



ICAI-GST

38th Edition

NEWSLETTER
July 2023

A Newsletter from The Institute of Chartered Accountants of India on GST



ICAI-Set up by an Act of Parliament

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President's Communication



Dear Professional Colleague

Greetings from the Institute of Chartered Accountants of India (ICAI)!

As ICAI has celebrated 75th Chartered Accountants Day this year, Goods and Services Tax (GST) has also completed its glorious six years journey in India on 1st July, 2023. It was the day to recount our shoulder-to-shoulder proactive role to strengthen the GST ecosystem for its smooth operation and to prepare ourselves for more responsiveness to the taxpayers' concerns and better tax regime for economy's growth.

Hon'ble Finance Minister of India, Smt. Nirmala Sitharaman felicitously describes the essence of GST as, *"GST is the embroidery that stitches the diversity of Indian markets into the fabric of economic progress."* GST is the epitome of cooperative federalism where the decisions have been taken by the Centre and the States together after careful deliberations and discussions. Right from the initial implementation stages, the Government has been very forthcoming to the suggestions put forward by the stakeholders and has made the amendments providing a platform for the ease of doing business.

Today, GST is one of the major sources of revenue collection of the Government with revenue of Rs. 1.5 lakh crore every month becoming a new normal. GST revenue collection has been increasing steadily at an approximate rate of 12% on a year-on-year basis.

The GST and Indirect Taxes Committee of ICAI has been assisting the Government in its capacity building initiatives for the officers of the Central Tax, State Tax, Union Territory Tax and other Government Departments. The capacity building programmes organized by the Committee for the State Tax Officers help extensively in building goodwill and forging a strong partnership between the profession and the Government. I am pleased to inform you that in furtherance of this objective, ICAI, through its GST and Indirect Taxes Committee, has entered into an MoU with Department of State Tax, Goa to develop co-operation and collaboration in capacity building, research, assistance in policy making, consulting and other such activities.

The GST and Indirect Taxes Committee has also developed a variety of publications on various aspects of GST which are updated regularly to include the latest updates, notifications and amendments brought in by the Government from time to time. This newsletter is a monthly endeavor of the committee to equip members with the latest amendments and recent developments pertaining to GST. I urge all of you to take full advantage of the publications and the newsletter of the GST & Indirect Taxes Committee.

I hope this Newsletter adds value to your professional knowledge and skills.

Best wishes,

CA. Aniket Sunil Talati

President

The Institute of Chartered Accountants of India

Chairman's Communication



Dear Members,

Warm Greetings!

I am delighted to share with you another enthralling edition of our GST Newsletter to enlighten you with the latest updates, insights, and resources related to GST. I must tell you that keeping oneself abreast with the dynamic GST law is *sine qua non* for navigating the world of GST more effectively.

This month we celebrated GST Day on 1st of July 2023 and successfully entered the 7th year of GST implementation. GST brought with it the concept of “One nation, One tax and One market” with the objective of integrating all taxes under one umbrella for the ease of doing business and with lesser compliances. GST has completely replaced manual filing system which has led to more transparency and accountability in transactions.

The 50th GST Council meeting held on 11th July, 2023 was another step towards making GST simpler and taxpayer friendly. It has clarified various issues where different practices are being followed by the taxpayers e.g., applicability of ISD *vis a vis* cross charge in case of distinct persons, manner of computing interest on reversal of wrongly availed and utilized input tax credit of IGST, TCS liability in case of multiple e-commerce operators, refund related issues etc. We have compiled all the notifications and circulars issued in pursuance of this meeting, in this Newsletter. Further, the e-invoice exemption declaration functionality is now live on the e-invoice portal which is specifically designed for taxpayers who are by default enabled for e-invoicing but are exempted from implementing it under the Central Goods and Services Tax Rules, 2017. Another important update is that GSTN has successfully geocoded more than 1.8 crore addresses of principal places of business.

