facing the penalty of losing ITC eligibility. This helps in ensuring that businesses can claim their rightful credits and maintain healthy cash flows.

iii. **Support for Businesses:** The relaxation acknowledges the difficulties faced by businesses, especially MSMEs, during the transition to the GST regime. It provides them with an opportunity to regularize their ITC claims, thereby reducing financial stress.

iv. **Legislative Amendments:** The recommended changes will require amendments to Section 16(4) of the CGST Act. These amendments will be introduced in the Parliament and, once passed, will have retrospective effect from July 1, 2017.

VI. Conclusion:

The relaxation in Section 16(4) of the CGST Act is a significant relief measure aimed at addressing the challenges faced by taxpayers during the initial years of GST implementation. By extending the deadlines for availing ITC and including provisions for returns filed after revocation of registration, the GST Council aims to foster a more compliant and taxpayer-friendly environment.

3. Amendment in Rule 88B of CGST Rules:

Amendment to provide that amount in the Electronic Cash Ledger on the due date of filing GSTR-3B, and debited while filing

the return, are not included in calculating interest for delayed filing.

I. Key Provision:

Rule 88B Amendment: The amendment to Rule 88B aims to provide that any amount available in the Electronic Cash Ledger (ECL) on the due date of filing the return in FORM GSTR-3B, and which is subsequently debited while filing the return, shall not be included in the calculation of interest under Section 50 of the CGST Act for delayed filing of the return.

II. Rationale Behind the Amendment:

Ease Interest Burden on Taxpayers: The primary objective is to ease the interest burden on taxpayers. If the amount required to settle the tax liability is available in the ECL on the due date but is debited only when the return is filed late, the taxpayer should not be penalized with interest on that amount.

Encourage Timely Tax Payment: This amendment encourages taxpayers to maintain sufficient balance in their ECL, even if they face delays in filing returns. It ensures that taxpayers who have made provisions to pay their taxes on time are not unduly burdened with additional interest.

Clarity and Fairness: The amendment provides clarity and ensures a fair approach to the calculation of interest. It distinguishes between delays in return filing and actual delays in tax payment, thereby promoting a more equitable tax administration. Implementation:

III. Legislative Changes:

The amendment will be incorporated into Rule 88B of the CGST Rules, 2017. This requires formal notification by the government to bring the changes into effect.

The amendment to Rule 88B of the CGST Rules is a positive step towards reducing the interest burden on taxpayers and promoting fair tax practices. By excluding amounts available in the ECL on the due date from interest calculations for delayed return filing, the GST Council aims to create a more equitable and efficient tax compliance environment.

4. Reduction of Government Litigation:

Fixing monetary limits for filing appeals by the Department before the GST Appellate Tribunal, High Courts, and Supreme Court

I. Objective –

Efficiency in Litigation: To ensure that the judicial system is not burdened with cases of insignificant monetary value, allowing focus on more substantial and impactful cases.

Reduction in Disputes: To reduce the number of appeals, thereby minimizing disputes and fostering a more cooperative compliance environment.

Resource Optimization: To optimize the use of government resources by reducing unnecessary litigation.

II. Monetary Limits for Filing Appeals:

GST Appellate Tribunal (GSTAT): Appeals by the Department will only be filed if the monetary amount involved is ₹ 20 lakhs or more.

High Courts: Appeals by the Department will only be filed if the monetary amount involved is ₹ 1 crore or more.

Supreme Court: Appeals by the Department will only be filed if the monetary amount involved is ₹ 2 crores or more.

This limit is not applicable for taxpayers who are open to file appeal irrespective of any monetary limits.

III. Principles for Application:

The aggregate amount of tax, interest, penalty, or late fee in dispute should be considered when applying these monetary limits. In cases of erroneous refunds, the disputed refund amount will be considered. For composite orders involving multiple appeals, the total disputed amount across all appeals should be taken into account.

IV. Certain possible Exclusions:

The monetary limits do not apply to cases where:

A provision of the CGST, SGST/UTGST, IGST, or Cess has been held ultra vires.

Matters involve recurring issues or significant legal interpretations, such as valuation, classification, refunds, or place of supply.

Adverse comments/costs imposed against the government/officers.

The Board as it deems may necessary to contest a case in the interest of justice or revenue.

V. Judicial Efficiency:

By setting monetary thresholds, the judicial system can focus on cases with significant revenue implications or those that raise important legal questions.

This measure aims to reduce the burden on courts and tribunals, allowing them to handle more critical and high-value cases efficiently.

5. Reduction in Pre-Deposit for Filing Appeals:

Forum	Earlier Pre-deposit	Proposed Pre-deposit
Appellate Authority	10% of the disputed tax amount, subject to a maximum of ₹ 25 crores for CGST and ₹ 25 crores for SGST.	10% of the disputed tax amount, subject to a maximum of ₹ 20 crores for CGST and ₹ 20 crores for SGST.
Appellate Tribunal	An additional 20% of the disputed tax amount (over and above the 10% already deposited for the first appeal), subject to a maximum of ₹ 50 crores for CGST and ₹ 50 crores for SGST.	An additional 10% of the disputed tax amount (over and above the 10% already deposited for the first appeal), subject to a maximum of ₹ 20 crores for CGST and ₹ 20 crores for SGST.

Rational behind this Amendment –

Ease Financial Burden: The reduction in pre-deposit requirements aims to alleviate the financial strain on businesses, particularly those facing cash flow issues. By lowering the amount that needs to be deposited upfront, businesses can maintain better liquidity and working capital

Encourage Compliance: Lowering the pre-

deposit threshold encourages taxpayers to file appeals without the fear of significant financial burden. This promotes a more compliant environment where taxpayers are more likely to pursue their rights to appeal.

Streamline Dispute Resolution: The amendments are designed to streamline the dispute resolution process by making it more accessible to taxpayers. This is expected to lead to a more efficient resolution of tax disputes, benefiting both the taxpayers and the tax administration.

The reduction in pre-deposit amounts for filing appeals under GST is a significant step towards easing the financial burden on taxpayers and encouraging compliance. This amendment is expected to improve cash flow for businesses, make the appeal process more accessible, and streamline the resolution of tax disputes.

6. Time for Filing Appeals in GST Appellate Tribunal:

Amendment to allow a three-month period for filing appeals before the Appellate Tribunal to start from a date notified by the Government.

I. Key Provision:

Amendment to Section 112: The GST Council recommended that the three-month period for filing appeals before the GSTAT should start from a date to be notified by the Government. This is specifically for appeal/revision orders passed before the notification date.

II. Rationale Behind the Amendment:

Providing Sufficient Time: This amendment ensures that taxpayers have adequate time to file appeals in the Appellate Tribunal, especially for orders issued prior to the notification date. This helps in cases where taxpayers might have missed the original appeal window due to various reasons such as lack of awareness or administrative delays.

Reducing Litigation and Improving Compliance:

By extending the appeal filing period, the amendment aims to reduce litigation. Taxpayers will be less likely to rush through the appeal process, potentially leading to more thorough and accurate appeal submissions.

Improved compliance is expected as taxpayers get a fair opportunity to contest decisions without the pressure of a stringent deadline.

Implementation of the amendment:

The Government will issue a notification specifying the new date from which the three-month period for filing appeals will begin. This notification will provide clarity and a definitive timeline for taxpayers.

7. Insertion of Section 11A in CGST Act, 2017:

To allow regularization of non-levy or short levy of GST where tax was not paid due to common trade practices.

I. Key Provision:

Section 11A: The new section empowers the government to allow the regularization of non-levy or short-levy of GST where the tax was not paid or was underpaid due to common trade practices, provided this is done on the recommendation of the GST Council.

II. Rationale Behind the Amendment:

Addressing Historical Practices: The initial

years of GST implementation saw various interpretations and practices by taxpayers, leading to instances where GST was not levied or was levied short due to prevailing trade practices.

Section 11A is designed to address these situations by providing a mechanism to regularize such cases without penalizing taxpayers for genuine mistakes made during the early stages of GST implementation.

Reducing Litigation and Disputes:

This provision aims to reduce litigation and disputes arising from past practices. Regularizing non-levy or short-levy cases helps in resolving potential conflicts between taxpayers and tax authorities amicably.

It promotes a more cooperative compliance environment and reduces the administrative burden on tax authorities and taxpayers.

Promoting Fairness and Equity:

The amendment ensures that taxpayers are not unduly penalized for actions based on common trade practices. It acknowledges the complexities and challenges faced during the transition to the new GST regime and provides a fair approach to dealing with such issues.

III. Implementation:

Legislative Changes: The insertion of Section 11A will require an amendment to the CGST Act, 2017. This amendment will be introduced and passed by the Parliament to formalize the provision. o The government, upon the GST Council's recommendation, will have the authority to regularize specific cases of non-levy or short-levy.

8. Reduction in TCS Rate for ECOs:

Reduction of Tax Collected at Source (TCS) rate for supplies made through Electronic Commerce Operators (ECOs) from 1% to 0.5%.

I. Key Provisions:

Under Section 52(1) of the CGST Act, Electronic Commerce Operators are required to collect TCS on net taxable supplies made through their platforms.

Current Rate of TCS	Proposed rate of TCS
The current rate of TCS is 1%, which is split into 0.5% CGST and 0.5% SGST/UTGST, or 1% IGST for inter-state supplies.	The reduced rate will be 0.50% split into 0.25% CGST and 0.25% SGST/UTGST for intra-state supplies, or 0.50% IGST for inter-state supplies

II. Rationale Behind the Reduction in TCS Rate:

Ease Financial Burden on Suppliers: The reduction in the TCS rate is intended to lower the blockage of cash for suppliers using ECO platforms. By reducing the TCS, the GST Council aims to provide financial relief and improve cash flow for these businesses.

Encourage Digital Transactions: Lowering the TCS rate is expected to incentivize more suppliers to engage in digital commerce. This move aligns with the government's broader goal of promoting digital transactions and a cashless economy.

Support Small and Medium Enterprises (SMEs): Many suppliers on ECO platforms are small and medium enterprises (SMEs). Reducing the TCS rate will particularly benefit these smaller entities, which often face tighter cash flow constraints compared to larger businesses

III. Implementation Mechanism –

The proposed reduction in the TCS rate will

require an amendment to Section 52(1) of the CGST Act. This legislative change will formalize the new TCS rates and ensure they are uniformly applied across all ECO platforms.

9. Refund Mechanism for Additional IGST:

Introduction of a mechanism for claiming a refund of additional IGST paid due to upward price revisions after export.

Mechanism for Claiming Refunds:

Situation Addressed: The mechanism addresses cases where exporters are required to pay additional IGST due to an upward revision in the price of goods after the goods have already been exported.

Claiming Refunds: Exporters will be able to claim refunds for the additional IGST paid because of the price revision. This new mechanism aims to simplify the refund process and ensure that exporters are not financially burdened due to post-export price adjustments.

10. Valuation of Import of Services by Related Persons:

Clarification on the deemed open market value of services provided by foreign affiliates to related domestic entities.

I. Key Recommendations:

Valuation Based on Invoice Value:

In cases where a foreign affiliate provides services to a related domestic entity and the recipient is eligible for full ITC, the value declared in the invoice by the domestic entity may be deemed the open market value. This is in accordance with the second proviso to Rule 28(1) of the CGST Rules.

Nil Value for Uninvoiced Services:

If no invoice is issued by the domestic entity for services provided by the foreign affiliate, and the recipient is eligible for full ITC, the value of such services may be deemed to be declared as Nil. This value is also considered as the open market value per the second proviso to Rule 28(1) of the CGST Rules.

The GST Council's recommendation to clarify the valuation of the import of services by related persons simplifies the compliance process and provides clear guidelines for businesses. By deeming the invoice value as the open market value and allowing a Nil value for uninvoiced services, the amendment ensures ease of doing business and reduces potential disputes

11. Valuation of Corporate Guarantees:

Amendment of Rule 28(2) of CGST Rules retrospectively to clarify valuation issues for corporate guarantees between related parties.

I. Key Provisions:

Amendment to Rule 28(2) of the CGST Rules, 2017:

Effective Date: The amendment to Rule 28(2) is retrospective, effective from October 26, 2023.

Valuation Criteria: The value of the supply of services by way of providing a corporate guarantee between related persons shall be deemed to be higher of:

1% of the amount of the guarantee offered, or

The actual consideration,

II. Circular Clarification:

A circular was issued to provide clarity on various issues related to the valuation of corporate guarantees. This circular ensures that the valuation method is uniformly applied across different scenarios and avoids disputes.

The circular also clarifies that this valuation rule does not apply to the export of such services or where the recipient is eligible for full input tax credit (ITC).

III. Rationale Behind the Amendment:

Uniformity and Clarity: The primary aim of the amendment is to provide a clear and uniform method for valuing corporate guarantees, which helps in reducing litigation and ensuring consistency in the application of GST laws.

Revenue Neutrality: The amendment ensures that transactions involving corporate guarantees between related parties are taxed in a manner that reflects their true economic value. This approach maintains revenue neutrality and fairness in the GST system.

Compliance and Simplification: By establishing a clear valuation method, the amendment simplifies compliance for businesses and tax practitioners. It eliminates ambiguities that could lead to varied interpretations and potential disputes.

The amendment to Rule 28(2) of the CGST Rules regarding the valuation of corporate guarantees between related persons is a significant step towards providing clarity and uniformity in GST compliance. This measure is expected to reduce litigation, enhance compliance, and ensure fair taxation of corporate guarantees.

12. Reverse Charge Mechanism (RCM) Invoices:

Clarification on the relevant financial year for availing ITC under RCM, based on when the invoice was issued by the recipient.

I. Key Points:

Reverse Charge Mechanism (RCM):

Under the RCM, the recipient of goods or services is liable to pay GST instead of the supplier. This is applicable in cases where supplies are received from unregistered suppliers or for specific notified categories of supplies.

The recipient is required to issue an invoice for such supplies, reflecting the tax payable under RCM.

Section 16(4) of the CGST Act, 2017:

Section 16(4) specifies the time limit for availing ITC on any invoice or debit note.

The ITC can be claimed until the earlier of:

i. 30th November of the Next Financial year to which such invoice pertains.
ii. The date of furnishing the relevant annual return.

II. Clarification on Relevant Financial Year for RCM Invoices:

The Council recommended clarifying that for supplies received from unregistered suppliers under RCM, where the recipient issues the invoice, the relevant financial year for calculating the time limit for availing ITC under Section 16(4) is the financial year in which the recipient issues the invoice.

This means that the time limit for claiming ITC starts from the financial year in which the recipient of the goods or services issues the invoice for the RCM supplies.

III. Scenario Analysis:

Delayed Self-Issued Invoice:

If a recipient issues a self-tax invoice for RCM supplies three years after the actual receipt of supplies, the relevant financial year for the ITC time limit calculation starts from the year the invoice is issued. Example:

Suppose a business receives supplies in FY 2020-21 but issues the self-tax invoice under RCM in FY 2023-24. According to the clarification, the relevant financial year for ITC purposes is 2023-24.

ITC Eligibility Window:

Based on Section 16(4), ITC for the invoice issued in FY 2023-24 can be claimed up to 30th Nov 2024 or the date of filing the annual return for FY 2023-24, whichever is earlier

IV. Implications:

Ensures Clarity:

This clarification ensures that taxpayers clearly understand the period within which they can claim ITC for supplies received under RCM. It removes any ambiguity regarding which financial year should be considered for calculating the ITC time limit.

Consistency in ITC Claims:

By establishing that the relevant financial year is when the invoice is issued by the recipient, it promotes consistency in ITC claims. Taxpayers will have a uniform reference point for calculating the time limit, simplifying compliance.

Facilitates Compliance: The clarification aids in easier compliance for businesses dealing with RCM supplies. Knowing the exact timeframe for ITC eligibility helps businesses plan their accounting and tax reporting more effectively

The GST Council's recommendation to clarify the relevant financial year for ITC calculation for RCM supplies addresses a crucial compliance aspect. It ensures that taxpayers have a clear understanding of the time limits for availing ITC, thereby reducing potential disputes and enhancing compliance with GST regulations

Conclusion

The GST Council even though met after a prolonged gap of 8 months had a lot of issues to be discussed and recommended major changes and clarifications to the relief of taxpayers. However, the clarification on the Gaming Industry is left untouched which came as a surprise. The inclusion of Petroleum products in the fold of GST was also left untouched. However, the Hon'ble Central Finance Minister emphasised during press release that legislative competence is already taken care of for the inclusion of petroleum products in GST.

It is interesting to await the actual implementation of the aforesaid key recommendations and the relief they provide to the taxpayers at large.

PRESS RELEASE

INDIRECT TAX

Recommendations of 53rd GST Council Meeting

GST Council recommends waiving interest and penalties for demand notices issued under Section 73 of the CGST Act (i.e. the cases not involving fraud, suppression or wilful misstatement, etc.) for the fiscal years 2017-18, 2018-19 and 2019-20, if the full tax demanded is paid upto 31.03.2025.

GST Council recommends the time limit to avail input tax credit w.r.t. any invoice or debit note under Section 16(4) of CGST Act, through any GSTR 3B return filed upto 30.11.2021 for FY 2017-18, 2018-19, 2019-20 and 2020-21, may be deemed to be 30.11.2021.

Council has recommends monetary limit of ₹ 20 lakh for GST Appellate Tribunal, ₹ 1 crore for High Court and ₹ 2 crore for Supreme Court, for filing of appeals by the Department, to reduce litigation.

GST Council recommends reduction of the quantum of pre-deposit required to be paid for filing of appeals under GST.

