



Goods and Service Tax

Clarification on various issues in GST

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The CBIC has recently issued 8 circulars in accordance with the recommendations of GST council. Such circulars have been issued to address some of the ongoing issues in GST law (such as interest on wrong availment of ITC, Cross charge between HO and BO, ITC mismatch etc.). Summary of the clarifications given in these circulars for better and easy understanding are as below:

Circular No. 192/04/2023-GST
Clarification on calculation of interest in case of wrong availment of ITC

In case IGST credit has been wrongly availed, interest is charged under section 50(3) if credit of IGST has been utilised i.e. if balance of IGST credit falls below the amount of wrong credit availed. However, there was ambiguity if balance of IGST falls below the amount of wrongly availed credit, but balance credit is available under CGST and SGST head, whether interest shall be charged.

It has been clarified that no interest liability would be levied in case of reversal of wrongly availed IGST credit, if credit balance in the electronic credit ledger, under the heads of IGST, CGST and SGST taken together during the period starting from such availment and up to such reversal has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in electronic credit ledger individually falls below the amount of such wrongly availed IGST credit.

It has been further clarified that credit of compensation cess available in electronic credit ledger shall not be taken into account for the purpose of calculation of interest on wrong availment of IGST credit.

Circular No. 193/05/2023-GST -
Clarification regarding differences in ITC availed in GSTR 3B and ITC in GSTR 2A

Circular no. 183/15/2022-GST dated 27.12.2022 was issued clarifying the way to deal with the difference in ITC availed in GSTR-3B as compared to GSTR-2A. The said circular was issued with respect to differences for FY 2017-18 and 2018-19. In the said circular it was clarified that a certificate from supplier / Chartered Accountants can be obtained certifying that supplies have actually been made.

Circular no. 193/05/2023 was issued clarifying that for the period from 01.04.2019 to 31.12.2021 in respect of ITC availed but not appearing in GSTR 2A, certificate may be obtained from supplier / CA as provided in Circular No. 183/15/2022-GST. Now, the registered person may obtain the said certificate for period from 01.04.2019 to 31.03.2021 as well. However, the same has been restricted to the ITC allowed as per rule 36(4) of CGST Rules as applicable during the said period. The said rule was amended thrice during the period, thus earlier circular shall be applied accordingly, which has been detailed below:

- ⇒ For the period 01.04.2019 to 08.10.2019 – During this period, since rule 36(4) was not in operation, circular No. 183/15/2022-GST dated 27.12.2022 shall apply as a whole.
- ⇒ For the period 09.10.2019 to 31.12.2019 - The guidelines of the earlier circular shall be applicable to the ITC availed but not appearing in GSTR 2A to the extent ITC does not exceed 20% of the eligible ITC. ITC availed in excess of 20% shall not be admissible even if certificate of supplier / CA is obtained and submitted.
- ⇒ For period 01.01.2020 to 31.12.2020 - The guidelines of the earlier circular shall be applicable to the ITC availed but not appearing in GSTR 2A to the extent ITC does not exceed 10% of the eligible ITC.
- ⇒ For period 01.01.2021 to 31.12.2021 - The guidelines of the earlier circular shall be applicable shall be applicable to the ITC availed but not appearing in GSTR 2A to the extent ITC does not exceed 5% of the eligible ITC.

Circular No. 194/06/2023-GST

Clarification on TCS liability in case of multiple E-commerce Operators in one transaction

As per section 52 an electronic commerce operator (ECO) is required to collect TCS if goods / services are supplied through it and consideration is collected by ECO. This circular has been issued to clarify the applicability of TCS liability in case of multiple E-commerce operators (ECO) are involved in one transaction. In such case wherein multiple ECO are involved, there may be two scenario which has been clarified below:

⇒ **Scenario 1**

Where multiple ECOs are involved in a single transaction of supply of goods or services through ECO platform and where the supplier-side ECO himself is not the supplier in the said supply i.e.

Buyer → Buyer Side ECO → Supplier Side ECO → Supplier

In such case, seller side ECO shall collect and pay the TCS and make balance payment to supplier.

⇒ **Scenario 2**

Where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the Supplier-side ECO is himself the supplier of the said supply

Buyer → Buyer Side ECO → Supplier (also an ECO)

In such cases where seller side ECO is also supplier, buyer side ECO shall be liable to collect TCS.

Circular No. 195/07/2023-GST

Clarification on replacement / repair services during warranty period

Manufacturers /suppliers offer warranty for the goods / services supplied by them. During the warranty period, replacement goods /services are supplied to customers free of charge and no separate consideration is charged. This circular clarifies the applicability of GST on goods / services provided free of cost during warranty period and other issues incidental thereto. These has been summarised below:

- ⇒ No GST would be levied on replacement of parts or repair services provided by the manufacturer/distributor/supplier during warranty period without charging any separate consideration. However, if any additional consideration is charged by the manufacturer from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.
- ⇒ No ITC is required to be reversed in respect of parts replaced / repair services provided by the manufacturer/distributor/supplier. In such cases, the value of original supply of goods (provided along with warranty) by the manufacturer/distributor/supplier to the customer includes the likely cost of replacement of parts and/ or repair services to be incurred during the warranty period. Therefore, these supplies cannot be considered as exempt supply and accordingly no ITC is required to be reversed.
- ⇒ In case where the distributor replaces the part to the customer under warranty either by using his stock or by purchasing from a third party and charges the consideration for the part so replaced from the manufacturer, in such case GST would be payable by the distributor and manufacturer can avail ITC of the same. Similarly, if distributor provides repair service to the customer under warranty on behalf of manufacturer, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair services and accordingly GST shall be paid by distributor.
- ⇒ In a case, where the manufacturer is providing part(s) to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement, no GST is payable on such replacement of parts by the manufacturer. Further, no reversal of ITC is required to be made by the manufacturer in respect of the parts so replaced by the distributor under warranty.
- ⇒ In case of extended warranty provided to customer, if it is provided 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.
- ⇒ In case where a customer opts for extended warranty at any time after the original supply, then the same is a separate contract and GST would be payable by the service

provider, whether manufacturer or the distributor or any third party, 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)

Circular No. 196/08/2023-GST

Clarification on taxability of shares held in a subsidiary company by the holding company.

Instances were noted wherein GST was being demanded on share held by holding company in subsidiary company considering it covered under “service of holding equity of subsidiary company” against SAC code 997171. GST was also demanded under reverse charge by Indian subsidiary company where shares are held by foreign holding company.

Vide this circular, it is clarified that GST would not be applicable on the activity of holding of shares of subsidiary company by the holding company, since the same can't be treated as a supply of services by a holding company to the said subsidiary company.

Circular No. 197/09/2023-GST

Issues related to Refund

Vide this circular, various issues in relation to refund of GST has been clarified which are summarised as under:

- ⇒ Refund of accumulated ITC as per the Section 54(3) shall be restricted to input tax credit as per those invoices, which are reflected in GSTR 2B instead of GSTR 2A. Such restriction shall be applicable for the refund claims made for the tax period January 2022 onwards.
- ⇒ While filing refund application, an undertaking is required to be furnished along with RFD-01. The said undertaking has been amended to give effect to the recent changes under the GST laws in respect of omission of GSTR 2 and GSTR 3. Amended undertaking is as follows:

“I hereby undertake to pay back to the Government the amount of refund sanctioned along with interest in case it is found subsequently that the requirements of clause (c) of subsection (2) of section 16 read with sub-section (2) of section 42 of the CGST/ SGST Act have not been complied with in respect of the amount refunded.”

- ⇒ In respect of calculation of “adjusted total turnover”, It is clarified that the value of goods exported out of India to be included while calculating “adjusted total turnover” and the same will be determined as per the Explanation inserted in Rule 89(4) of the CGST Rules, 2017.
- ⇒ In cases where goods could not be exported or payment for export of services could not be received within the time prescribed under CGST Rules, exporter has to make payment of GST on those goods or services along with interest.

In this regard it has been clarified that if even after the time prescribed, such goods are exported or as the case may be, payment is realised in case of export of services, the said exporters are entitled to claim refund of the integrated tax and interest so paid in compliance of the provisions of sub-rule (1) of rule 96A.

Refund application in these cases may be made under the category “Excess payment of tax”. However, till the time the refund application cannot be filed under the category “Excess payment of tax” due to non-availability of the facility on the portal to file refund of IGST paid in compliance with the provisions of sub-rule (1) of rule 96A of CGST Rules as “Excess payment of tax”, the applicant may file the refund application under the category “Any Other” on the portal.

Circular No. 198/10/2023-GST

Clarification on issue pertaining to e-invoice

It is clarified that the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, is required to issue e-invoices for the supplies made to Government Departments or establishments/ Government agencies/ local authorities/ PSUs, etc, who are even registered only for the purpose of deduction of tax at source.

Circular No. 199/11/2023-GST

Circular for clarification on distribution of Credit

In case of company have branches in multiple states, there are some common services availed by HO which are utilised at multiple branches located in different states. Also, some internally generated services are provided by HO to BO wherein employees at HO provides certain services to branch offices. Distribution of ITC of common services and raising invoice to Branch office for services provided by HO has always been a contentious issue.

- ⇒ In this circular, it has been clarified that Head Office (HO) can distribute the common input services procured by the HO from a third party but attributable to both HO and

Branch Office (BOs) through ISD mechanism. However, such ISD mechanism is not mandatory for distribution of ITC to BO. HO can also issue tax invoice to the BO in respect of any input services, procured by HO from a third party for on or behalf of a BO, only if the said services have actually been provided to the concerned BOs.

- ⇒ In respect of the valuation of internally generated services provided by HO to BO, which is also a very litigative issue, it has been clarified that where recipient BO is eligible to avail full ITC, as per second proviso to rule 28, the invoice value shall be deemed to be the open market value. Thus, irrespective of the fact whether cost of any particular services, like employee cost etc., has been included or not in the taxable value of the services in the invoice is immaterial if recipient BO is eligible for full ITC. In such case, even if invoice is not issued to BO value of service shall be considered to be nil and acceptable as per second proviso to rule 28.
- ⇒ Considering the genuine hardship faced by assessee in valuation of services, it has been further clarified that in case of internally generated services, The cost of salary of employees of HO involved in providing of services to BO is not required to be included in value of supply even if the concerned BO is not eligible for full ITC.

In case of query in this respect, you can reach to us:



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