GST and Indirect Taxes Committee is holding GST Certificate courses and other CPE programmes at various branches and regions to keep you updated and *au courant* with GST law. Such skill building programmes go a long way in enhancing the confidence of our members in dealing with all possible scenarios under GST and giving their best service to the country at large. I am pleased to inform you that the fee for GST Certificate Course has been reduced to Rs. 9,000/- to benefit the members at large. Considering that GST law has undergone significant changes in the last six years, I highly recommend doing this course as it will upgrade your knowledge and skills in GST. Interested members can keep track of the courses in their region/branch through the website of the Committee <https://idtc.icai.org/> in the tab ‘Upcoming Events’.

We value your feedback, so please feel free to reach out to us with any suggestions, questions, or topics you would like us to cover in the next edition.

I end my message by quoting a famous saying and a beautiful line which I always believe in, “Reading is essential for those who seek to rise above the ordinary”.

Thank you for being a part of our GST community and my best wishes for all your endeavors.

Yours sincerely,

CA. Sushil Kumar Goyal

Chairman

GST & Indirect Taxes Committee

The Institute of Chartered Accountants of India

CONCEPT OF 'PROPER OFFICER' UNDER GST

Background

Under the GST Law, different functions are entrusted to different authorities on the basis of administrative hierarchy which includes assessment, adjudication and recovery etc. Considering the fact that the jurisdiction under GST has been divided between multiple states and central authorities, the performance of the assigned functions becomes critical to ensure that there is no overlapping of any function. Also, in case, the same function is performed by multiple officers, then this may lead to a situation where the assessee may resort to jurisdictional arbitrage. Therefore, it is imperative to separate the functions and powers of the officers in order to maintain the sanctity of proceedings under the GST Law or any other taxation law for that matter.

Proper Officer under GST Law

The term "Proper Officer" has been defined under the Central Goods and Services Tax Act, 2017 ('the Act') as follows –

2(91) "proper officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;

The proper officer can be either a 'Commissioner' or any 'officer of the central tax' who has been assigned the function by the Commissioner of the Central Board of Indirect Taxes

and Customs ('CBIC'). Accordingly, allocation of functions to a specified class of officers is an essential requirement under the GST Law. In order to ensure that the provisions of the GST Law are effectively executed, specific provisions have been incorporated within the Act under 'Chapter II – Administration,' which deals with appointment and powers of officers. By exercising the powers under section 3 of the Act, the Government has notified different classes of officers under the GST Law. Additionally, Section 4 of the Act allows CBIC to appoint certain persons as officers under the Act. As per Section 5 of the Act, the Board is empowered to impose conditions and limitations on exercise of powers by the officers appointed under the Act. In case of the functions related to the IGST Act, 2017, the central tax officers can be appointed by CBIC to exercise the powers under the IGST Act, 2017. Various provisions of the Act assign relevant functions to the class of officer or to a 'Proper Officer'. Further, vide *Circular No.3/3/2017 - GST dated July 05, 2017*, CBIC assigned various functions to different Central Tax officers other than registration and composition levy related functions.

With an intent to optimize the work allocation related to adjudication of cases under Section 73 and 74 of the Act, CBIC issued *Circular No. 31/05/2018 – GST dated February 9, 2018*. Following monetary limits have been defined for different class of officers to adjudicate the cases under Section 73 and 74 of the Act:

Sr. No.	Officer	Amount of dispute related to CGST (including cess)	Amount of dispute related to IGST (including cess)	Amount of dispute related to CGST and IGST (including cess)
1	Superintendent	Not exceeding INR 10 lacs	Not exceeding INR 20 lacs	Not exceeding INR 20 lacs
2	Deputy/Assistant Commissioner	Above INR 10 lacs but not exceeding INR 1 crore	Above INR 20 lacs but not exceeding INR 2 crore	Above INR 20 lacs but not exceeding INR 2 crore
3	Additional/Joint Commissioner	Above INR 1 crore	Above INR 2 crore	Above INR 2 crore

Powers conferred upon Investigation Authorities (DGGI, DGGST etc.)