GST Council recommends amending provisions of CGST Act to provide that the three-month period for filing appeals in GST Appellate Tribunal will start from a date to be notified by the Government.

To ease the interest burden of the taxpayers, GST Council recommends to not levy interest u/s 50 of CGST Act in case of delayed filing of return, on the amount which is available in Electronic Cash Ledger (ECL) on the due date of filing of the said return.

GST Council recommends sunset clause from April 1st, 2025 for receipt of any new application for Anti-profiteering.

GST Council recommends exemption from Compensation Cess leviable on the imports in SEZ by SEZ Unit/developer for authorised operations from 1st July, 2017.

GST Council recommends 12% GST on milk cans (steel, iron, aluminum) irrespective of use; Carton, Boxes And Cases of both corrugated and non-corrugated paper or paper-board; Solar cookers whether single or dual energy source; and sprinklers including fire water sprinklers.

GST Council recommends exemption of certain services provided by Indian Railways to common man and also intra railway supplies.

GST Council recommends certain exemptions related to accommodation services, providing relief to students and working professionals.

GST Council recommends to roll-out the biometric-based Aadhaar authentication of registration applicants on pan-India basis in a phased manner.

Posted On: 22 JUN 2024 7:43PM by PIB Delhi.

The 53rd GST Council met under the Chairpersonship of Union Minister for Finance & Corporate Affairs Smt. Nirmala Sitharaman in New Delhi today. The meeting was also attended by Union Minister of State for Finance Shri Pankaj Chaudhary, Chief Ministers of Goa and Meghalaya; Deputy Chief Ministers of Bihar, Haryana, Madhya Pradesh, and Odisha;

besides Finance Ministers of States & UTs (with legislature) and senior officers of the Ministry of Finance & States/ UTs.

The GST Council *inter alia* made the following recommendations relating to changes in GST tax rates, measures for facilitation of trade and measures for streamlining compliances in GST.

A. Changes in GST Tax Rates:

I. Recommendations relating to GST rates on Goods.

A. Changes in GST rates of goods

1. A uniform rate of 5% IGST will apply to imports of 'Parts, components, testing equipment, tools and tool-kits of aircrafts, irrespective of their HS classification to provide a fillip to MRO activities subject to specified conditions.
2. All milk cans (of steel, iron and aluminium) irrespective of their use will attract 12% GST.
3. GST rate on 'carton, boxes and cases of both corrugated and non-corrugated paper or paper-board' (HS 4819 10; 4819 20) to be reduced from 18% to 12%.
4. All solar cookers whether single or dual energy source, will attract 12% GST.
5. To amend existing entry covering Poultry keeping Machinery attracting 12% GST to specifically incorporate "parts of Poultry keeping Machinery" and to regularise past practice on 'as is where is' basis in view of genuine interpretational issues.
6. To clarify that all types of sprinklers including fire water sprinklers will attract 12% GST and to regularise the past practice on 'as is where is' basis in view of genuine interpretational issues.
7. To extend IGST exemption on imports of specified items for defence forces for a further period of five years till 30th June, 2029.
8. To extend IGST exemption on imports of research equipment/buoys imported under the Research Moored Array for African-Asian-Australian Monsoon Analysis and Prediction (RAMA) programme subject to specified conditions.
9. To exempt Compensation Cess on the imports in SEZ by SEZ Unit/ developers for authorised operations w.e.f. 01.07.2017.

Other Miscellaneous Changes

10. To exempt Compensation cess on supply of aerated beverages and energy drinks to authorised customers by Unit Run Canteens under Ministry of Defence.
11. To provide Adhoc IGST exemption on imports of technical documentation for AK-203 rifle kits imported for Indian Defence forces.

II. Recommendations relating to GST rates on services

1. To exempt the services provided by Indian Railways to general public, namely, sale of platform tickets, facility of retiring rooms/waiting rooms, cloak room services and battery-operated car services and to also exempt the Intra-Railway

transactions. The issue for the past period will be regularized from 20.10.2023 to the date of issue of exemption notification in this regard.

2. To exempt GST on the services provided by Special Purpose Vehicles (SPV) to Indian Railway by way of allowing Indian Railway to use infrastructure built & owned by SPV during the concession period and maintenance services supplied by Indian Railways to SPV. The issue for the past will be regularized on 'as is where is' basis for the period from 01.07.2017 till the date of issue of exemption notification in this regard.

3. To create a separate entry in notification No. 12/2017- CTR 28.06.2017 under heading 9963 to exempt accommodation services having value of supply of accommodation up to ₹ 20,000/- per month per person subject to the condition that the accommodation service is supplied for a minimum continuous period of 90 days. To extend similar benefit for past cases.

Other changes relating to Services

4. Co-insurance premium apportioned by lead insurer to the co-insurer for the supply of insurance service by lead and co-insurer to the insured in coinsurance agreements, may be declared as no supply under Schedule III of the CGST Act, 2017 and past cases may be regularized on 'as is where is' basis.

5. Transaction of ceding commission/ re-insurance commission between insurer and re-insurer may be declared as no supply under Schedule III of CGST Act, 2017 and past cases may be regularized on 'as is where is' basis.

6. GST liability on reinsurance services of specified insurance schemes covered by Sr. Nos. 35 & 36 of notification No. 12/2017-CT (Rate) dated 28.06.2017 may be regularized on 'as is where is' basis for the period from 01.07.2017 to 24.01.2018.

7. GST liability on reinsurance services of the insurance schemes for which total premium is paid by the Government that are covered under Sr. No. 40 of notification No. 12/2017-CTR dated 28.06.2017 may be regularized on 'as is where is' basis for the period from 01.07.2017 to 26.07.2018.

8. To issue clarification that retrocession is 're-insurance of re-insurance' and therefore, eligible for the exemption under Sl. No. 36A of the notification No. 12/2017-CTR dated 28.06.2017.

9. To issue clarification that statutory collections made by Real Estate Regulatory Authority (RERA) are exempt from GST as they fall within the scope of entry 4 of No.12/2017-CTR dated 28.06.2017.

10. To issue clarification that further sharing of the incentive by acquiring bank with other stakeholders, where the sharing of such incentive is clearly defined under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions and is decided in the proportion and

manner by NPCI in consultation with the participating banks is not taxable.

B. Measures for facilitation of trade:

1. **Insertion of Section 128A in CGST Act, to provide for conditional waiver of interest or penalty or both, relating to demands raised under Section 73, for FY 2017-18 to FY 2019-20 :** Considering the difficulties faced by the taxpayers, during the initial years of implementation of GST, the GST Council recommended, waiving interest and penalties for demand notices issued under Section 73 of the CGST Act for the fiscal years 2017-18, 2018-19 and 2019-20, in cases where the taxpayer pays the full amount of tax demanded in the notice upto 31.03.2025. The waiver does not cover demand of erroneous refunds. To implement this, the GST Council has recommended insertion of Section 128A in CGST Act, 2017.

2. **Reduction of Government Litigation by Fixing monetary limits for filing appeals under GST:** The Council recommended to prescribe monetary limits, subject to certain exclusions, for filing of appeals in GST by the department before GST Appellate Tribunal, High Court, and Supreme Court, to reduce government litigation. The following monetary limits have been recommended by the Council:

   GSTAT: ₹ 20 lakhs

   High Court: ₹ 1 crore

   Supreme Court: ₹ 2 crores

3. **Amendment in Section 107 and Section 112 of CGST Act for reducing the amount of pre-deposit required to be paid for filing of appeals under GST:** The GST Council recommended reducing the amount of pre-deposit for filing of appeals under GST to ease cash flow and working capital blockage for the taxpaye ₹ The maximum amount for filing appeal with the appellate authority has been reduced from ₹ 25 crores CGST and ₹ 25 crores SGST to ₹ 20 crores CGST and ₹ 20 crores SGST. Further, the amount of pre-deposit for filing appeal with the Appellate Tribunal has been reduced from 20% with a maximum amount of ₹ 50 crores CGST and ₹ 50 crores SGST to 10 % with a maximum of ₹ 20 crores CGST and ₹ 20 crores SGST.

4. **Applicability of Goods and Services Tax on Extra Neutral Alcohol (ENA) Taxation of ENA under GST:** The GST Council, in its 52nd meeting, had recommended to amend GST Law to explicitly exclude rectified spirit/Extra Neutral Alcohol (ENA) from the scope of GST when supplied for manufacturing alcoholic liquors for human consumption. The GST Council now recommended amendment in sub-section (1) of Section 9 of the CGST Act, 2017 for not levying GST on Extra Neutral Alcohol used for manufacture of alcoholic liquor for human consumption.

5. **Reduction in rate of TCS to be collected by the ECOs for supplies being made through them:** Electronic Commerce Operators (ECOs) are required to collect Tax Collected at Source (TCS) on net taxable supplies under Section 52(1) of the CGST Act. The GST Council has recommended to reduce the TCS rate from present 1% (0.5% CGST + 0.5% SGST/ UTGST, or 1% IGST) to 0.5 % (0.25%

CGST + 0.25% SGST/UTGST, or 0.5% IGST), to ease the financial burden on the suppliers making supplies through such ECOs.

6. **Time for filing appeals in GST Appellate Tribunal:** The GST Council recommended amending Section 112 of the CGST Act, 2017 to allow the three-month period for filing appeals before the Appellate Tribunal to start from a date to be notified by the Government in respect of appeal/ revision orders passed before the date of said notification. This will give sufficient time to the taxpayers to file appeal before the Appellate Tribunal in the pending cases.

7. **Relaxation in condition of section 16(4) of the CGST Act:**

   (a) In respect of initial years of implementation of GST, i.e., financial years 2017-18, 2018-19, 2019-20 and 2020-21:

   The GST Council recommended that the time limit to avail input tax credit in respect of any invoice or debit note under Section 16(4) of CGST Act, through any return in FORM GSTR 3B filed upto 30.11.2021 for the financial years 2017-18, 2018-19, 2019-20 and 2020-21, may be deemed to be 30.11.2021. For the same, requisite amendment in section 16(4) of CGST Act, retrospectively, w.e.f. 01.07.2017, has been recommended by the Council.

   (b) with respect to cases where returns have been filed after revocation:

   The GST Council recommended retrospective amendment in Section 16(4) of CGST Act, to be made effective from July 1st, 2017, to conditionally relax the provisions of section 16(4) of CGST Act in cases where returns for the period from the date of cancellation of registration/ effective date of cancellation of registration till the date of revocation of cancellation of the registration, are filed by the registered person within thirty days of the order of revocation.

8. **Change in due date for filing of return in FORM GSTR-4 for composition taxpayers from 30th April to 30th June:** The GST Council recommended an amendment in clause (ii) of sub-rule (1) of Rule 62 of CGST Rules, 2017 and FORM GSTR-4 to extend the due date for filing of return in FORM GSTR-4 for composition taxpayers from 30th April to 30th June following the end of the financial year. This will apply for returns for the financial year 2024-25 onwards. The same would give more time to the taxpayers who opt to pay tax under composition levy to furnish the said return.

9. **Amendment of Rule 88B of CGST Rules, 2017 in respect of interest under Section 50 of CGST Act on delayed filing of returns, in cases where the credit is available in Electronic Cash Ledger (ECL) on the due date of filing the said return:** The GST Council recommended amendment in rule 88B of CGST Rules to provide that an amount, which is available in the Electronic Cash Ledger on the due date of filing of return in FORM GSTR-3B, and is debited while filing the said return, shall not be included while calculating interest under section

50 of the CGST Act in respect of delayed filing of the said return.

10. **Insertion of Section 11A in CGST Act for granting power not to recover duties not levied or short-levied as a result of general practice under GST Acts:** The GST Council recommended inserting a new Section 11A in CGST Act to give powers to the Government, on the recommendations of the Council, to allow regularization of non-levy or short levy of GST, where tax was being short paid or not paid due to common trade practices.

11. **Refund of additional Integrated Tax (IGST) paid on account of upward revision in price of the goods subsequent to export:** The GST Council recommended to prescribe a mechanism for claiming refund of additional IGST paid on account of upward revision in price of the goods subsequent to their export. This will facilitate a large number of taxpayers, who are required to pay additional IGST on account of upward revision in price of the goods subsequent to export, in claiming refund of such additional IGST.

12. **Clarification regarding valuation of supply of import of services by a related person where recipient is eligible to full input tax credit:** The Council recommended to clarify that in cases where the foreign affiliate is providing certain services to the related domestic entity, for which full input tax credit is available to the said related domestic entity, the value of such supply of services declared in the invoice 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.

13. **Clarification regarding availability of Input Tax Credit (ITC) on ducts and manholes used in the network of Optical Fiber Cables (OFCs):** The Council recommended to clarify that input tax credit is not restricted in respect of ducts and manhole used in network of optical fiber cables (OFCs), under clause (c) or under clause (d) of sub-section (5) of section 17 of CGST Act.

14. **Clarification on the place of supply applicable for custodial services provided by banks:** The Council recommended to clarify that place of supply of Custodial services supplied by Indian Banks to Foreign Portfolio Investors is determinable as per Section 13(2) of the IGST Act, 2017.

15. **Clarification on valuation of corporate guarantee provided between related persons after insertion of Rule 28(2) of CGST Rules, 2017:** GST Council recommended amendment of rule 28(2) of CGST Rules retrospectively with effect from 26.10.2023 and issuance of a circular to clarify various issues regarding valuation of services of providing corporate guarantees between related parties. It is inter alia being clarified that valuation under rule 28(2) of CGST Rules would not be applicable in case of export of such

services and also where the recipient is eligible for full input tax credit.

16. **Clarification regarding applicability of provisions of Section 16 (4) of CGST Act, 2017, in respect of invoices issued by the recipient under Reverse Charge Mechanism (RCM):** The Council recommended to clarify that in cases of supplies received from unregistered suppliers, where tax has to be paid by the recipient under reverse charge mechanism (RCM) and invoice is to be issued by the recipient only, 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 is the financial year in which the invoice has been issued by the recipient.

17. **Clarification on following issues to provide clarity to trade and tax officers and to reduce litigation:**

i. Clarification on taxability of re-imbursement of securities/shares as ESOP/ESPP/RSU provided by a company to its employees

ii. Clarification on requirement of reversal of input tax credit in respect of amount of premium in Life Insurance services, which is not included in the taxable value as per Rule 32(4) of CGST Rules.

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

iv. Clarification in respect of Warranty/ Extended Warranty provided by Manufacturers to the end customers

v. Clarification regarding availability of input tax credit on repair expenses incurred by the insurance companies in case of reimbursement mode of settlement of motor vehicle insurance claims.

vi. Clarification on taxability of loans granted between related person or between group companies.

vii. Clarification on time of supply on Annuity Payments under HAM Projects.

viii. Clarification regarding time of supply in respect of allotment of Spectrum to Telecom companies in cases where payment of licence fee and Spectrum usage charges is to be made in instalments.

ix. Clarification relating to place of supply of goods supplied to unregistered persons, where delivery address is different from the billing address

x. Clarification on mechanism for providing evidence by the suppliers for compliance of the conditions of Section 15(3)(b)(ii) of CGST Act, 2017 in respect of post-sale discounts, to the effect that input tax credit has been reversed by the recipient on the said amount.

xi. Clarifications on various issues pertaining to special procedure for the manufacturers of the specified commodities, like pan masala, tobacco etc.

18. The Council recommended amendment in section 140(7) of CGST Act retrospectively w.e.f. 01.07.2017 to provide for transitional credit in respect of invoices pertaining to services provided before appointed date, and where invoices were received by

Input Service Distributor (ISD) before the appointed date.

19. The Council recommended providing a new optional facility by way of **FORM GSTR-1A** to facilitate the taxpayers to amend the details in **FORM GSTR-1** for a tax period and/ or to declare additional details, if any, before filing of return in **FORM GSTR-3B** for the said tax period. This will facilitate taxpayer to add any particulars of supply of the current tax period missed out in reporting in **FORM GSTR-1** of the said tax period or to amend any particulars already declared in **FORM GSTR-1** of the current tax period (including those declared in IFF, for the first and second months of a quarter, if any, for quarterly taxpayers), to ensure that correct liability is auto-populated in **FORM GSTR-3B**.

20. The Council recommended that filing of annual return in **FORM GSTR-9/9A** for the **FY 2023-24** may be exempted for taxpayers having aggregate annual turnover upto two crore rupees.

21. Amendment was recommended to be made in section 122(1B) of CGST Act retrospectively w.e.f. 01.10.2023, so as to clarify that the said penal provision is applicable only for those e-commerce operators, who are required to collect tax under section 52 of CGST Act, and not for other e-commerce operators.

22. The Council recommended amendment in rule 142 of CGST Rules and issuance of a circular to prescribe a mechanism for adjustment of an amount paid in respect of a demand through **FORM GST DRC-03** against the amount to be paid as pre-deposit for filing appeal.

Other measures pertaining to Law and Procedures

23. **Rolling out of bio-metric based Aadhaar authentication on All-India basis:** The GST Council recommended to roll-out the biometric-based Aadhaar authentication of registration applicants on pan-India basis in a phased manner. This will strengthen the registration process in GST and will help in combating fraudulent input tax credit (ITC) claims made through fake invoices.

24. **Amendments in Section 73 and Section 74 of CGST Act, 2017 and insertion of a new Section 74A in CGST Act, to provide for common time limit for issuance of demand notices and orders irrespective of whether case involves fraud, suppression, willful misstatement etc., or not:** Presently, there is a different time limit for issuing demand notices and demand orders, in cases where charges of fraud, suppression, willful misstatement etc., are not involved, and in cases where those charges are involved. In order to simplify the implementation of those provisions, the GST Council recommended to provide for a common time limit for issuance of demand notices and orders in respect of demands for FY 2024-25 onwards, in cases involving charges of fraud or willful misstatement and not involving the charges of fraud or willful misstatement etc. Also, the time limit for the taxpayers to avail the benefit of reduced penalty, by paying the tax demanded along with interest, has been recommended to be increased from 30 days to 60 days.

25. The Council recommended amendment

in section 171 and section 109 of CGST Act, 2017 to provide a sunset clause for anti-profiteering under GST and to provide for handling of anti-profiteering cases by Principal bench of GST Appellate Tribunal (GSTAT). Council has also recommended the sun-set date of 01.04.2025 for receipt of any new application regarding anti-profiteering.

26. **Amendment in Section 16 of IGST Act and section 54 of CGST Act to curtail refund of IGST in cases where export duty is payable:** The Council recommended amendments in section 16 of IGST Act and section 54 of CGST Act to provide that the refund in respect of goods, which are subjected to export duty, is restricted, irrespective of whether the said goods are exported without payment of taxes or with payment of taxes, and such restrictions should also be applicable, if such goods are supplied to a SEZ developer or a SEZ unit for authorized operations.

27. The threshold for reporting of B2C inter-State supplies invoice-wise in Table 5 of **FORM GSTR-1** was recommended to be reduced from ₹ 2.5 Lakh to ₹ 1 Lakh.

28. The Council recommended that return in **FORM GSTR-7**, to be filed by the registered persons who are required to deduct tax at source under section 51 of CGST Act, is to be filed every month irrespective of whether any tax has been deducted during the said month or not. It has also been recommended that no late fee may be payable for delayed filing of Nil **FORM GSTR-7** return. Further, it has been recommended that invoice-wise details may be required to be furnished in the said FORM GSTR-7 return.

Note: The recommendations of the GST Council have been presented in this release containing major item of decisions in simple language for information of the stakeholders. The same would be given effect through the relevant circulars/ notifications/ law amendments which alone shall have the force of law.

DIRECT TAX

Gross Direct Tax collections for the Financial Year (FY) 2024-25 register a growth of 22.19%

- **Net Direct Tax collections for FY2024-25 grow at over 20.99%**
- **Advance Tax collections for FY2024-25 stand at ₹ 1,48,823 crore with a growth of 27.34%**
- **Refunds aggregating to ₹ 53,322 crore issued in the current fiscal**

Posted On: 18 JUN 2024 5:59PM by PIB Delhi

The provisional figures of Direct Tax collections for the Financial Year 2024-25 (**as on 17.06.2024**) show that **Net collections are at ₹ 4,62,664 crore, compared to ₹ 3,82,414 crore** in the corresponding period of the preceding Financial Year (i.e. FY 2023-24), representing an **increase of 20.99%.**

The Net Direct Tax collection of ₹ 4,62,664 crore (as on 17.06.2024**)** includes Corporation Tax (CIT) at ₹ 1,80,949 crore (net of refund)

and Personal Income Tax (PIT) including Securities Transaction Tax (STT) at ₹ 2,81,013 crore (net of refund).

The provisional figures of **Gross collection** of Direct Taxes (before adjusting for refunds) for the Financial Year 2024-25 stand at ₹ **5,15,986 crore** compared to ₹ **4,22,295 crore** in the corresponding period of the preceding financial year, showing **a growth of 22.19%** over the collections of FY 2023-24.

The Gross collection of ₹ 5,15,986 crore includes Corporation Tax (CIT) at ₹ 2,26,280 crore and Personal Income Tax (PIT) including Securities Transaction Tax (STT) at ₹ 2,88,993 crore. Minor head wise collection comprises Advance Tax of ₹ 1,48,823 crore; Tax Deducted at Source of ₹ 3,24,787 crore; Self-Assessment Tax of ₹ 28,471 crore; Regular Assessment Tax of ₹ 10,920 crore; and Tax under other minor heads of ₹ 2,985 crore.

Provisional figures of total **Advance Tax collections** for Financial Year 2024-25 (as on 17.06.2024) stand at ₹ **1,48,823 crore,** against Advance Tax collections of ₹ 1,16,875 crore for the corresponding period of the immediately preceding Financial Year (i.e. FY 2023-24), showing a **growth of 27.34%**. The Advance Tax collection of ₹ 1,48,823 crore comprises Corporation Tax (CIT) at ₹ 1,14,353 crore and Personal Income Tax (PIT) at ₹ 34,470 crore.

Refunds amounting to ₹ **53,322 crore** have also been issued in the FY 2024-25 till 17.06.2024, which are 33.70% higher than refunds issued during the same period in the preceding year.

NOTIFICATION

INDIRECT TAX

Customs (Non - Tariff)

Notification No. 45/2024 -Customs (N.T.)

New Delhi, dated the 20th June, 2024

In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the Notification No. 40/2024-Customs(N.T.), dated 6th June, 2024 except as respects things done or omitted to be done before such supersession, the Central Board of Indirect Taxes and Customs hereby determines that the rate of exchange of conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II annexed hereto, into Indian currency or vice versa, shall, with effect from 21st June, 2024, be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

SCHEDULE-I

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	56.90	54.50
2.	Bahraini Dinar	230.00	213.25
3.	Canadian Dollar	61.80	59.90
4.	Chinese Yuan	11.70	11.30
5.	Danish Kroner	12.20	11.85
6.	EURO	91.20	88.10
7.	Hong Kong Dollar	10.85	10.55
8.	Kuwaiti Dinar	281.05	263.60
9.	New Zealand Dollar	52.35	50.05
10.	Norwegian Kroner	8.00	7.80
11.	Pound Sterling	107.85	104.35

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
12.	Qatari Riyal	24.5	21.35
13.	Saudi Arabian Riyal	22.65	21.65
14.	Singapore Dollar	62.75	60.75
15.	South African Rand	4.80	4.50
16.	Swedish Kroner	8.10	7.90
17.	Swiss Franc	96.20	92.65
18.	Turkish Lira	2.65	2.50
19.	UAE Dirham	23.45	22.05
20.	US Dollar	84.30	82.60

SCHEDULE-II

Sl. No.	Foreign Currency	Rate of exchange of 100 unit of foreign currency equivalent to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	53.60	52.00
2.	Korean Won	6.20	5.85

[F.No. 468/01/2024-Cus.V]

CIRCULARS

INDIRECT TAX

Goods & Services Tax

CENTRAL TAX

CIRCULAR NO. 207/1/2024-GST

F. NO. CBIC-20001/4/2024-GST

Subject: Reduction of Government Litigation – fixing monetary limits for filing appeals or applications by the Department before GSTAT, High Courts and Supreme Court -reg.

Reference is invited to the National Litigation Policy which was conceived with the aim of optimizing the utilization of judicial resources and expediting the resolution of pending cases. It underscores the importance of prudent litigation practices by establishing thresholds for filing appeals in Revenue matters. Specifically, the Policy mandates that appeals should not be pursued when the amount involved is below a specified monetary limit set by Revenue authorities. Furthermore, it discourages filing appeals in cases where established precedents from Tribunals and High Courts have settled the matter and have not been contested in the Supreme Court.

1.1 Section 120 of the Central Goods and Services Tax Act, 2017 (hereinafter referred as "the CGST Act") provides for power to the the Central Board of Indirect Taxes & Customs (hereinafter referred to as "the Board") for fixing the monetary limits for filing of appeal or application by the tax authorities as below:

"120. Appeal not to be filed in certain cases. —

(1) The Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions issued under sub-section (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of the central tax from filing appeal or application in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal or application has been filed by the officer of the central tax pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the officer of the central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application.

(4) The Appellate Tribunal or court hearing such appeal or application

shall have regard to the circumstances under which appeal or application was not filed by the officer of the central tax in pursuance of the orders or instructions or directions issued under sub-section (1)."

2. Accordingly, in exercise of the powers conferred by Section 120 of the CGST Act read with section 168 of the CGST Act, the Board, on the recommendations of the GST Council, fixes the following monetary limits below which appeal or application or Special Leave Petition, as the case may be, shall not be filed by the Central Tax officers before Goods and Service Tax Appellate Tribunal (GSTAT), High Court and Supreme Court under the provisions of CGST Act, subject to the exclusions mentioned in para 4 below:

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

3. While determining whether a case falls within the above monetary limits or not, the following principles are to be considered:

i. Where the dispute pertains to demand of tax (with or without penalty and/or interest), the aggregate of the amount of tax in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess) only shall be considered while applying the monetary limit for filing appeal.

ii. Where the dispute pertains to demand of interest only, the amount of interest shall be considered for applying the monetary limit for filing appeal.

iii. Where the dispute pertains to imposition of penalty only, the amount of penalty shall be considered for applying the monetary limit for filing appeal.

iv. Where the dispute pertains to imposition of late fee only, the amount of late fee shall be considered for applying the monetary limit for filing appeal.

v. Where the dispute pertains to demand of interest, penalty and/or late fee (without involving any disputed tax amount), the aggregate of amount of interest, penalty and late fee shall be considered for applying the monetary limit for filing appeal.

vi. Where the dispute pertains to erroneous refund, the amount of refund in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess) shall be considered for deciding whether appeal needs to be filed or not.

vii. Monetary limit shall be applied on the disputed amount of tax/interest/penalty/late fee, as the case may be, in respect of which appeal or application is contemplated to be filedin a case.

viii. In a composite order which disposes more than one appeal/demand notice, the monetary limits shall be applicable on the total amount of tax/interest/penalty/late fee, as the case may be, and not on the amount involved in individual appeal or demand notice.

4. EXCLUSIONS

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; or

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; or

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) Actor the Rules made thereunder;or

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,

v. which is recurring in nature and/ or involves interpretation of the provisions of the Act /the Rules/ notification/circular/order/instruction etc; or

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

vii. 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.

5. It is pertinent to mention that an appeal should not be filed merely because the disputed tax amount involved in a case exceeds the monetary limits fixed above. Filing of appeal in such cases is to be decided on merits of the case. The officers concerned shall keep in mind the overall objective of reducing unnecessary litigation and providing certainty to taxpayers on their tax assessment while taking a decision regarding filing an appeal.

6. Attention is drawn to sub-sections (2), (3) & (4) of section 120 of the CGST Act, which provide that in cases where it is decided not to file appeal in pursuance of these instructions, such cases shall not have any precedent value. In such cases, the Reviewing Authorities shall specifically record that "even though the decision is not acceptable, appeal is not being filed as the amount involved is less than the monetary limit fixed by the Board."

6.1 Non-filing of appeal based on the above monetary limits, shall not preclude the tax officer from filing appeal or application in any other case involving the same or similar issues in which the tax in dispute exceeds the monetary limit or case involving the questions of law.

6.2 Further, it is re-iterated that in such cases where appeal is not filed solely

on the basis of the above monetary limits, there will be no presumption that the Department has acquiesced in the decision on the disputed issues in the case of same taxpayers or in case of any other taxpayers. Accordingly, in case any prior order is being cited or relied upon by the taxpayer, claiming that the same has been accepted by the Department, it must be checked as to whether such order was accepted only on account of the monetary limit before following them in the name of judicial discipline.

6.3 Also, in respect of such cases where no appeal is filed based on the monetary limit, the Departmental representatives/counsels must make every effort to bring to the notice of the GSTAT or the Court, as the case may be, that the appeal in such cases was not filed only for the reason of the amount of the tax in dispute being less than the specified monetary limit and, therefore, no inference shall be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should draw the attention of the GSTAT or the Court towards the provisions of sub-section (4) of section 120 of the CGST Act, 2017 as reproduced in para 1.1 above.

7. The above may be brought to the notice of all concerned.

8. Difficulties, if any, in implementation of thiscircular may be informed to the Board (gst-cbec@gov.in).

9. Hindi version will follow.

CIRCULARNO.-208/2/2024-GST

F.NO.CBIC-20001/4/2024-GST

Subject: Clarifications on various issues pertaining to special procedure for the manufacturers of the specified commodities as per Notification No. 04/2024 - Central Taxdated 05.01.2024– reg.

Based on the recommendation of 50thGST Council meeting, a special procedure wasnotified vide Notification No. 30/2023-Central Tax dated 31.07.2023 to be followed by theregistered persons engaged in manufacturing of goods mentioned in the schedule to the saidnotification.The said notification has been rescinded vide Notification No. 03/2024-Central Taxdated05.01.2024andarevisedspecialprocedurehasbeennotifiedvideNotificationNo.04/2024-Central Tax dated 05.01.2024.

2. Representations have been received from various trade associations seeking clarity onsome issues pertaining to the said special procedure. To ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods & Services Tax Act,2017 (herein after referred to as the "CGSTAct"), hereby clarifies various issues as under:

S. No.	Issued Raised by Trade	Clarification on the issue
1.	Non availability of make, model number and machine number - The trade bodies have raised the issue that some of the manufacturers of the said goods are using very old packing machines since decades including second hand machines. Therefore, the details of make, model number and machine number of these machines are not readily available.	It is clarified that in Table 6 of FORM GST SRM-I as notified vide Notification No. 04/2024-CT dated 05.01.2024, make and model number are optional. However, where make of the machine is not available, the year of purchase of the machine may be declared as the make number. It is also clarified that the machine number is a mandatory field in Table 6 of FORM GST SRM-I to be filled up by the manufacturer. 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.
2.	In cases where the electricity consumption rating of the packing machine is not available in the specifications of the said machine or in the documents/record of the same, then how to declare the electricity consumption rating of the said machine in Table 6 of FORM GST SRM-I?	It is clarified that electricity consumption rating of the packing machine is to be declared in Table 6 of FORM GST SRM- I on the basis of details of the same as available either on the machine or in the documents/record of the said machine. However, if the same is not available either on the machine or in the documents/records, 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, as notified vide Notification No. 04/2024-CT dated 05.01.2024. The said electricity consumption rating can be declared in Table 6 of FORM GST SRM-I accordingly. The copy of such certificate of the Chartered Engineer needs to be uploaded along with FORM GST SRM-I. The details of the documents so uploaded needs to be provided in Table 10 of the said form. It is also clarified that in cases where there are certificates of Chartered Engineer for more than one machine, then all such certificates may be uploaded in a single PDF file.
3.	Which value has to be reported in Column 8 of Table 9 of FORM GST SRM-II in case of goods having no MRP, for example, goods manufactured for export market?	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 as notified vide Notification No. 04/2024-CT dated 05.01.2024.

S. No.	Issued Raised by Trade	Clarification on the issue
4.	What should be the qualification and eligibility of the Chartered Engineer for providing Chartered Engineer certificate under the special procedure notified vide Notification No. 04/2024-CT dated 05.01.2024?	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 under the special procedure notified vide Notification No. 04/2024-CT dated 05.01.2024.
5.	Whether the special procedure notified vide Notification No. 04/2024-CT dated 05.01.2024 is applicable to the manufacturing units located in Special Economic Zone (SEZ)?	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.
6.	Whether the special procedure notified vide Notification No. 04/2024-CT dated 05.01.2024 is applicable to the manual processes using electric operated heat sealer and seamer?	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. Further, it is also clarified that the said special procedure is not applicable in respect of manual packing operations such as those in cases of post-harvest packing of tobacco leaves.
7.	In cases where multiple machines are required for filling, capping and packing of containers, the serial number of which machine is required to be declared in Table 6 of FORM GST SRM-I?	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.
8.	In case of job work or contract manufacturing, which person shall be required to comply with the special procedure as notified vide Notification No. 04/2024-CT dated 05.01.2024?	It is clarified that the special procedure notified vide Notification No. 04/2024-CT dated 05.01.2024shall 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.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

CIRCULAR NO.209/3/2024-GST

F.NO. CBIC-20001/4/2024-GST

Subject: 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 of goods to unregistered persons– Reg.

Vide Notification 02/2023-Integrated Tax, dated 29th September, 2023, the provisions of the Integrated Goods and Services Tax (Amendment) Act, 2023 (31 of 2023) came into force with effect from 01.10.2023.

2. Clause (ca) has been inserted in Section 10(1) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act") with effect from 01.10.2023. The same is reproduced as under:

"(ca) where the supply of goods is made to a person other than a registered person, the place of supply shall, notwithstanding anything contrary contained in clause (a) or clause (c), be the location as per the address of the said person recorded in the invoice issued in respect of the said supply and the location of the supplier where the address of the said person is not recorded in the invoice.

Explanation.— *For the purposes of this clause, recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person;"*

2.1 The said provision has been inserted as a non-obstante provision overriding the provisions under Section 10(1)(a) or 10(1)(c) of IGST Act. The clause (ca) 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. An explanation has also been added to the said clause to clarify that recording the name of the State of the said person shall be deemed to be the recording of the address of the said person.

3. Reference has been received from trade and industry seeking clarification regarding the place of supply in terms of newly added clause (ca) of section 10(1) of the IGST Act, 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.

4. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 hereby clarifies the issues as under:

S.No.	Issue	Clarification
Place of supply of goods (particularly being supplied through e-commerce platform) to unregistered persons where billing address is different from the address of delivery of goods.		
1.	Mr. A (unregistered person) located in X State places an order on an e-commerce platform for supply of a mobile phone, which is to be delivered at an address located in Y State. Mr. A, while placing the order on the e-commerce platform, provides the billing address located in X state. In such a scenario, what would be the place of supply of the said supply of mobile phone, whether the State pertaining to the billing address i.e. State X or the State pertaining to the delivery address i.e. State Y?	As per the provisions of clause (ca) of sub-section (1) of section 10 of IGST Act, 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. Further, as per Explanation to the said clause, recording the name of the State of the said unregistered person on the invoice shall be deemed to be the recording of the address of the said person. Accordingly, it is clarified that in such cases involving supply of goods to an unregistered person, where the address of delivery of goods recorded on the invoice is different from the billing address of the said unregistered person on the invoice, the place of supply of goods in accordance with the provisions of clause (ca) of sub-section (1) of section 10 of IGST Act, shall be the address of delivery of goods recorded on the invoice i.e. State Y in the present case where the delivery address is located. Also, in such cases involving supply of goods to an unregistered person, where the billing address and delivery address are different, the supplier may record the delivery address as the address of the recipient on the invoice for the purpose of determination of place of supply of the said supply of goods.

5. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

CIRCULAR NO.210/4/2024-GST

F. NO. CBIC- 20001/4/2024-GST

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

As per S.No. 4 of Schedule I of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act'), import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business,is to be treated as supply even if made without consideration.

2. Representations have been received from trade and industry stating that demands are being raised by some of the field formations against the registered persons seeking tax on reverse charge basis in respect of certain activities undertaken by their related persons based outside India, by considering the said activities as import of services by the registered person in India, based on an expansive interpretation of the deeming fiction in S.No. 4 of Schedule I of CGST Act, though no consideration is involved in the said activities and the same are not considered as supplies by the said related person in India. It has been represented that the same treatment, which is being given to domestic related parties/ distinct persons as per clarification provided by Circular No. 199/11/2023-GST dated 17.07.2023, may also be provided in cases where a foreign entity is providing service to its related party located in India, in cases where full ITC is available to the said recipient located in India.

3.1 In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues as under:

3.2 Rule 28 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the 'CGST Rules') is reproduced as below:

"Rule 28.Value of supply of goods or services or both between distinct or related persons, other than through an agent. –

(1) The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value

declared in the invoice shall be deemed to be the open market value of the goods or services.…"

3.3 As per second proviso to rule 28(1) of CGST Rules, in cases involving supply of goods or services or both between the distinct or related persons where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the said goods or services.

3.4 It may be noted that vide Circular No. 199/11/2023-GST dated 17.07.2023, clarification has been issued regarding 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.It has been clarified in the said circular that as per the second proviso to rule 28(1) of CGST Rules, in respect of supply of services by Head Office(HO) to Branch Offices(BO) of an organisation, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is eligible for full input tax credit. It has also been clarified vide the said circular that in cases where full input tax credit is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.

3.5 The second proviso to Rule 28 (1) of CGST Rules, is applicable in all the cases involving supply of goods or services or both between the distinct persons as well as the related persons, in cases where full ITC is available to the recipient. Accordingly, it is evident that 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.

3.6 In case of import of services by a registered person in India from a related person located outside India, the tax is required to be paid by the registered person in India under reverse charge mechanism. In such cases, the registered person in India is required to issue self-invoice under Section 31(3)(f) of CGST Act and pay tax on reverse charge basis.

3.7 In view of the above, 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 availableto the said related domestic entity, the value of such supply of services declared in the invoice 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.

4. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

5. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

CIRCULAR NO. 211/5/2024-GST

F. NO. CBIC-20001/4/2024-GST

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

Representations have been received from trade and industry seeking clarity on the applicability of time limit specified under section 16(4) of Central Goods & Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") for the purpose of availment of input tax credit (ITC)by the recipient on the tax paid by him under reverse charge mechanism (RCM) in respect of supplies received from unregistered persons. It has been represented that in some cases, where tax is payable on reverse charge basis by the recipient, such as, where an activity is performed by the overseas related person for the entity located in India and no consideration is involved, such an activity may not be considered as supply of services by the concerned recipient in India and accordingly, no invoice is issued as well as no tax is paid by the said recipient under RCM in respect of the same. However, later on, either on their own on the basis of some clarification issued by the department or on the basis of some court judgement or on being pointed out by the tax authorities during scrutiny or audit or otherwise, the said recipient issues the invoice and pays the tax under RCM, along with interest, and claims input tax credit on such tax paid.

1.2 It has been represented that some of the field formations are taking the view that in such cases, the relevant year of the invoice for the purpose of section 16(4) of CGST Act is the year in which the said supply was received and accordingly, the time limit for availment of ITC under section 16(4) of CGST Act is only upto the September/ November of the following financial year, i.e. the financial year following the financial year in which the said services was received. On the other hand, industry has represented that as the invoice in respect of such supplies received from unregistered supplier, where tax has to be paid by the recipient on RCM basis, is to be issued by the recipient as per section 31(3)(f) of CGST Act, the relevant year of invoice for the purpose of section 16(4) of CGST Act is the financial year in which such invoice has been issued and accordingly, ITC should be available on the said invoice under section 16(4) of CGST Act till the September/ November of the financial year following the financial year in which such invoice has been issued. Request has been made to issue clarification in the matter to avoid litigation.

2. The matter has been examined. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies the issue as follows.

2.1 As per section 16(2)(a) of CGST Act, no

registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed.

2.2 Rule 36(1)(b) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules) prescribes that input tax credit shall be availed by a registered person inter alia on the basis of an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31 of CGST Act, subject to the payment of tax.

2.3 Further, clause (f) of sub-section (3) of section 31 of CGST Act provides that a registered person, who is liable to pay tax under sub-section (3) or sub-section (4) of section 9, 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. Accordingly, where the supplier is unregistered and recipient is registered, and the recipient is liable to pay tax on the said supply on RCM basis, the recipient is required to issue invoice as per section 31(3)(f) of CGST Act and pay the tax in cash on the same under RCM.

2.4 Section 16(4) of CGST Act, as amended vide the Finance Act, 2022, deals with time limit to avail ITC, and is reproduced below-

"A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier."

Section 16(4)of CGST Act, before the said amendment vide the Finance Act, 2022, provided as follows:

"A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier."

2.5 It can be seen that section 16(4) of CGST Act links the time limit for ITC availment with the financial year to which the invoice or debit note pertains. As discussed in Para 2.3 above, 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 in cash under RCM. Further, as discussed in Para 2.1 above, ITC cannot be availed by a registered person in respect of any supply of goods or services or both received by him, as per the provisions of section 16(2)(a) of CGST Act, unless he is in possession of a tax invoice or debit note or such other tax paying documents as may be prescribed.

2.6 A combined reading of the above provisions leads to a conclusion that as ITC can be availed by the recipient only on the basis of invoice or debit note or other duty paying document, and as in case of RCM supplies

received by the recipient from unregistered supplier, invoice has to be issued by the recipient himself, the relevant financial year, to which invoice pertains, for the purpose of time limit for availment of ITC under section 16(4) of CGST Act in such cases shall be the financial year of issuance of such invoice only. In cases, where the recipient issues the said 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.

2.7 Accordingly, 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. In case, 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.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

CIRCULAR NO.-212/6/2024-GST

F.NO. CBIC-20001/4/2024-GST

Subject: Mechanism for providing evidence of compliance of conditions of Section 15(3)(b)(ii) of the CGST Act, 2017 by the suppliers -reg.

In cases where the discounts are offered by the suppliers through tax credit notes, after the supply has been effected, the said discount is not to be included in the taxable value only if the condition of clause (b)(ii) of sub-section (3) of section 15 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), for reversal of the input tax credit attributable to the said discount by the recipient, is satisfied. Representations have been received from the trade and the field formations mentioning that there is presently no facility available to the supplier as well as the tax officers on the common portal to verify whether the input tax credit attributable to the said discount has been reversed by the recipient or not. Request has been made to provide a suitable mechanism for enabling the suppliers as well as tax officers to verify fulfilment of the condition of section 15(3)(b)(ii) of the CGST Act regarding proportionate reversal of input tax credit by the recipients in respect of such discounts given by the supplier by issuing tax credit notes after the supply has been effected.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field

formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues as under:

2.1 Section 15 of the CGST Act provides for value of taxable supply of goods or services or both. Sub-section (3) of the said section provides that the value of supply shall not include discount given by the supplier, subject to certain conditions. As per clause (b) of the said sub-section, any discount which is given after the supply has been effected shall not be included in the value of the supply, only if it satisfies the following conditions:

i. Such discount is established in terms of an agreement entered into at or before the time of such supply;

ii. Such discount must be specifically linked to the relevant invoices

iii. Input Tax Credit attributable to such discount on the basis of document issued by the supplier has been duly reversed by the recipient.

2.2 Accordingly, wherever any discount is offered by the supplier to the recipient, by issuance of a tax credit note as per section 34 of the CGST Act, after the supply has been effected, the said discount can be excluded from the value of taxable supply only if the conditions of clause (b) of sub-section (3) of section 15 of the CGST Act are fulfilled. Such conditions inter alia includes the requirement of reversal of input tax credit by the recipient attributable to the said discount.

2.3 However, there is no system functionality/ facility presently available on the common portal to enable the supplier or the tax officer to verify the compliance of the said condition of proportionate reversal of input tax credit by the recipient.

2.4 In view of the above, 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.

2.5 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.

2.6 Such certificate issued by CA or CMA shall contain UDIN (Unique Document Identification Number). UDIN of the certificate issued by CAs can be verified from ICAI website https://udin.icai.org/search-udin and that issued by CMAs can be verified from ICMAI website https://eicmai.in/udin/VerifyUDIN.aspx.

2.7 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 ₹ 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.

2.8 Such certificates issued by the CA/CMA or the undertakings/ certificates issued by the recipient of supply, as the case may be, shall be treated as a suitable and admissible evidence for the purpose of section 15(3)(b)(ii) of the CGST Act, 2017. The supplier shall produce such certificates/ undertakings before the tax officers, if required, during any proceedings such as scrutiny, audit, investigations, etc. Even for the past period, where ever any such evidence as per section 15(3)(b)(ii) of CGST Act in respect of credit note issued by the supplier for post-sale discounts is required to be produced by him to the tax authorities, the concerned taxpayer may procure and provide such certificates issued by CA/CMA or the undertakings/ certificates issued by the recipients of supply, as the case may be, to the concerned investigating/audit/adjudicating authority as evidence of requisite reversal of input tax credit by his recipients.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

CIRCULAR NO. 213/07/2024-GST

F. NO. CBIC-20001/4/2024-GST

Subject: Clarification on the taxability of ESOP/ESPP/RSU provided by a company to its employees through its overseas holding company - reg.

Representations have been received from the trade and field formations seeking clarification regarding the taxability of Employee Stock Option (ESOP)/Employee Stock Purchase Plan (ESPP)/ Restricted Stock Unit (RSU) provided by a company to its employees.

2.1 It has been represented that some of the Indian companies provide the option to their employees for allotment of securities/ shares of their foreign holding company as part of the compensation package as per terms of contract of employment. 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.

2.2 Doubts are being raised regarding taxability of such a transaction under GST, i.e. whether such transfer of shares/ securities by the foreign holding company directly to the employees of the Indian subsidiary company and subsequent re-imbursement of the cost of such shares/ securities by the Indian subsidiary company to the foreign

holding company can be considered as import of financial services by the Indian subsidiary company from the foreign holding company and whether the same can be considered as liable to GST in the hands of Indian subsidiary company on reverse charge basis.

3. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under.

4. The companies are providing option of allotment of securities/shares to their employees as a means of incentivization and the same is commonly referred to as an Employee Stock Purchase Plan (ESPP) or Employee Stock Option Plan (ESOP) or Restricted Stock Unit (RSU). Such specific terminology usage depends on the agreed-upon compensation terms between the employer and the employee. ESPPs and ESOPs are typically presented as 'options' granted to employees, whereas RSUs take the form of awards or rewards contingent upon the employee meeting specific performance standards. Regardless of the terminology used, the fundamental essence of the transaction remains the same i.e. the allocation of securities or shares from the employer to employee as part of compensation package with the aim of motivating enhanced performance.

4.1 A transaction involving transfer of ESOP/ESPP/RSU to the employees of domestic subsidiary by the foreign holding company appears to involve the following steps:

- The domestic subsidiary company gives option/ facility of ESOP/ESPP/RSU to its employees as part of compensation package as per terms of employment.
- The employees exercise their stock options, either by purchasing shares at the grant price or by holding the options until they vest.
- The foreign holding company of the domestic subsidiary company issues ESOP/ESPP/RSU, which are securities/shares listed on the foreign stock exchange, to the employees of the domestic subsidiary company.
- The foreign holding company transfers the shares directly to the employees of the subsidiary company.
- The domestic subsidiary company generally reimburses the cost of such shares to the foreign holding company on cost-to cost basis either through an actual remittance or through an equity transfer as prescribed by the relevant Indian Accounting Standard.
- The employees hold the shares and may sell them at a later date, if they so choose.

4.2 The foreign holding company issues securities/shares as ESOP/SPP/RSU to the employees of the domestic subsidiary company on the request of the said domestic subsidiary company. However, Securities under GST Law are considered neither goods

nor services in terms of definition of "goods" under clause (52) of section 2 of CGST Act and in terms of definition of "services" under clause (102) of the said section. Further, securities include 'shares' as per definition of "securities" under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956. Accordingly, purchase or sale of securities/shares, in itself, is neither a supply of goods nor a supply of services. Therefore, in the absence of such transaction, falling under the supply of 'goods' or 'services' as per GST Act, GST is not leviable on said transaction of sale/purchase/transfer of securities/shares.

4.3 Further, the companies offer ESOP/ ESPP/RSU to their employees to motivate them to perform better, and to retain the employees, by aligning the interest of employees with that of company. The ESOP/ ESPP/RSU is a part of remuneration of the employee by the employer as per terms of employment. As per Entry 1 of Schedule III of the CGST Act, 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. Therefore, GST is not leviable on the compensation paid to the employee by the employer as per the terms of employment contract which involve transfer of securities/ shares of the foreign holding company to the employees of domestic subsidiary company.

4.4 The foreign holding company directly transfers the shares/securities to the employees of the domestic subsidiary company on the request of the said domestic subsidiary company. Reimbursement of such securities/ shares is generally done by domestic subsidiary company to foreign holding company on cost-to-cost basis i.e. equal to the market value of securities without any element of additional fee, markup or commission.Since the said reimbursement by the domestic subsidiary company to the foreign holding company is for transfer of securities/shares, which is neither in nature of goods nor services, the same cannot be treated as import of services by the domestic subsidiary company from the foreign holding company and hence, is not liable to GST under CGST Act.

4.5 However, if the foreign holding company charges any additional fee, markup, or commission from the domestic subsidiary company for issuing ESOP/ESPP/RSU to the employees of the domestic subsidiary company, then the same shall be considered to be in nature of consideration for the supply of services of facilitating/ arranging the transaction in securities/ shares by the foreign holding company to the domestic subsidiary company. In this case, GST will be leviable on such amount of the additional fee, markup, or commission, charged by the foreign holding company from the domestic subsidiary for issuance of its securities/shares to the employees of

the latter. The GST shall be payable by the domestic holding company on reverse charge basis on such import of services from the foreign holding company.

4.6 Accordingly, 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.

5. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

6. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

CIRCULAR NO.-214/8/2024-GST

F.NO. CBIC-20001/4/2024-GST

Subject: 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-reg.