By exercising the powers under Section 3 of the Act, the Government has appointed officers of Directorate General of GST Intelligence ('DGGI'), Directorate General of GST and Directorate General of Audit as Central Tax Officers. Further, these officers have been empowered to exercise all the powers as exercisable by the central tax officers of corresponding rank. Following is the illustrative list of officers as notified by the Government:

Sr. No.	Officers of DGGI, DGGST, etc.	Corresponding rank of Central Tax officer
1	Principal Director General	Principal Chief Commissioner
2	Director General, Audit	Chief Commissioner
3	Principal Additional Director General	Principal Commissioner
4	Additional Director General	Commissioner

5	Additional Director	Additional Commissioner
6	Joint Director	Joint Commissioner
7	Deputy/Assistant Director	Deputy Commissioner/Assistant Commissioner
8	Senior Intelligence Officer/Additional Assistant Director	Superintendent
9	Intelligence Officer	Inspector

Vide *Notification No. 02/2022- Central Tax dated March 11, 2022*, para 3A has been inserted in the *Notification No. 2/2017- Central Tax dated June 19, 2017*, to empower Additional Commissioners of Central Tax/Joint Commissioners of Central Tax of some of the specified Central Tax Commissionerates, with All India Jurisdiction for the purpose of adjudication of the show cause notices issued by the officers of the DGGI. Further, vide *Circular No. 31/05/2018 – GST dated February 9, 2018*, as amended by *Circular No. 169/01/2022-GST dated March 12, 2022* CBIC has also clarified that the central tax officers of Audit Commissionerates and DGGI shall only exercise the powers of issuance of show cause notice. The adjudication of such show cause notice shall be completed by the competent central tax officer of the jurisdictional executive Commissionerate of the assessee where case pertains to only one executive Commissionerate. In case the jurisdiction of multiple executive Commissionerate is involved, additional/joint commissioners of the specified Commissionerates have been empowered with PAN India jurisdiction, irrespective of the amount involved.

In case show cause notices have been issued on similar issues to an assessee and made answerable to different levels of adjudicating authorities within a Commissionerate, such show cause notices should be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of central tax and/or integrated tax (including cess).

It is also important to refer to the provisions of Section 6 of the Act, which provides that where any proceedings under any State GST Act or the UTGST Act have been initiated on a subject matter, no proceedings shall be initiated by the proper officer under the CGST Act on the same subject matter.

Position under the Customs Law

Under the Customs Law, in the case of *Sayed Ali*¹, the Hon'ble Supreme Court accepted the governing test in relation to the interpretation of the term "proper officer" as defined under Section 2(34) of the Customs Act which reads as:

"proper officer", in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Commissioner of Customs.

In order to determine whether an officer of customs is "proper officer", the test is the specific assignment of function by either the Board or the Commissioner of Customs. The issue before the court was to adjudicate the jurisdiction of the Collector of Customs (Preventive) to issue the show cause notice. The revenue contended that the appointment as an officer of customs with the territorial jurisdiction gives *ipso facto* right to exercise the statutory powers under the Customs Law. However, this contention was rejected because it would amount to a confusing situation where all the officers of customs in a jurisdiction would be designated as the proper officers.

The basic test of "*specific conferment of function*" on the proper officer to issue the show cause notice was applied to interpret that only such a customs officer who has been specifically assigned the functions of assessment and reassessment in the jurisdictional area where the import concerned has been affected, by either the Board or the Commissioner of Customs, in terms of Section 2(34) of the Customs Act, is competent to issue the show cause notice.

After the aforesaid decision Customs (Amendment and Validation) Act, 2011 was enacted and the officers of customs have been deemed to be the proper officers in relation to the power of assessment. The constitutional validity of the amendment in provisions, in view of such enactment was challenged in the case of *Mangali Impex Ltd.*². The petitioner asserted that the random power that has been conferred on multiple sets of customs officers without any jurisdictional limit will create confusion as envisaged in the case of *Sayed Ali*. The Court in this case took the view that mere empowering of officers as "proper officers" will not be identical to "assigning them any specific function of every assessment or reassessment" under the Customs Law. The power of assessment has to be in relation to a territorial or pecuniary jurisdictional limit. Accordingly, the Court held that the officers of Department of Revenue Intelligence (DRI) had no power to issue show cause notice or adjudicate the same.