Representations have been received from the trade and field formations seeking clarification on the issue as to whether the amount of insurance premium, which is not included in the taxable value as per Rule 32(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") applicable for life insurance business, will be treated as pertaining to an exempt supply/ non-taxable supply and whether the input tax credit availed in respect of such amount shall be required to be reversed or not.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act"), hereby clarifies the issues as under:

S. No.	Issue	Clarification
1.	Whether the amount of insurance premium, which is not included in the taxable value as per Rule 32(4) of CGST Rules applicable for life insurance business, shall be treated as pertaining to a non-taxable supply/ exempt supply for the purpose of reversal of Input tax credit as per section 17(1) of CGST Act read with Rule 42 & 43 of CGST Rules.	'Life insurance business' has been defined in Section 2(11) of the Insurance Act, 1938 as below: *"2(11) life insurance business means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include--* *(a) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance,* *(b) the granting of annuities upon human life ; and* *(c) the granting of superannuation allowances and benefit payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons ;* **Explanation -** *For the removal of doubts, it is hereby declared that life insurance business shall include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment and a component of insurance issued by an insurer referred to in clause (9) of this section.* 2. Life insurance companies are providing service of insuring the life of the insured and in return, are charging consideration in the form of premium from the insured. A number of life insurance companies are providing policies which may consist of a component of investment in addition to the component for the risk cover of the life insurance and accordingly, in such

S. No.	Issue	Clarification
		cases, the premium charged also includes the component which is allocated for investment or saving on behalf of the policy holder. As per definition of 'Life insurance business' provided in Section 2(11) of the Insurance Act, 1938, life insurance business includes any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment and a component of insurance issued by an insurer. Accordingly, such life insurance policies, which also include a component of investment along with the component of risk cover for life insurance, are also covered under life insurance business. 2.1 It is mentioned that value of supply of services in relation to life insurance business is to be determined as per provisions of sub-rule (4) of rule 32 of CGST Rules. The said sub- rule provides that the value of supply of services in respect of life insurance business is primarily to be determined by deducting the amount of premium allocated for investment/savings on behalf of the policy holder from the gross premium charged from 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. However, where the entire premium is only towards the risk cover in life insurance, the value of supply is not required to be determined under the said sub-rule as in such cases whole of the consideration i.e. gross premium is towards life insurance services. 2.2 As per section 2(47) of the CGST Act, exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or

S. No.	Issue	Clarification
		under section 6 of the Integrated Goods and Services TaxAct, 2017 (hereinafter referred to as the "IGST Act"), and includes non-taxable supply. The said definition of exempt supply has the following three limbs: - (a) Supply of service which is nil rated; (b) Supply of service which is wholly exempted from tax under section 11 of CGST Act or under Section 6 of IGST Act; or (c) Supply of service which is non- taxable supply. 2.2.1. Further, as per section 2(78) of CGST Act, non-taxable supply means a supply of goods or services or both which is not leviable to tax under the CGST Act or under the IGST Act. 2.2.2 It is mentioned that there is no doubt about taxability of supply of service of providing life insurance services by the insurance company to the insured/ policy holder but the only issue is regarding the treatment of the amount of premium which is not included in the taxable value of supply, as determined under the provisions of Rule 32(4) of CGST Rules. The service of providing life insurance cover is neither nil rated, nor there is any notification issued under section 11 of CGST Act by virtue of which the said service or any portion of the said service has been exempted from GST. 2.2.3 It is also mentioned that the supply can be considered as a non-taxable supply only when it is not leviable to tax under the CGST Act or under the IGST Act. It is not a case where the tax is not leviable on the supply of life insurance services provided by life insurance companies to the insured/policy holder. The value of the said supply of service in respect of life insurance

S. No.	Issue	Clarification
		business as determined under Rule 32(4) of CGST Rules, 2017 may not include some portion of gross premium as per methodology provided in the said rule. This portion of premium which is not includible in taxable value as per provisions of Rule 32(4) of CGST Rules is neither nil rated, nor wholly exempted from tax under section 11 of CGST Act and also not a non-taxable supply. Therefore, just because some amount of consideration is not included in value of taxable supply as per the provisions of the statute, it cannot be said that the said portion of consideration becomes attributable to a non-taxable or exempt supply. 2.2.4 Further, Rule 42 of the CGST Rules provides for reversal of input tax credit in certain scenarios. As per the said rule, only that input tax credit which attract the provisions of sub-section (1) and sub-section (2) of Section 17 of the CGST Act needs to be determined and reversed thereof. Further, sub- section (1) and sub-section (2) of Section 17 of the CGST Act restrict the amount of credit only in a case where the registered person uses the goods or services partly for business or other purposes or partly for making taxable supplies or exempt supplies. However, as discussed in Para 2.2.3 above, the portion of premium, which is not includible in taxable value of supply as per Rule 32(4) of CGST Rules, cannot be considered as pertaining to an exempt supply. 3. In view of this, 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

S. No.	Issue	Clarification
		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.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

CIRCULAR NO.-215/9/2024-GST

F.NO. CBIC-20001/4/2024-GST

Subject: Clarification on taxability of salvage/ wreck value earmarked in the claim assessment of the damage caused to the motor vehicle -reg.

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. Such damages to the insured vehicle are classified in two categories:

i. Total Loss/ Constructive Total Loss or Cash Loss; and

ii. Partial Loss Situation

1.1 Representations have been received from the trade and field formations seeking clarification as to whether in case of motor vehicle insurance, GST is payable by the insurance company on salvage/ wreckage value earmarked in the claim assessment of the damage caused to the motor vehicle.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

S. No.	Issue	Clarification
1.	Whether the insurance company is liable to pay GST on the salvage/ wreckage value earmarked in the claim assessment of the damage caused to the motor vehicle?	Under GST law, supply is the relevant taxable event for levying tax. For an activity/transaction to be liable to GST, existence of 'supply' as defined under section 7 of CGST Act should be there. 1.1 Section 7 of CGST Act defines supply to mean 'all forms of supply of goods or services or both made or agreed to be made for a consideration by a person in the course or furtherance of business.' In the instant case, insurance companies are providing service of insuring the vehicle/ automobile for any damages and in return, charging consideration in the form of

S. No.	Issue	Clarification
		premium charged from the owner of the vehicle. It is also noted that in respect of insurance services being provided by the insurance companies, it is the responsibility of the insurance company to get the damaged vehicle repaired or to compensate the insured person against the damage caused to the vehicle, to the extent covered under the terms of the insurance. 1.2 Any Deduction made by the insurance company from the final claim amount paid to the insured is in the form of deductibles which is pre-decided and mutually agreed by the insured and the insurer while signing the insurance contract. In cases where as per the policy contract, the insurance company's liability to pay the insured is limited to Insured's Declared Value (IDV) of the vehicle less the value of salvage/ wreck in cases of total loss to the vehicle, if the insurance claim is settled by the insurance company as per the terms of the insurance contract by deducting value of salvage/ wreckage from the claim settlement amount, the salvage/ wreckage does not become property of insurance company, and the ownership for such wreckage/ salvage remains with the insured. However, in some cases, the insurance company may support sourcing of competitive quotes from various salvage/ wreckage buyers and the insured may select the best available offer for sale of wreckage or damaged car. The insured may also source quotes from open markets and dispose the wreckage or damaged car to such a buyer. In any case, the ownership of the wreckage vests with the insured and not with the insurance company. The same can be disposed by the insured either directly, or through the garage, or may not be disposed at all, as per his wish and choice. The deduction of the value of salvage from the insurance settlement amount, is as per the terms of the insurance contract, and cannot be said to be consideration for any supply being made by insurance company. Accordingly, in such cases, there does not appear to be any supply of salvage by insurance company and as such, there does not appear to be any liability under GST on the part of insurance company in respect of this salvage value.

S. No.	Issue	Clarification
		2.3 However, in situations where the insurance contract provides for settlement of claim on full IDV, without deduction of value of salvage/ wreck, the insured will be paid for full claim amount without any deductions on account of salvage value. In such a situation, the salvage becomes the property of Insurance Company after settling the claim for the full amountand the insurance company is obligated to deal with the same or dispose of the same. In such cases, the outward GST liability on disposal/sale of the salvage is to be discharged by the insurance companies. 3. Therefore, 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.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

CIRCULAR NO. 216/10/2024-GST

F. NO. CBIC-20001/4/2024-GST

Subject: 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-reg.

Reference is invited to Circular No. 195/07/2023-GST dated 17.07.2023 (herein after referred to as "the said circular") clarifying certain issues regarding GST liability and availability of input tax credit (ITC) in respect of warranty replacement of parts and repair services during warranty period. Representations have been received from trade and industry requesting for some further clarifications in related matters.

2. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods & Services Tax Act, 2017 (herein after referred to as the "CGST Act"), hereby clarifies the following issues as below.

3. 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:

3.1 Table in Para 2 of Circular No. 195/07/2023-GST dated 17.07.2023 clarifies regarding GST liability as well as liability to reverse ITC, only in cases involving replacement of 'parts' and not if goods as such are replaced under warranty. Request has been made to also issue a clarification in respect of cases where the goods as such are replaced under warranty.

3.2 In cases where warranty is provided by the manufacturer/ suppliers to the customers in respect of any goods, and if any defect is detected in the said goods during the warranty period, the manufacturer may be required to replace either one or more parts or the goods as such, depending upon the extent of damage/ defect noticed in the said goods. However, Table in Para 2 of the said circular only clarifies in respect of the situations involving replacement of part/ parts and does not specifically refer to the situation involving replacement of goods as such. It is clarified that the clarification provided in Para 2 of the said circular is also applicable in case where the goods as such are replaced under warranty.

3.3 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'.

4. 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:

4.1 Sr. No. 4 of Para 2 of the said Circular clarifies about the GST liability as well as liability to reverse ITC in cases where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer. However, it does not cover the scenario where the distributor replaces the goods to the customer as part of warranty out of his own stock on behalf of the manufacturer to provide prompt service to the customer, and then raises a requisition to the manufacturer for the goods replaced by him under warranty. The manufacturer, thereafter, provides the said goods to the distributor vide a delivery challan, as replenishment for the goods provided as replacement to the customer by the distributor. Request has been made to issue clarification in respect of such a scenario also.

4.2 In 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, the key aspects, viz.(i) distributor providing replacement out of his own stock; (ii) manufacturer replenishing the distributor for the said replacement; and (iii) the replacement being made at no additional cost on the distributor, are all covered in the scenario specified in point (b) of Sr. No.4 of Para 2 of the said Circular. Therefore, GST liability as well as liability to reverse ITC in cases covered by the said scenario should

be similar to that in respect of the scenario covered in point (b) of S. No. 4 of Para 2 of the above circular.

4.3 Accordingly, to specifically clarify in respect of such a scenario, in column 3 of the table in Para 2 of the said circular, against S. No. 4, after point (c), point (d) shall be inserted as below:

"(d) There may be cases where the distributor replaces the goods or its parts to the customer under warranty by using his stock and then raises a requisition to the manufacturer for the goods or the parts, as the case may be. The manufacturer then provides the said goods or the parts, as the case may be, to the distributor through a delivery challan, without separately charging any consideration at the time of such replenishment. 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."

5.(i) Nature of supply of extended warranty, at the time of original supply of goods, as a separate supply from supply of goods, if the supply of extended warranty is made by a person different from the supplier of the goods;

(ii) Nature of supply of extended warranty, made after original supply of goods:

5.1 It has been represented that in respect of cases, where agreement for extended warranty is made at the time of original supply of goods, and the supplier of extended warranty is different from the supplier of goods, the extended warranty should be treated as a separate and independent transaction from the supply of goods, whereas Sr. No. 6 of Para 2 of the said Circular has treated it to be in the nature of composite supplies, the principal supply being the supply of goods. Request has been made to issue a suitable clarification in the matter.

5.1.1 There may be cases where the supplier of the goods may be the dealer while the supplier of extended warranty may be the OEM or third party. In such cases, the supplies being made by different suppliers cannot be treated as part of the composite supply. It is, therefore, clarified that in cases, where agreement for extended warranty is made at the time of original supply of goods, and the supplier of extended warranty is different from the supplier of goods, the supply of extended warranty and supply of goods cannot be treated as the composite supply. In such cases, supply of extended warranty will be treated as a separate supply from the original supply of goods.

5.2 It has also been represented that in cases where extended warranty is sold subsequent to the original supply of goods, the same should be considered as supply of services only whereas the said Circular clarifies that GST on the same would be payable depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services). Request has been made to issue a revised clarification in respect of the same.

5.2.1 Supply of extended warranty is an assurance to the customers by the

manufacturer/ third party that the goods will operate free of defects during the extended warranty coverage period, and in case of any defect attributable to faulty material or workmanship at the time of manufacture, the same will be repaired/ replaced by the said manufacturer/ third party. Further, whether the goods will later on require replacement of parts or just repair service or neither during the said extended warranty period, is also not known at the time of sale/ supply of extended warranty. Thus, extended warranty is in the nature of conveying of an "assurance" and not an actual replacement of part or repairs.

5.3 Accordingly, it is clarified that in cases, where supply of extended warranty is made subsequent to the original supply of goods, or where supply of extended warranty is to be treated as a separate supply from the original supply of goods in cases referred in Para 5.1.1 above, 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.

5.4 Accordingly, in Sr. No. 6 of Table in para 2 of the said Circular, in column No. 3 of the table, the following shall be substituted:

"(a) If a customer enters into an agreement of extended warranty with the supplier of the goods at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly. However, if the supply of extended warranty is made by a person different from the supplier of the goods, then supply of extended warranty will be treated as a separate supply from the original supply of goods and will be taxable as supply of services.

(b) In case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same 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."

6. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

7. DIFFICULTY, IF ANY, IN THE IMPLEMENTATION OF THIS CIRCULAR MAY BE BROUGHT TO THE NOTICE OF THE BOARD. HINDI VERSION WOULD FOLLOW. CIRCULAR NO. 217/11/2024-GST

F. NO. CBIC-20001/4/2024-GST

Subject: 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-reg.

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 policy holders

and settle the claims in two modes i.e., Cashless or Reimbursement.

1.2 Under both modes of settlement, the insurance company accounts for repair liability (as assessed by the Surveyor/ Loss Assessor) as claim cost and is liable to make payment of approved repair charges to the garage. In both the cases, the invoices are generally issued by the garages in the name of Insurance companies. While in case of Cashless Mode, the insurance companies directly make the payment of approved repair charge to the Network Garage, in case of Reimbursement 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. Accordingly, the insurance companies may be availing input tax credit (ITC) on the tax paid in respect of such repair services provided by the garages in Cashless Mode of claim settlement as well as in Reimbursement Mode of claim settlement on the basis of the invoices issued by the garages in their name.

1.3 It has been represented by the insurance companies that in case of reimbursement mode of claim settlement, some field formations are raising objections on availment of ITC by insurance companies in respect of repair invoices issued by the non-network garages on insurance companies. It is being claimed by the said field formations that in case of reimbursement mode of claim settlement, there is no credit facility offered by the garages to the Insurance Companies and therefore, the supply of repair service is made by the garage to the insured and not to the insurer. Accordingly, it is being claimed that ITC of repair invoices, in such cases, should not be available to the insurance companies.

1.4 Request has been received seeking clarity on availability of ITC in respect of repair expenses incurred in case of reimbursement mode of claim settlement.

2. In order to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act"), hereby clarifies the following:

S. No.	Issue	Clarification
1	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. Whether ITC is available to	Under reimbursement mode of claim settlement, the insured avails repair services from non-network garages with which the insurance companies do not have routine business relationship. The said garages issue the invoice in the name of the insurance company while not extending credit facility for the repair costs. Accordingly, the policy holder/ insured makes payment of such repair services, and subsequently, the insurance company reimburses the approved claim cost to the insured.

S. No.	Issue	Clarification
	insurance companies in respect of repair expenses reimbursed by the insurance company in case of reimbursement mode of claim settlement.	Section 17(5) of the CGST Act provides that ITC in respect of services of repair of motor vehicles shall be available where received by a taxable person engaged in the supply of general insurance services in respect of motor vehicles insured by him. Section 16 of CGST Act provides that every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49 of the said Act, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person. Further, section 2(93) of CGST Act defines "recipient" of supply of goods or services or both, as the person who is liable to pay the consideration, where such consideration is payable for the said supply of goods or services or both. Moreover, as per section 2(31) of CGST Act, "consideration" includes any payment made or to be made in relation to supply of the goods or services or both, whether by the recipient or by any other person. In reimbursement mode of claim settlement, the payment is made by the insurance company for the approved cost of repair services through reimbursement to the insured. Further, irrespective of the fact that the payment of the repair services to the garage is first made by the insured, which is then reimbursed by the insurance company to the insured to the extent of the approved claim cost, the liability to pay for the repair service for the approved claim cost lies with the insurance company, and thus, the insurance company is covered in the definition of "recipient" in respect of the said supply of services of vehicle repair provided by the garage under section 2(93) of CGST Act, to the extent of approved repair liability. Moreover, availment of credit in respect of input tax paid on motor vehicle repair services received by the insurance company for outward supply of insurance services for such motor vehicles is not barred under section 17(5) of CGST Act.

S. No.	Issue	Clarification
		Accordingly, 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.
2.	Where the invoice raised by the garage also includes an amount in excess of the approved claim cost, the insurance company only reimburses the approved claim cost to the garage after considering the standard deductions viz. the compulsory deductibles to be borne by the insured, depreciation, improvements outside the coverage, value of salvage of the damaged parts of the motor vehicles, etc. The remaining amount is to be paid by the insured to the garage. What is the extent of ITC available to the insurer in such cases?	In cases where the garage issues two separate invoices in respect of the repair services, one to the insurance company in respect of approved claim cost and second to the customer for the amount of repair service in excess of the approved claim cost, input tax credit may be available to the insurance company on the said invoice issued to the insurance company subject to reimbursement of said amount by insurance company to the customer. However, 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.
3.	Whether ITC is available to the insurer where the invoice for the repair of the vehicle is not in name of the insurance company.	In such a case, condition of clause (a) and (aa) of section 16(2) of CGST Act is not satisfied and accordingly, input tax credit will not be available to the insurance company in respect of such an invoice.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version would follow.

CIRCULAR NO.218/12/2024-GST

F. NO. CBIC-20001/4/2024-GST

Subject: 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- reg.