Further, in the case of *Canon India*³, it has been observed that the proper officer cannot assume the authority of another proper officer on a particular power. Concerning the power of the DRI to issue the show cause notice, it

¹Commissioner of Customs v. Sayed Ali, 2011 (2) TMI 5 (S.C.)

²Mangali Impex Ltd. v. Union of India, [2016] 69 taxmann.com 302 (Delhi)

³Canon India Private Limited vs Commissioner of Customs, 2021 (3) TMI 384 (SC)

will be pertinent to accentuate the prior entrustment of the function under Section 2(34) of the Customs Act. The Court further noted that the mere appointment of persons as proper officers under Section 2(34) of the Customs Act is not sufficient, the power of assessment and adjudication must be specifically assigned.

Subsequently, amendments were made vide Finance Act, 2022 in the provisions of Customs Law. Section 2(34) of the Customs Act was amended to state that the proper officer can be appointed by Board or the Principal Commissioner of Customs or Commissioner of Customs in terms of powers conferred upon them under Section 5. Further, Section 3 was substituted to include officers of DRI, Audit and Preventive as officers of customs. In addition to this, Section 5 was amended to empower the Board and the Commissioner to assign functions to Customs Officer.

Issues related to Proper Officer under GST

Multiple issues have cropped up on the legality of powers conferred upon the officers under the Act before various forums. In the ensuing paras, key issues have been discussed:

I. Whether DGGI officers are proper officers?

In order to understand whether the DGGI officers are proper officers under GST, it is important to discuss the order passed by Hon'ble Gujarat High Court in the case of *Yasho Industries*⁴. The DRI initiated the enquiry and issued summons to the assessee alleging incorrect availment of double benefits i.e. exemption of IGST on the input material imported under Advance Authorization/EOU Scheme and refund of IGST paid of goods imported. This was followed by the summons issued u/s 70 of the Act by DGGI to give evidence and to produce evidence and documents under which IGST refund and import of raw materials have been claimed. The said summons were challenged by the assessee before the Hon'ble High Court on the grounds that officials of DGGI are not the proper officers to exercise the powers under section 70 of the Act. The assessee argued that the officials of DGGI are merely Central Tax Officers with the rank of a Superintendent and are not assigned with specific function under Section 70 of the Act.

The Hon'ble High Court rejected the contention of the assessee and held that officers of DGGI are 'Proper Officer' under GST to issue summons under Section 70 of the Act. As far as Section 2(91) of the Act is concerned, it pertains to the proper officer in relation to any function to be performed under the Act to be the Commissioner or such officer, who is assigned that function by the "Commissioner in the Board". The Circular Vide the *Circular No. 3/3/2017-*

GST dated July 05, 2017, was issued by CBIC in exercise of the powers conferred by Section 2(91) of the Act and various functions under the Act were assigned to the officers, as that of proper officers under the Act. The Court accordingly held that the judgment in the case of *Canon India (supra)* is not applicable in the case of DGGI exercising the powers under the CGST Act.

II. Concurrent proceedings by two authorities

Another important issue, which arises for consideration before the judicial authorities is regarding concurrent investigations by two authorities under the Act. Section 6(2)(b) of the Act bars any officer under the Act to initiate any proceeding against the assessee where proper officer under the State Act or UTGST Act has initiated any proceedings on the same subject matter. In light of the aforesaid provision, it is important to refer the order in the case of *Kaushal Kumar Mishra*⁵ where in investigation was initiated by 3 authorities i.e.; DGGI, Bhopal; DGGI, Ludhiana and; CGST, Kanpur.

The assessee contended that DGGI, Bhopal and DGGI, Ludhiana are not empowered to carry out investigations in wake of the investigation already underway by the jurisdictional officers of CGST, Kanpur Commissionerate. Accordingly, the investigations carried out by DGGI, Ludhiana and Bhopal were in violation of Section 6(2)(b) of the Act as once the matter was under investigation by one officer, the same matter cannot be taken up by another officer. The Hon'ble High Court stated that the facts indicating subject matter involved in all three investigations carried out, officers of whom are appointed as proper officers, are different and independent of each other. It was held that the investigations by DGGI, Bhopal and DGGI, Ludhiana are not hit by bar on concurrent investigations on the same matter under Section 6(2)(b) of the Act.