Representations have been received from trade and industry seeking clarity on whether there is any supply involved in the transaction of granting of loan by a person to a related person or by an overseas affiliate to its Indian entity, where the consideration being paid is only by way of interest or discount, and whether any GST is applicable on the same.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

S. No.	Issue	Clarification
Clarification regarding taxability of the transaction of providing loan by an overseas entity to its Indian related entity or by a person in India to a related person		
1	Whether the activity of providing loans by an overseas affiliate to its Indian affiliate or by a person to a related person, where there is no consideration in the nature of processing fee/ administrative charges/ loan granting charges etc., and the consideration is represented only by way of interest or discount, will be treated as a taxable supply of service under GST or not.	1. 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, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply, even if made without consideration. Therefore, it is evident that the service of granting loan/ credit/ advances by an entity to its related entity is a supply under GST. 2. Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) are exempted under sub entry (a) of entry 27 of Notification No. 12/2017-Central Tax (Rate). Therefore, it is clear that 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. 3. It is mentioned that overseas affiliates or domestic related persons are generally charging no consideration in the form of processing fee/ service fee, other than the consideration by way of interest or discount on the loan amount. Doubts are being raised regarding the taxability of the services of processing/ administering/ facilitating the loan in such cases, by deeming the same as supply 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. The processing fee/ service fee is generally a one-time charge that lenders levy on applicants when they apply for a loan. This fee is generally non-refundable and is used to cover the administrative cost of processing the loan application.Charges of any other nature in respect

S. No.	Issue	Clarification
		of loan, other than by way of interest or discount, would represent taxable consideration for providing the facilitation/ processing/ administration services for the loan and hence would be liable to GST. This has been clarified at serial number 42 in the Sectoral FAQ on Banking, Insurance and Stock Brokers Sector issued by CBIC. 4. It is significant to note that the processing/ service fee is generally charged by the bank/ financial institution from the recipient of the loan in order to cover the administrative cost of processing the loan application. An independent lender may carry out a thorough credit assessment of the potential borrower to identify and evaluate the risks involved and to consider methods of monitoring and managing these risks. Such credit assessment may include understanding the business of the applicant, as well as the purpose of the loan, financial standing and credibility of the applicant, how it is to be structured and the source of its repayment which may include analysis of the borrower's cash flow forecasts, the strength of the borrower's balance sheet, and where any collateral is offered, due diligence on the collateral offered may also be required to be carried out. To cover such costs, the independent lender generally collects a fee that is in the nature of processing fee/ administrative charges/ service fee/ loan granting charges, which is leviable to GST. 5. However, when an entity is extending a loan to a related entity, it may not require to follow such processes as are followed by an independent lender. For example, it may not need to go through the same process of information gathering about the borrower's business, his financial standing and credibility and other details, as the required information may already be readily available within the group, or between related persons. The lender may not also take any collateral from the borrower. Accordingly, in case of loans provided between related parties, there may not be the activity of 'processing' the loan, and no administrative cost may be involved in granting such a loan. Therefore, it may not be desirable to place

S. No.	Issue	Clarification
		the services being provided for processing the loans by banks or independent lenders vis-a-vis the loans provided by a related party, on equal footing. 6. Even in case of loans provided between unrelated parties, there may not be any processing fee/ administrative charges/ loan granting charges etc., based on the relationship between the bank/ independent lender and the person taking the loan. The lender might waive off the administrative charges in full, based on the nature and amount of loan granted, as well as based on the relationship between the lender and the concerned person taking the loan. 7. Accordingly, 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. 8. However, 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

1. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.
2. Difficulties, if any, in implementing this Circular may please be brought to the notice of the Board. Hindi version would follow.

CIRCULAR NO. 219/13/2024-GST

F. NO. CBIC-20001/4/2024-GST

Subject: 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 - reg.

Representations have been received from Cellular Operators Association of India (COAI) submitting that input tax credit (ITC) is being denied by some tax authorities on ducts and manholes used in network of optical fiber cables (OFCs)on the ground that the same is blocked as per section 17(5) of the Central Goods &Services Tax Act, 2017 (herein after referred to as the 'CGST Act"), being in nature of immovable property (other than Plant and Machinery). It has been requested to issue clarification in respect of availability of ITC on ducts and manholes used in network of optical fiber cables (OFCs), so as to prevent unwarranted litigation in the telecommunication sector across the country.

2. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issue as below.

Issue	Clarification
Whether the input tax credit on the ducts and manholes used in network of optical fiber cables (OFCs) for providing telecommunication services is barred in terms of clauses (c) and (d) of sub-section (5) of section 17 of the CGST Act, read with Explanation to section 17 of CGST Act?	1. Sub-section (5) to Section 17 of the CGST Act provides that input tax credit shall not be available, inter alia, in respect of the following: i. works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service; or ii. goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business. 2. Explanation in section 17 of CGST Act provides that the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes land, building or any other civil structures; telecommunication towers; and pipelines laid outside the factory premises.

Issue	Clarification
	3. Ducts and manholes are basic components for the optical fiber cable (OFC) network used in providing telecommunication services. The OFC network is generally laid with the use of PVC ducts/sheaths in which OFCs are housed and service/connectivity manholes, which serve as nodes of the network, and are necessary for not only laying of optical fiber cable but also their upkeep and maintenance. In view of the Explanation in section 17 of the CGST Act, it appears that ducts and manholes are covered under the definition of "plant and machinery" as they are used as part of the OFC network for making outward supply of transmission of telecommunication signals from one point to another. Moreover, ducts and manholes used in network of optical fiber cables (OFCs) have not been specifically excluded from the definition of "plant and machinery" in the Explanation to section 17 of CGST Act, as they are neither in nature of land, building or civil structures nor are in nature of telecommunication towers or pipelines laid outside the factory premises. 4. Accordingly, 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.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version would follow.

CIRCULAR NO 220/14/2024-GST

F. NO. CBIC-20001/4/2024-GST

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

Representations have been received seeking clarification on the Place of Supply in cases of Custodial Services provided by Banks to Foreign Portfolio Investors (hereinafter referred to as "FPIs"), as a view is being taken by some field formations that the Place of Supply in case of 'custodial service' would be determined as per Section 13(8)(a) of the Integrated Goods and Services Tax Act, 2017

(hereinafter referred to as "IGST Act"), i.e. the location of the service provider (banks or financial institutions).

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issue as under:

Issue	Clarification
Whether the activity of providing Custodial Services by banks or financial institutions to FPIs will be treated as services provided to 'account holder' under Section 13(8)(a) of the IGST Act, 2017? Further, how the place of supply of the said services shall be determined?	According to the Securities and Exchange Board of India (Custodian of Securities) Regulations 1996, 'Custodial Services' in relation to securities means safekeeping of securities of a client and providing services incidental thereto, and includes- • maintaining accounts of securities of a client; • collecting the benefits or rights accruing to the client in respect of securities; • keeping the client informed of the actions taken or to be taken by the issuer of securities, having a bearing on the benefits or rights accruing to the client; and • maintaining and reconciling records of the services referred above. As per Regulation 20(1) of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, an FPI is allowed to invest only in the following securities, namely- (a) shares, debentures and warrants issued by a body corporate; listed or to be listed on a recognized stock exchange in India; (b) units of schemes launched by mutual funds under Chapter V, VI-A and VI-B of the Securities and Exchange Board of India (Mutual Fund) Regulations, 1996; (c) units of schemes floated by a Collective Investment Scheme in accordance with the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999; (d) derivatives traded on a recognized stock exchange; (e) units of real estate investment trusts, infrastructure investment trusts and units of Category III Alternative Investment Funds registered with the Board; (f) Indian Depository Receipts; (g) any debt securities or other instruments as permitted by the

Issue	Clarification
	Reserve Bank of India for foreign portfolio investors to invest in from time to time; and (h) such other instruments as specified by the Board from time to time. Various banks enter into custodial agreements with the Foreign Portfolio Investors (FPIs) for the provision of such custodial services. The main activity carried out by banks as a custodian in relation to custodial services is maintaining account of the securities held by the FPIs. As per clause (a) of sub-section (8) of section 13 of IGST Act, Place of Supply of services supplied by banking company or a financial institution or a non-banking company to account holders shall be the location of the supplier of services. As per Explanation (a) of Section 13(8) of IGST Act, *'account' means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account.* It is mentioned that the provisions similar to above provisions under IGST Act existed during the Service Tax regime. The place of provision of service under Service Tax was governed by the Service Tax Place of Provision of Supply Rules, 2012. Provisions of Rule 9(a) of the Service Tax Place of Provision of Supply Rules, 2012 were identical to that of section 13(8)(a) of the IGST Act. The Education Guide under the Service Tax Law clarified the scope of the term "account holder" and the services provided by banks to account holders as well as the services which are not provided to account holders, as below: *"Question: 5.9.2 What is the meaning of "account holder"? Which accounts are not covered by this rule?* *Answer: "Account" has been defined in the rules to mean* *an account which bears an interest to the depositor. Services provided to holders of demand deposits, term deposits, NRE (non-resident external) accounts and NRO (non-resident ordinary) accounts will be covered under this rule.* *Question:5.9.3 What are the services that are provided by a banking company to an account holder (holder of an account bearing interest to the depositor)?* *Answer: Following are examples of services that are provided by a banking company or financial institution to an "account holder", in the ordinary course of business :-*

Issue	Clarification
	i) services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc; *ii) transfer of money including telegraphic transfer, mail transfer, electronic transfer etc.* *Question:5.9.4 What are the services that are not provided by a banking company or financial institution to an account holder, in the ordinary course of business, and will consequently be covered under another Rule?* *Answer: Following are examples of services that are generally NOT provided by a banking company or financial institution to an account holder (holder of a deposit account bearing interest), in the ordinary course of business:-* *i) financial leasing services including equipment leasing and hire purchase;* *ii) merchant banking services;* *iii) Securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing;* *iv) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services* *In the case of any service which does not qualify as a service provided to an account holder, the place of provision will be determined under the default rule i.e. the Main Rule 3. Thus, it will be the location of the service receiver where it is known (ascertainable in the ordinary course of business), and the location of the service provider otherwise."* Accordingly, as per clarification given in Education Guide under Service Tax Regime, the custodial services are not considered to be covered under the services provided by bank to account holders, but have been considered to be covered under the services which are not provided to account holder. As the provisions of section 13(8)(a) of the IGST Act are similar to the provisions of Rule 9(a) of the Service Tax Place of Provision of Supply Rules, 2012, the clarification given in the Education Guide under Service Tax Regime is equally applicable under GST Regime. Accordingly, it is clarified that the custodial services provided by banks or financial institutions to FPIs are not to be treated as services provided

Issue	Clarification
	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.

2. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

3. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

CIRCULAR NO.-221/15/2024-GST

F.NO. CBIC-20001/4/2024-GST

Subject: Clarification on time of supply in respect of 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 -reg.

Representations have been received from the trade and the field formations seeking clarification regarding the time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects in Hybrid Annuity Mode (HAM) model, where certain portion of Bid Project Cost is received during construction period and remaining payment is received through deferred payment (annuity) spread over years.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

S. No.	Issue	Clarification
1.	Under HAM model of National Highways Authority of India (NHAI), the concessionaire has to construct the new road and provide Operation & Maintenance of the same which is generally over a period of 15- 17 years and the payment of the same is spread over the years. What is the time of supply for the	Under the Hybrid Annuity Model (HAM) of concession agreements, the highway development projects are under Design, Build, Operate and Transfer model (DBOT), wherein the concessionaire is required to undertake new construction of Highway, as well as the Operation and Maintenance (O&M) of Highways. The payment terms for the construction portion as well as the O&M portion of the contract are provided in the agreement between National Highways Authority of India (NHAI) and the concessionaire. 2.1 A HAM contract is a single contract for

S. No.	Issue	Clarification
	purpose of payment of tax on the said service under the HAM model?	construction as well as operation and maintenance of the highway. The payment terms are so staggered that the concessionaire is held accountable for the repair and maintenance of the highway as well. The contract needs to be looked at holistically based on the services to be performed by the concessionaire and cannot be artificially split into two separate contracts for construction and operation and maintenance, based on the payment terms. The concessionaire is bound contractually to complete not only the construction of the highway but also to operate and maintain the same. 2.2 In HAM contract, the payment is made spread over the contract period in installments and payment for each installment is to be made after specified periods, or on completion of an event, as specified in the contract. The same appears to be covered under the 'Continuous supply of services' as defined under section 2(33) of the CGST Act. 2.3 As per clause (a) of Section 13(2) of CGST Act, the time of supply in respect of a supply of services shall be the date of issue of Invoice, or date of receipt of payment, whichever is earlier, in cases where invoice is issued within the period prescribed under section 31 of CGST Act. Further, as per clause (b) of Section 13(2) of CGST Act, in cases where invoice is not issued within the period prescribed under section 31, the time of supply of service shall be date of provision of the service or date of receipt of payment, whichever is earlier. However, as per section 31(5) of CGST Act, in cases of continuous supply of services, where the payment is made periodically, either due on a specified date or is linked to the completion of an event, the invoice is required to be issued on or before the specified date or the date of completion of that event. 2.4 Accordingly, as per section 13(2) of CGST Act, read with section 31(5) of CGST Act, time of supply of services under HAM contract, including construction and O&M portion, should be the date of issuance

S. No.	Issue	Clarification
		of such invoice, or date of receipt of payment, 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. However, in cases, where the invoice is not issued on or before the specified date or the date of completion of the event specified in the contract, as per clause (b) of section 13(2), time of supply should be the date of provision of the service, or date of receipt of payment, whichever is earlier. In case of continuous supply of services, the date of provision of service may be deemed as the due date of payment as per the contract, as the invoice is required to be issued on or before the due date of payment as per the provisions of Section 31(5) of CGST Act. 3. In the light of above, 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. 4. 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.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

CIRCULAR NO.-222/16/2024-GST

F.NO. CBIC-20001/4/2024-GST

Subject: Clarification on time of supply of services of spectrum usage and other similar services under GST -reg.

Representations have been received from the trade and the field formations seeking clarification regarding the time of supply for payment of GST in respect of supply of spectrum allocation services in cases where the successful bidder for spectrum allocation (i.e. the 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.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to As "CGST Act"), hereby clarifies the issues as under:

S.No.	Issue	Clarification
	In cases of spectrum allocation where the successful bidder (i.e. the 'telecom operator') opts for making payments in instalments as mentioned in the Notice Inviting Application (NIA) and Frequency Assignment Letter (FAL) issued by Department of Telecommunications (DoT), Government of India, what will be the time of supply for the purpose of payment of GST on the said supply of spectrum allocation services.	Under the spectrum allocation model followed by DoT, bidder (the telecom operator) bids for securing the right to use spectrum offered by the government. Here, service provider is the Government of India (through DoT) and service recipient is the bidder/ telecom operator. The GST is to be discharged on the supply of spectrum allocation services by the recipient of services (the telecom operator) on reverse charge basis [Notification No. 13/2017-Central Tax (Rate) dated 28th June, 2017 referred]. 2.1 In respect of the said supply of spectrum allocation services, if the telecom operator chooses the option to make payment in installments, the payment has to be made spread over the contract period in installments and payment for each installment is to be made after specified periods, as specified in the Frequency Assignment Letter of DoT, which is in the nature of contract. The same is a 'continuous supply of services' as defined under section 2(33) of the CGST Act, since the supply of services (spectrum usage) is agreed to be provided by the supplier (DoT) to the recipient (telecom operator) continuously for a period which is exceeding three months with periodic payment obligations.

S.No.	Issue	Clarification
		2.2 As per section 13(1) of CGST Act, the liability to pay tax on supply of services shall arise at the time of supply. In case of forward charge supplies, the time of supply of services is governed by section 13(2) of CGST Act, which is the earlier of date of issue of invoice by the supplier or date of provision of service or the date of payment, as the case maybe. 2.3 However, in respect of supply of services, on which tax is paid or liable to be paid on reverse charge basis, as per Section 13(3) of CGST Act, 2017, the time of supply of services shall be the earlier of the following dates, namely:- (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or (b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier. 2.3.1 Some of the field formations are considering the Frequency Assignment Letter issued by DoT as akin to any other document, by whatever name called, in lieu of an invoice mentioned in clause (b) of section 13(3) of CGST Act and are demanding interest on instalments paid after 60 days from the date of issue of the same. 2.3.2 It is observed that Frequency Assignment Letter is in the nature of a bid acceptance document intimating the telecom operator that the result of the auction has been accepted by the competent authority and the details of blocks and spectrum allotted to the telecom operator. The Frequency Allotment Letter also mentions the options and the amounts to be paid by the telecom operator in each of the two options.

S.No.	Issue	Clarification
		2.4 Further, as per section 31(5)(a) of CGST Act, in cases of continuous supply of services, where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before such due date of payment. In the instant case, the date of payment to be made by the telecom operator to DoT is clearly as certainable from the Notice Inviting Applications read with the Frequency Assignment Letter. Accordingly, tax invoice will be required to be issued in respect of the said supply of services, on or before such due date of payment as per the option exercised by the telecom operator. 3. In the 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. 4. It is also clarified that the similar treatment regarding the time of supply, as is discussed in the above paras, 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 installments over the period of time.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

CUSTOMS

Subject: Launch of Exchange Rate Automation Module (ERAM) -reg.

In terms ofsection l4 ofthe Customs Act, the value ofany imported goods or export goods shall be calculated with reference to the rate ofexchange as in force on the date on which a bill ofentry is presented under section 46, or a shipping bill/bill ofexport is presented under section 50. For this purpose, Board currently notifies exchange rates of 22 cunencies (listed at Annexure) twice a month, i.e. every lst and 3rd Thursdays. These notified exchange rates become effective frorn midnight of the following day. Where a due date, i.e. lst or 3rd Thursday, falls on a holiday, the rates are notified on the previous working day.

l.l Further, on a given day, if it is noticed that exchange rate of a currency has fluctuated more than ± 5%o vis-d-vis the notified rate, the rate for that currency is re-notified with effect from the following day.

2. These notifications are based on the rates obtained from the State Bank of India (SBl) on a daily basis. The SBI communicates 'card rates' which include 'Bill rates', 'TT rates' and 'TC rates'to CBIC everyday. While the Bill rates are used in transactions related to Letters of Credit, the TT rates are used in telegraphic transfers and TC rates for travellers' cheques. The rates notified by the Board are the Bill rates (for transaction up to ₹ l0 lakh) received from SBI, adjusted to the nearest five paise.

3. The existing process ofnotifiing exchange rates is manual. Also, the rates so notified are manually incorporated in the Indian Customs EDI System (ICES) by an oflicer designated for this purpose.

4. It has now been decided to automate the aforesaid process of issuing exchange rates, beginning with forwarding of exchange rate data by SBI to ICEGATE through message exchange. The exchange rates received from SBI shall be adjusted to the nearest five paise and integrated with ICEs.

4.1 These exchange rates shall be published on ICEGATE website at 6:00 p.m. as per the existing frequency (as stated in Para I and Para l.l above) and shall be accessible for public viewing on ICEGATE website i.e. https://www.icegate.gov.in.

5. These rates, so published online, shallcome into effect from midnight ofthe following day. For instance, exchange rates published on the evening of 11th July 2024 shall come into force from 00:00 hrs of 12th July 2024 and shall remain in force till the next revision.