Here it is important to refer the clarification issued by CBIC dated October 5, 2018 which reads out as:

"Officers of both Central tax and State tax are authorized to initiate intelligence based enforcement action on the entire taxpayer's base irrespective of the administrative assignment of the taxpayer to any authority. The authority which initiates such action is empowered to complete the entire process of investigation, issuance of SCN, adjudication, recovery, filing of appeal etc. arising out of such action."

In other words, if an officer of Central tax initiates intelligence-based enforcement action against a taxpayer administratively assigned to State tax authority, the officers of Central tax authority would not transfer the said

⁴*Yasho Industries v UOI*, 2021 (6) TMI 918 (Guj. HC)

⁵*Kaushal Kumar Mishra v Addl. Dir. General, DGGI, Ludhiana Zonal Unit*, 2021 (2) TMI 699 (P&H)

case to its State tax counterpart and would themselves take the case to its logical conclusions. Similar position would remain in case of intelligence-based enforcement action initiated by officers of State tax authorities against a taxpayer administratively assigned to the Central tax authority.

III. Validity of proceedings initiated by officer other than the proper officer

Another contentious issue that needs attention is the validity of the proceedings initiated by any other officer and not the proper officer. In the case of *Nayara Energy*⁶ the legality and validity of the show cause notice issued by the Deputy Commissioner of State Tax under Section 74(1) of the State GST Act, and Section 74(1) of the Act has been challenged. The Hon'ble Gujarat High Court after referring to the provisions of the Section 2(91) and Section 3 of the Act, came to a prima facie conclusion that in absence of any specific notification issued by the State Government

appointing the Deputy Commissioner of State Tax as 'proper officer' under Section 2(91) read with Section 3 of the Act, the exercise of power was without jurisdiction. The Hon'ble High Court has accordingly stayed the proceedings. However, the final judgment of the Hon'ble High Court is awaited.

Conclusion

In the light of the aforesaid discussion and the comparative analysis between the position under the Customs law and the GST law, it is clear that the concept of proper officer is equally relevant under GST. The position on this issue under the GST law is still evolving and it would be interesting to see the developments on this issue considering the fact that Supreme Court had alerted on the possible confusion due to multiplicity of jurisdictional officers including the investigation and enforcement authorities.

Contributed by CA. Sourabh Baser

COMPLIANCE SCHEDULE

COMPLIANCES FOR THE MONTH OF AUGUST, 2023

Forms	Compliance Particulars	Due Dates
GSTR 7	Return to be furnished by the registered persons who are required to deduct tax at source.	10.09.2023
GSTR 8	Return to be furnished by the registered electronic commerce operators who are required to collect tax at source on the net value of taxable supplies made through it.	10.09.2023
GSTR 1	Statement of outward supplies by the taxpayers having an aggregate turnover of more than Rs. 5 crore or the taxpayers who have opted for monthly return filing.	11.09.2023
IFF	Statement of Outward supplies by the taxpayers having an aggregate turnover upto Rs. 5 crore and who have opted for the QRMP scheme.	13.09.2023
GSTR 5	Return to be furnished by the non-resident taxable persons containing details of outward supplies and inward supplies.	13.09.2023
GSTR 6	Return to be furnished by every Input Service Distributor (ISD) containing details of the Input tax credit received and its distribution.	13.09.2023
GSTR 3B	Return to be furnished by all the taxpayers other than who have opted for QRMP scheme comprising consolidated summary of outward and inward supplies.	20.09.2023
GSTR 5A	Return to be furnished by Online Information and Database Access or Retrieval (OIDAR) services provider for providing services from a place outside India to unregistered person in India.	20.09.2023
PMT 06	Payment of GST for a taxpayer with aggregate turnover up to Rs. 5 crores during the previous year and who has opted for quarterly filing of return under QRMP.	25.09.2023

⁶Nayara Energy Ltd. v Union of India, 2019 (28) G.S.T.L. 574 (Guj.)