6. The published exchange rates will be stored and shall remain accessible on ICEGATE for future reference. so as to enable a user to check the exchange rates for a previous date.

7. As a contingency plan for catering to any technical snag, the following procedure shall be followed for ensuring unintemrpted accessibility ofexchange rates at any given time:

(i) Nodal Officers have been appointed in the SBI, Board, ICD (Patparganj), Air Cargo Complex (Bengaluru) and DG (Systems) to monitor and manually intervene, where needed.

(ii) Nodal Officer at ICD (Patparganj) shall continue to monitor the exchange

rates in ICES as per the current practice. If any issue is noticed or in case of any unforeseen exigencies, he shall inform the Nodal Officer in DG (System) to take corrective action.

(iii) Where, on a due date when the rates are to be published, there is a failure in electronic transmission from SBI or an incomplete message is received, the last updated rates shall remain in force for the following day and the rates shall be revised the following day by 6:00 p.m. to apply from 00:00 hrs of the next day.

(iv) Where, on a due date when the rates are to be published, the exchange rates received fiom SBI fail to get integrated on ICES by 6:00 p.m., the message received from SBI shall be discarded and the last updated rates shall remain in force for the following day. The rates shall be revised the following day by 6:00 p.m. to apply from 00:00 hrs of the next day.

(v) As soon as the situation indicated ar (iii) or (iv) above is encountered, an automated email and SMS alert will be sent to the Nodal Officers at ICD (Patparganj), Air Cargo Complex (Bengaluru), DG (System), SBI and the Board for corrective action. If the issue remains unresolved for consecutive two days, the exchange rates shall be updated on the System through manual intervention using the 'admin' interface by the Nodal Oflicer at ICD (Patparganj).

8. The automated system ofascertaining and publishing ofexchange rates, as above, shall come into effect from 1st Thursday of July 2024, i.e. 4th July, 2024) upon which the existing system of notifuing exchange rates through a notification would be dispensed with. A link shall be provided on the CBIC website which will take the user to the ICEGATE website, where the published rates will be available for viewing.

9. Suitable Public Notice may be issued for guidance ofthe stakeholders. Difficulty faced, if any, in implementation may be brought to the notice of the Board.

1.	Australian Dollar	12.	Qatari Riyal
2.	Bahraini Dinar	13.	Saudi Arabian Riyal
3.	Canadian Dollar	14.	Singapore Dollar
4.	Chinese Yuan	15.	South African Rand
5.	Danish Kroner	16.	Swedish Kroner
6.	EURO	17.	Swiss Franc
7.	Hong Kong Dollar	18.	Turkish Lira
8.	Kuwaiti Dinar	19.	UAE Dirham
9.	New Zealand Dollar	20.	US Dollar
10.	Norwegian Kroner	21.	Japanese Yen
11.	Pound Sterling	22.	Korean Won

Note: The list of currencies is subject to revision from time to time, based on requirement ofthe trade.

JUDGEMENT

INDIRECT TAX

No embargo on inspecting officer to issue SCN & adjudicate the issue as long as he is proper officer under GST Act: HC

Facts of the case - Rasathe Garments v. State Tax Officer (ST) (Inspn.) - [2024] (Madras)

The petitioner's premises were inspected by the State Tax Officer (ST) and based on inspection, the ST Officer issued the Show Cause Notice (SCN). It filed writ petition to challenge the SCN and contended that there was scope of patent bias since the inspecting officer was acting as adjudicating officer.

Decision of the case :

The Honorable High Court noted that there was no embargo under scheme of respective GST enactments on inspecting officer to issue show cause notice and to adjudicate issue as long as such officer also satisfies definition of a "proper officer" as per Section 2(91) of respective GST enactments. However, with a view to eliminate scope of bias, the inspecting officer acting as a adjudicating officer has been discharged in the Circular No. 13/2022-TNGST dated 08.11.2022. Therefore, the Court held that there is no merit in the challenge to the impugned Show Cause Notice and the petition was dismissed.

Attachment order to be quashed as it invoked Customs Act provisions whereas tax dues pertained to service tax: HC

Facts of the case - Zest Buildtek Promotors v. Deputy Commissioner of GST & Central Excise - [2024] (Madras)

The petitioner was a partnership firm engaged in the business of construction of residential properties on joint venture basis. It received a demand notice but no order was communicated by the department after the reply was issued. Thereafter, the recovery department issued attachment order and it filed writ petition to challenge the order since it was issued under Customs Act.

Decision of the case :

- The Honorable High Court noted that the impugned attachment order was wrongly issued under Customs Act for recovery of service tax dues. The Court also noted that the petitioner didn't receive a copy of the assessment order when the writ petition was filed and it would have been inappropriate for the petitioner to assail the assessment order without the leave of this Court.
- Therefore, the Court directed the department to provide opportunity to file statutory appeal against assessment order and the petitioner was permitted to present a statutory appeal before the Appellate Authority. The Court also quashed the attachment order and restrained petitioner from alienating/ encumbering attached property without appellate authority's permission.

No error in issuing a separate notice to proprietorship firm by Superintendent of Rohtak Commissionerate where firm was situated: HC

Facts of the case - Shashank Garg v. Proper Officer cum Additional Commissioner (Anti-Evasion) - [2024] (Punjab & Haryana)

The petitioner was an individual who received

show cause notice from the Commissionerate at Panchkula. Thereafter, a separate notice was issued in name of proprietorship concern by Superintendent Commissionerate at Rohtak. It filed writ petition against the notice and contended that once a notice was issued to him, a separate notice could not have been issued in name of proprietorship concern.

Decision of the case :

- The Honorable High Court noted that the petitioner may be a resident of area governed under jurisdiction of Commissionerate at Panchkula, but the proprietorship firm was situated at Jind, where jurisdiction of Rohtak Commissionerate would lie. Therefore, it could not be held that Commissionerate at Rohtak was not having jurisdiction.
- Thus, the Court held that there was no reason to interfere with show cause notice and appeal of assessee was to be dismissed. The Court also directed the petitioner to file appropriate reply to the show cause notice and contest the same.

Search and seizure of godown can't result in penalty proceedings under Section 129 of CGST Act: HC

Facts of the case - Gopi Chand Batra Traders v. State of U.P. - [2024] (Allahabad)

The petitioner was engaged in trading of goods. The proceedings under Section 129(3) of the GST Act, 2017 were initiated subsequent to search of the business premises of the petitioner. It filed writ petition against the demand order and contended that search and seizure of godown cannot result in penalty proceedings under Section 129.

Decision of the case :

- The Honorable High Court noted that the coordinate Bench of this Court in the case of Mahavir Polyplast Pvt. Ltd. v. State of U.P. & Ors. [2022] 142 taxmann.com 8 (Allahabad) held that search and seizure of the godown cannot result in penalty proceedings under Section 129 of the Act.
- Therefore, the Court held that the present proceedings were not justified and the impugned penalty order was liable to be set aside. The Court also directed the department to refund the amount of tax and penalty deposited by the petitioner within a period of four weeks.

HC directed dept. to refund tax & penalty since authorities didn't consider petitioner's explanation and there was no intention to evade tax

Facts of the case - Vishal Pipes Ltd. v. State of U.P. - [2024] (Allahabad)

The petitioner was aggrieved by the order imposing penalty under Section 129(3) and the order in appeal. The department had raised two issues for imposition of the tax i.e. expiry of e-way bill and discrepancy in weight of goods. The petitioner furnished explanation on both the issues raised by the authorities. But the GST Authorities imposed penalty under Section 129(3) and rejected appeal. It filed writ petition against both the orders.

Decision of the case :

- The Honorable high Court noted that some of the goods were traveling from Sikandrabad to Shamli, and thereafter, the balance goods to Muzaffarnagar. At both the places goods were sent to the same purchaser. The difference in quantity of the goods was explained by

the fact that the total quantity of the goods was 13,820 kilograms out of which 8200 kilograms were dropped at Shamli and the balance goods were taken to Muzaffarnagar.

- The Honorable High Court further that the expiry of e-way bill by itself without intention to evade tax would not attract penalty. Moreover, the authorities failed to consider petitioner's explanation and there was no intention to evade tax. Therefore, the Court held that the impugned penalty order and appellate order was liable to be quashed and the department was directed to refund tax and penalty deposited.

HC set aside order since no hearing given despite assessee expressly requested for personal hearing in reply to notice

Facts of the case - Tvl. Town & City Developers v. State Tax Officer (Intelligence) - [2024] (Madras)

The petitioner was a developer and it had availed benefit of Notification No. 03/2019–Central Tax (Rate) dated 29-3-2019 and paid GST at 1%. The department issued intimation and show cause notice (SCN) and levied GST at 5% on the ground that it failed to provide evidence that the projects developed by the petitioner qualified as affordable housing projects. It filed writ petition and contended that it had expressly requested for a personal hearing in reply to notice but personal hearing was not granted.

Decision of the case :

The Honorable High Court noted that the impugned order was preceded by both an intimation and a show cause notice and assessee's replies were also taken into consideration. However, it was evident from the petitioner's final reply that the petitioner requested for a personal hearing but the same was not granted. Therefore, the Court held that the impugned order was liable to be set aside and the department was directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue fresh orders.

HC directs Appellate Authority to admit appeal as delay was caused due to rejection of rectification petition

Facts of the case - Tvl. SKL Exports v. Deputy Commissioner (ST)(GST)(Appeal) - [2024] (Madras)

The petitioner received assessment orders and it filed rectification petitions against the said orders. Such rectification petitions were rejected, and the order was passed. After that, the petitioner filed an appeal against the assessment order. However, the Appellate Authority rejected the appeal on the ground that it was filed beyond the period of limitation prescribed in Section 107 of CGST Act, 2017. It filed writ petition against the rejection of appeal.

Decision of the case :

- The Honorable High Court noted that the rectification petitions were filed and appeals were filed shortly after such rectification petitions were rejected. The petitioner also remitted 10% of the disputed tax demand and a substantial amount was appropriated from the bank account of the petitioner towards the tax demand.
- Therefore, the Court held that these were appropriate cases in which the Appellate Authority should be directed to receive and dispose of the appeals on merits. The Court also directed the Appellate Authority to raise the bank attachment which was made pursuant to the order.

Penalty under Section 74 was inappropriate since fraud or misstatement wasn't proven by revenue: HC

Facts of the case - Greenstar Fertilizers Ltd. v. Joint Commissioner (Appeals) - [2024] (Madras)

The petitioner was a Central Excise Assessee under the provisions of the Central Excise Act, 1944 r/w. Central Excise Rules, 2002. It had wrongly availed the credit under Section 142 of the CGST Act, 2017. The department issued show cause notice and penalties were imposed for wrongful availment of ITC. It filed appeal but the order was rejected. Thereafter, it filed writ petition to challenge the order.

Decision of the case :

The Honorable High Court noted that the penalties under section 74 deals with situation where credit is availed or utilized by reason of fraud or any wilful misstatement or suppression of facts. In the instant case, the fraud or misstatement wasn't proven by department and credit was also reversed post-notice. Therefore, the Court held that penalties under Section 74 were inappropriate and a token penalty of Rs.10,000 was to be imposed.

Matter to be remanded for reconsideration since tax liability was computed on best judgement basis without hearing assessee: HC

Facts of the case - Annalakshmi Stores v. Deputy State Tax Officer - [2024] (Madras)

The petitioner was a registered taxable person. The GST department had issued order for cancellation of registration with retrospective effect on the ground that the petitioner had not filed his returns continuously for a period of six months. Thereafter, a show cause notice in Form GST ASMT-14 was issued by creating a temporary ID. It filed writ petition and contended that the uploading of such notice on the temporary ID did not constitute service of notice as per Section 169 of the CGST Act, 2017 and it was unaware of issuance of notice in Form GST ASMT-14.

Decision of the case :

The Honorable High Court noted that the tax liability against the petitioner was computed on best judgment basis by drawing on particulars available in auto-populated GSTR-2A. The taxable value was arrived at and freight and miscellaneous charges and gross profit was added thereon. This exercise was carried out without hearing the petitioner in person and considering the petitioner's objections. Therefore, the Court held that the impugned orders and notices were to be set aside and matter was to be remanded for reconsideration.

HC set-aside order passed by AO stating that reply to SCN wasn't properly filed without any justification

Facts of the case - Future Generali India Insurance Co. Ltd. v. Goods and Service Tax Officer (GSTO) - [2024] (Delhi)

The petitioner received a show cause notice (SCN) proposing a demand of Rs.7,02,71,577.00. It submitted detailed replies but the proper officer passed the order stating that the replies were not properly filed despite of sufficient opportunities provided. It filed writ petition against the order and contended that the order was passed without considering merits of the case.

Decision of the case :

- The Honorable High Court noted that the department enclosed the findings of the Special Audit in Form GST ADT-04 and no

further reasons were given in the said SCN. The Special Audit Report gave findings under separate headings and to the said SCN, detailed replies were furnished by the petitioner giving response under each of the heads with supporting documents.

- However, the impugned order recorded the narration that the reply uploaded by the taxpayer was not properly replied/filed. The Court noted that the observation in the impugned order was not sustainable for the reasons that the replies filed by the petitioner were detailed replies with supporting documents. Therefore, it was held that the impugned order was liable to be set aside and SCN was remitted for re-adjudication.

DIRECT TAX

CBDT to provide all relevant documents to assessee before rejecting its application for condonation of delay: HC

Facts of the case - Tata Autocomp Gotion Green Energy Solutions (P.) Ltd. vs. Central Board of Direct Taxes - [2024] (Bombay)

Tata Autocomp Gotion Green Energy Solutions Private Limited (the petitioner) was a joint venture between Tata Autocomp Systems Ltd. and Hefei Guoxuan High-Tech Power Energy Co. Ltd. (GOTION CHINA). Petitioner was to be owned 60% by Tata Autocomp and 40% by GOTION China.

The petitioner stated that the commercial production started at the end of the Financial Year 2022-23, and the first bill for sale was raised on 31 March 2023. For AY 2020-21 and 2021-22, the petitioner had not exercised the option to be governed by Section 115BAB of the Act, which it thought of exercising for AY 2022-23.

Therefore, the petitioner filed an application under Section 119(2)(b) to condone delay in filing Form 10-ID to avail of the beneficial rate of tax of 15% under Section 115BAB of the Act for reasons mentioned in the application.

The matter was heard by Member (IT&R), CBDT, and subsequently, the Additional Commissioner of Income Tax (ITA Cell), CBDT, New Delhi, passed an order rejecting the application. Aggrieved by the order, the petitioner filed a writ petition to the Bombay High Court.

Decision of the case :

- The High Court held that the order was challenged on various grounds. Still, two points stand out: first, the order has not been passed or signed by the Member who gave a personal hearing. Second, the order relies on the report of the Field Authorities, which the petitioner stated has not been provided.
- CBDT received such a report and considered it only when the petitioner received the impugned order. The petitioner's officers were called by the 'Field Authorities'. Their explanations were sought after, but nothing was received by the petitioner. Further, the order says, "This issues with the approval of Member (IT&R), Central Board of Direct Taxes" and is signed by Virender Singh, Additional Commissioner of Income Tax (ITA Cell), CBDT, New Delhi.
- If the Member (IT&R) has granted a personal hearing, the order should have been passed by him. The contention that there could be file notings was not made available to the petitioner. Therefore, on these grounds alone, the High Court quashed and set aside the impugned order and remanded the matter to CBDT.

- The Member/Members shall make available to the petitioner all Field Reports/documents/ instructions received by the CBDT from the Field Authorities. Within two weeks of receiving the same, the petitioner shall file, if advised, further submissions in support of its application for condonation of delay.

Sec. 50C not applicable on transfer of leasehold rights in land and building: ITAT

Facts of the case - Shivdeep Tyagi vs. ITO - [2024] (Delhi - Trib.)

Assessee, an individual, was a salaried employee. He filed his return of income for the relevant assessment year and declared income. The return of income was processed under section 143(1). Subsequently, the Assessing Officer (AO) reopened the assessee's case based on AIR information that the assessee sold a right in a leasehold property for ₹ 60,00,000 but did not offer the capital gains tax.

Reassessment was completed at an income of ₹ 75,94,850 for stamp duty purposes against the actual sale consideration of ₹ 60,00,000. On appeal, the CIT(A) upheld the reassessment proceedings, and the matter reached before the Delhi Tribunal.

Decision of the case :

- The Tribunal held that the leasehold right in a plot of land is neither 'land or building or both' as such nor can be included within the scope of 'land or building or both'. The distinction between a capital asset being 'land or building or both' and any 'right in land or building or both' is well recognised under the Act.
- Section 54D of the Act deals with certain cases in which capital gains on the compulsory acquisition of land and buildings are charged to tax. Section 54D(1) opens with: "Subject to the provisions of sub-section (2), where the capital gain arises from the transfer by way of compulsory acquisition under any law of a capital asset, being land or building or any right in land or building, forming part of an industrial undertaking…..". Thus, it is palpable from section 54D that 'land or building' is distinct from 'any right in land or building'.
- Section 50C states that the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted for stamp valuation authority in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.
- Relying upon the decision of the Hon'ble Supreme Court in the case of Amarchand N. Shroff [1963] 48 ITR 59 (SC), the Tribunal held that a deeming provision could be applied only in the scope of the law and not beyond the explicit mandate of the section. Hence, the provisions of Section 50C of the Act are applicable only with respect to 'land or building or both'. If the capital asset under transfer cannot be described as 'land or building or both', then Section 50C will not apply.
- Accordingly, the provisions of Section 50C do not apply to the transfer of leasehold rights in land.

Relief u/s 54 allowable even if sale deed wasn't registered if assessee had executed agreement to sale: ITAT

Facts of the case - Umesh Sumanlal Shah vs.

Income Tax Officer - [2024] (Ahmedabad - Trib.)

Assessee filed its return of income for the relevant assessment year and declared long-term capital gains (LTCG) arising from the sale of a property. During the assessment proceedings, the Assessing Officer (AO) observed that the assessee did not purchase any residential property against the capital gain arising from the sale of the property. Accordingly, he disallowed the deduction claim under Section 54 of the Income Tax Act and added the same to Long Term Capital Gain.

Aggrieved by the order, the assessee preferred an appeal to the CIT(A). The CIT(A) dismissed the appeal, and the matter reached the Ahmedabad Tribunal.

Decision of the case :

- The Tribunal held that the assessee showed consideration in his return of income under Capital Gain. The assessee made an investment in new residential property, paid full consideration for the property, and took possession of it. The assessee furnished the bank statement and Municipal Tax bill, which specifically showed the assessee's name as the occupier. The payment of Municipal Tax and the bill to that extent is sufficient evidence of possession by the assessee.
- The observation of the AO that the deed of conveyance must be duly stamped and registered by law will support the conduct of the assessee regarding the actual consideration paid by the assessee as well as the investment made by the assessee in the relevant Assessment Year and which is duly reflected in the return of income as well as books of the assessee.
- Further, in Sanjeev Lal v. CIT, 365 ITR 389, the Supreme Court ruled that if an assessee executes an agreement to sell a house and buys a new residential property within a year of that agreement, and the sale deed is delayed due to an order by a competent authority, a valid transfer under Section 2(47) of the Act is recognized.
- Thus, the assessee was eligible for relief under Section 54 for purchasing the new property, provided other conditions were met.

CIT(E) can't reject trust's application without serving hearing notice as per provisions of Sec. 282: ITAT

Facts of the case - Idream Social Edtech Foundation vs. Commissioner of Income-tax (Exemptions) - [2024] (Chandigarh - Trib.)

The assessee trust had filed an application for registration under section 12A(1)(ac)(iii). The Commissioner (Exemptions) issued a questionnaire electronically to verify genuineness of its activities requesting the assessee to furnish relevant documents and details online through e-proceedings on the e-filing portal along with supporting documents or evidences etc.

However, the assessee made no submissions. Thus, the Commissioner (Exemptions) rejected the application for registration under section 12AB on the ground that the assessee failed to furnish the relevant details along with supporting documents or evidence.

Aggrieved by the order, the assessee filed an appeal to the Chandigarh Tribunal.

Decision of the case :

- The Tribunal held that the notices were uploaded to the e-portal, but the assessee stated that he had not received any notice of

hearing. Further, something needed to be on record to prove that the assessee had been served proper notice of hearing to furnish the relevant information or documents, etc. Merely uploading information about the date of hearing on the Income Tax Portal was not an effective service of notice as per the provisions of section 282.

- Accordingly, considering the facts and circumstances and in the interest of justice, the file was restored to the file of the Commissioner (Exemptions) to decide the matter afresh in accordance with law after giving reasonable opportunity to be heard by the assessee. The assessee was directed to cooperate in the fresh proceedings before the Commissioner (Exemptions).
- As a result, the appeal of the assessee was allowed for statistical purposes.

Non-service of order & its unsigned copy uploaded on ITBA portal don't make sec. 263 proceedings invalid: ITAT

Facts of the case - Ramasamy Sathyan Vs. Assistant Commissioner of Income Tax - [2024] (Chennai - Trib.)

The Assessing Officer (AO) completed the assessment proceedings under section 143(3) read with section 153C. Later, the Principal Commissioner of Income Tax (PCIT), under section 263, passed assessment order on the assessee. The assessee contended that the original assessment order was non-est as it did not contain the signature of AO and was not served upon him. The assessee had furnished his email ID for communication, but he did not receive the order. No demand notice was served to the assessee, and thus, the original assessment order was non-est.

Aggrieved by the order, an appeal was filed to the Chennai Tribunal.

Decision of the case :

- The Tribunal held that while passing the assessment through the online (ITBA) portal, there is no mandatory requirement to manually send the assessment order to the assessee as it was a duplication of work. The unserved and unsigned order uploaded to the ITBA portal was a mere mistake, and the unsigned and non-service of the order did not vitiate the proceedings under section 263 of the Act.
- Under section 263 of the Act, the order from AO is not required to be mandatorily served upon the assessee. The proceedings under section 263 are not invalid in case of non-service of the order and unsigned order of the Assessing Officer. The requirement under section 263, i.e., for initiating revision or assuming jurisdiction by the PCIT, to call for the records and, after examining the same, considers the order passed therein by the AO is erroneous in so far as it is prejudicial to the interests of the revenue having satisfied that it is a fit case for inquiry in enhancing the assessment.
- In the instant case, the PCIT held that the AO had omitted to consider the share profits of the assessee in the original assessment proceedings and invoked the jurisdiction under section 263 of the Act. Therefore, the assessee's contention that the unsigned and non-service of order vitiates the entire proceedings under section 263 is not justified.

Name of concerned AO can't be reflected in notice issued u/s 148 in faceless manner: HC

Facts of the case - Ram Narayan Sah vs. The Union Of India - [2024] (Gauhati)

The petitioner filed the instant writ petition

against the notice issued by the Assessing Officer (AO) for reopening the assessment under Section 147 of the Income Tax Act. The petitioner contended that the notice was issued with the name of the AO. This was contrary to the provisions of Section 151A and the schemes framed thereunder, whereby the Income Tax Authority was required to undertake these proceedings in a 'faceless' manner.

Decision of the case :

- The High Court held that the scheme's scope under Section 151A is for assessment, re-assessment, and re-computation under Section 158 and issuance of notices under Section 148. The same shall be by a process through automated allocation in accordance with the risk management strategy formulated as referred to under Section 148 for issuance of the notice and in a faceless manner and to the extent provided under Section 144B reference to make the assessment, re-assessment of total income or loss of the assessee.
- The statute, in order to obviate prejudice and bias, has resorted to issuing notices through automated allocation via the risk management strategy. The notices are required to be issued in an automated manner without any interface between the department and the assessee. There is no fundamental right or legal right available to an assessee to demand that the notices, though automated digital allocation, should be issued. If the department issues fresh notices, the petitioner shall also be granted liberty to file their appropriate reply under section 148.
- Accordingly, the department is required to follow the procedure prescribed for the scheme. Accordingly, the department will withdraw the notices and thereafter issue fresh notices if permissible under the law as per the scheme read in section 151A.

No denial of sec. 54B relief just because assessee didn't show agricultural income in his ITR: ITAT

Facts of the case - Pareshbhai Parsottambhai Patel vs. Principal Commissioner of Income-tax - [2024] (Surat-Trib.)

Assessee-individual sold land and claimed deduction under section 54B in respect of capital gain arising from the sale of land. The Assessing Officer (AO) completed the assessment under section 143(3) without making any addition. Later, the Principal Commissioner of Income Tax (PCIT) found that the assessee had not shown agricultural income earned by him in his return of income.

Accordingly, the assessee was not entitled to claim deduction under section 54B. Arguing that the Assessing Officer (AO) was obligated to conduct inquiries and verifications and make necessary additions regarding the deduction under Section 54B during the assessment proceedings but failed to do so, the PCIT initiated revisionary proceedings against the assessee.

Aggrieved-assessee filed an appeal to the Surat Tribunal.

Decision of the case :

- The Tribunal held that the AO had issued three notices to the assessee under section 142(1) to examine three issues: (i) investment in immovable property, (ii) capital gain on the sale of property, and (iii) capital gain deduction claimed under section 54B. In response to these notices, the assessee submitted a detailed reply and various evidences stating that the land was used for

agriculture. Thus, the assessee proved that the land was used for agricultural purposes prior to its sale for many years.

- The main allegation of the PCIT was that the assessee had not shown agricultural income in his return of income. In this regard, the assessee submitted that the land was inherited by the members of the assessee's family, and one of the family members was showing agricultural income. It was sufficient compliance on the part of the assessee to claim such deduction under section 54B.
- Only the condition to be fulfilled to claim the deduction under section 54B is that 'land was being used' by the assessee for agricultural purposes, and it was not necessary for the assessee to show agricultural income in his return of income. The assessee fulfilled this condition as the land was used by the assessee for two preceding previous years for agricultural purposes. It is not the requirement of section 54B(1) that the assessee has to show agricultural income in his return of income.
- Since the AO conducted an inquiry on the matter at hand and based on the evidence collected, he had formed a reasonable view, which cannot be considered unsustainable. Thus, the AO's order cannot be termed as erroneous or prejudicial to the interest of revenue.

Additional tax u/s 143(1) isn't valid if assessee revised his return and same was taken up in scrutiny: HC

Facts of the case - Khandelwal Rubber Products (P.) Ltd. vs. Commissioner of Income-tax - [2024] (Allahabad)

The present appeal has been filed by the assessee against the order passed by the Income Tax Appellate Tribunal. By that order, the Tribunal has dismissed the appeal filed by the assessee and confirmed the demand for additional tax imposed under section 143(1A) of the Income Tax Act, 1961. The appeal was admitted on the questions of law:

"Was the additional tax levied based on the loss shown in the original return valid, given that the original return became non-existent after revision and the Assessing Officer issued a notice under Section 143(2) based on the revised return?"

Decision of the case :

- The High Court held that the provisions of section 143(1A) of the Act, would apply and remain confined to situations covered u/s 143(1)(a) of the Act. The High Court observed that the provisions of section 143(1A) could not apply to a case where an assessment may have been completed u/s 143(3) of the Act.
- The High Court further noted that once the assessment proceedings concluded, neither the original intimation issued under Section 143(1)(a) remained nor was there a legal basis to invoke the provision of Section 143(1A). The High Court held that by initiating the assessment proceedings under Section 143(3) of the Act, the Assessing Officer himself eliminated the basis to invoke Section 143(1A). Consequently, the appeal was to be allowed.

Share application money is neither loan nor deposit; provisions of sec. 269SS and 269T not attracted: HC

Facts of the case - CIT vs. Vamshi Chemicals Ltd - [2024] (Calcutta)

During the relevant assessment year, the assessee-company received share application money for

preference shares amounting to Rs.20,000 or more from persons otherwise than by an account payee cheque or by account payee bank draft. The Assessing Officer (AO) issued a show cause notice for penalty under section 271D/271E on the ground that the assessee had violated the provisions of section 269SS.

On appeal, the CIT(A) upheld the penalty order. Aggrieved by the order, an appeal was filed to the Tribunal. The Tribunal deleted the penalty and the matter reached the Calcutta High Court.

Decision of the case :

- The High Court held that the words' loan or deposit' have been defined in Explanation (iii) to section 269T, which is not an expansive definition. It provides that "loan or deposit" means any loan or deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, including a loan or deposit of any nature.
- In the case of a loan, it is ordinarily the debtor's duty to seek the creditor and repay the money according to the agreement. In other words, a loan grants temporary use of money or temporary accommodation on certain conditions. Thus, a loan is an act of advancing money by one person to another under an agreement by which the recipient of money agrees to repay the amount on agreed terms.
- In case of a deposit, it is generally the duty of the depositor to go to the banker or the depositee, as the case may be, and demand it. The essence of a deposit is that there must be a liability to return it to the party by whom or on whose behalf the deposit has been accepted on fulfilment of certain conditions.
- Share application money is neither repayable after notice nor repayable after a period. It is for participation in the capital of the company. Therefore, neither as per the definition of the words "loan or deposit" given in Explanation (iii) to section 269T nor in the ordinary sense, share application money can be said to be a loan or deposit.
- Once share application money is neither loan nor deposit, neither section 269SS nor 269T shall attract. Consequently, no penalty either under section 271D or under section 271E could be imposed.

ITAT can't recall its order based on subsequent judgment of Supreme Court: Mumbai ITAT

Facts of the case - DCIT vs. ANI Integrated Services Ltd. - [2024] (Mumbai - Trib.)

The assessee filed its return of income for the relevant assessment year. During the assessment proceedings, the Assessing Officer (AO) disallowed the deduction claimed by the assessee on account of the delay in deposits of employee's contribution towards the provident fund and ESIC. The matter was then taken to the Tribunal. The Tribunal held that the assessee had filed its return of income by the due date specified under section 139(1). Thus, the deduction claimed by the assessee regarding the delayed deposit of employees' contributions towards the provident fund and ESIC was allowable.

The AO filed a Miscellaneous Application before the Mumbai Tribunal to recall the order passed by the Tribunal, contending that the Tribunal's order was based on the binding precedents available at that time. However, in case of Checkmate Services P. Ltd. v. CIT [2022] 143 taxmann.com 178 (SC), the Hon'ble Supreme Court reversed the judgment based on which the Tribunal passed the order. Thus, the order passed by the Tribunal

was based on an erroneous interpretation of law.

Decision of the case :

- The Mumbai Tribunal held that the Constitutional Bench of the Hon'ble Supreme Court clearly opined that the change in law or subsequent decision/judgment of a Co-ordinate Bench or a larger Bench by itself cannot be regarded as a ground of review.
- Admittedly, when the judgment of the Tribunal was passed, it was based on the law binding on the Tribunal and authorities below by a series of judgments of the Hon'ble Jurisdictional High Court and other High Courts. Thus, the decision of the Tribunal was rendered before the judgment of the Hon'ble Supreme Court.
- The judgment of the Hon'ble Supreme Court will apply in all the cases where the lis or cases are pending before any Court or forum. But once the issue in the appeal has attained finality following the earlier binding precedence of the jurisdictional high court and there are no lis pending, based on the subsequent judgment of a superior court, do not alter the finality of the judgment.
- If the Revenue's contention is to be accepted. In that case, whenever a judgment is reversed by a higher Court or by any Constitutional Court subsequently in some different case, all the appeals and matters which have been decided following the earlier order of the Constitutional Courts / High Court or Supreme Court do not mean that all such orders should be recalled even when no lis is pending and to disturb the finality.
- Further, the powers under section 254(2) are akin to Order XLVII Rule 1 of CPC. While considering the application under section 254(2), the Tribunal is not required to revisit its earlier order and discuss merits. The powers under section 254(2) are only to rectify or correct any mistake apparent from the record. The Tribunal cannot revisit its order based on a subsequent judgment of a higher court.
- Therefore, the Tribunal was not required to recall its order based on a subsequent judgment of the Apex Court.

TAX CALENDAR

INDIRECT TAX

Due Date	Returns
July 7th, 2024	FEMA-ECB, ECB-2
July 10th, 2024	GSTR-7 (GST-TDS)
	GSTR-8 (GST-TCS)
	GSTR-1-Other than QRMP scheme
July 13th, 2024	GSTR-1-QRMP-Invoice Furnishing Facility
	GSTR-5-Non-Resident Taxable Person
	GSTR-6-Input Service Distributor

DIRECT TAX

Due Date	Returns
July 7th, 2024	Due date for deposit of Tax deducted/collected for the month of June, 2024. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan
	Due date for deposit of TDS for the period April 2024 to June 2024 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H
July 15th, 2024	Due date for issue of TDS Certificate for tax deducted under 194-IA, IB M & S (specified person) for the month of May, 2024
	Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending June, 2024
	Quarterly statement of TCS deposited for the quarter ending June 30, 2024
	Upload the declarations received from recipients in Form No. 15G/15H during the quarter ending June, 2024
	Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of June, 2024

E-PUBLICATIONS
Of
TAX RESEARCH DEPARTMENT

- Guide Book for GST Professionals
- Handbook for Certifi cation for diff erence between GSTR-2A & GSTR - 3B
- Impact of GST on Real Estate
- Insight into Customs-Procedure & Practice
- Input Tax Credit and In depth Discussion
- Taxation on Co-operative Sector
- Guidance notes on Preparation and Filing of Form GSTR 9 and 9c
- Guidance Note on Anti Profi teering
- Handbook on GST on Service Sector
- Handbook on Works Contract under GST
- Handbook on Impact of GST on MSME Sector
- Assessment under the Income Tax Law
- Impact on GST on Education Sector
- International Taxation and Transfer Pricing
- Handbook on E-Way Bill
- Filing of Return
- Handbook on Special Economic Zone and Export Oriented Units

For E-Publications, Please Visit Taxation Portal

https://icmai.in/TaxationPortal/

NOTES:

TAXATION COMMITTEES - PLAN OF ACTION

Proposed Action Plan:

1. Successfully conduct all Taxation Courses.
2. Publication and Circulation of Tax bulletin (both in electronic and printed formats) for the awareness and knowledge updation of stakeholders, members, traders, Chambers of Commerce, Universities.
3. Publication of Handbooks on Taxation related topics helping stakeholders in their job deliberations.
4. Carry out webinars for the Capacity building of Members - Trainers in the locality to facilitate the traders/ registered dealers.
5. Conducting Seminars and workshops on industry specific issues, in association with the Trade associations/ Traders/ Chamber of commerce in different location on practical issues/aspects associated with GST.
6. Tendering representation to the Government on practical difficulties faced by the stakeholders in Taxation related matters.
7. Updating Government about the steps taken by the Institute in removing the practical difficulties in implementing various Tax Laws including GST.
8. Facilitating general public other than members through GST Help-Desk opened at Head quarter of the Institute and other places of country.
9. Introducing advance level courses for the professionals on GST and Income Tax.
10. Extending Crash Courses on Taxation to Corporates, Universities, Trade Associations etc.

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