GST UPDATES

1) Extension of due date of Forms GSTR-1, GSTR-3B and GSTR-7 for the State of Manipur

The due date of filing following forms for the month of April, May and June 2023 has been extended to 31st July, 2023 for registered persons, whose principal place of business is in the State of Manipur:

S. No.	Forms	Extended Due Date
1.	GSTR-1 (Statement of outward supplies)	31 st July, 2023
2.	GSTR-3B (Monthly return & Quarterly return for the quarter ending June 2023)	31 st July, 2023
3.	GSTR-7 (Return by a registered person required to deduct tax at source under section 51)	31 st July, 2023

Notification No. 18/2023 – CT dated 17.07.2023,
 Notification No. 19/2023 – CT dated 17.07.2023,
 Notification No. 20/2023 – CT dated 17.07.2023,
 Notification No. 21/2023 – CT dated 17.07.2023

2) Extension of due date of filing Forms GSTR-4, GSTR-9 & GSTR-10 of earlier periods at reduced/waived late fees

The date upto which the Forms GSTR-4, GSTR-9 & GSTR-10 of earlier periods can be filed at reduced/waived late fees has been extended from 30.06.2023 to 31.08.2023. Details of reduced late fees are as follows:

Default	Reduced late fee	Condition
Non-filing of Form GSTR-4 (Return for composition supplier) for quarters falling between the period July 2017 to March 2019 or the financial years from 2019-20 to 2021-22, by the due date	Rs. 500 [Rs. 250 each for CGST & SGST] OR Nil, if no GST is payable	Return is filed between the period 01.04.2023 and 31.08.2023
Non-filing of Form GSTR-9 (Annual Return) for financial years 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22, by the due date	Total late fee restricted to Rs. 20,000 [Rs. 10,000 each for CGST & SGST]	
Non filing of Form GSTR-10 (Final Return) by the due date	Rs.1,000 [Rs. 500 each for CGST & SGST]	

Notification No. 22/2023 – CT dated 17.07.2023,
 Notification No. 25/2023 – CT dated 17.07.2023,
 Notification No. 26/2023 – CT dated 17.07.2023

3) Extension of time limit for applying for revocation of cancellation of registration

The following registered persons, who have failed to apply for revocation of cancellation of their registration within a period of 30 days or such extended period as prescribed in section 30, have been allowed to apply for the same up to 31st August, 2023, as under:

Registered person	Conditions
Composition taxpayer, whose registration has been cancelled on or before 31.12.2022 due to non-furnishing of return for a financial year beyond three months from the due date of furnishing the said return	1. Application for revocation of cancellation of registration to be made after furnishing of returns due up to the effective date of cancellation of registration and payment of due tax, interest, penalty and late fee in respect of such returns. 2. No further extension shall be provided for filing application of revocation of cancellation of registration in such cases.
Regular taxpayer filing monthly returns, whose registration has been cancelled due to non-furnishing of return for 6 months	
Regular taxpayer filing quarterly returns, whose registration has been cancelled on or before 31.12.2022 due to non-furnishing of return for 2 tax periods	
Here, the person who has failed to apply for revocation of cancellation of registration within the time period specified in section 30 shall include a person whose appeal against the order of cancellation of registration or the order rejecting the application for revocation of cancellation of registration under section 107 of CGST Act has been rejected on the ground of failure to adhere to the time limit specified under section 30(1) of the Act. Hence, such persons can also apply for revocation of cancellation of registration up to 31 st August, 2023.	

Notification No. 23/2023 – CT dated 17.07.2023

4) Deemed withdrawal of assessment orders issued under section 62 of the CGST Act (Assessment of non-filers of returns)

The assessment order under section 62(1) of the CGST Act issued on or before 28.02.2023 in respect of the registered person who has failed to furnish a valid return within a period of 30 days of the service of such

assessment order shall be deemed to be withdrawn, if such registered person furnishes the said return on or before 31.08.2023 along with interest due under section 50(1) and late fee payable under section 47.

The above benefit shall be available irrespective of whether or not an appeal has been filed against such assessment order under section 107 or whether or not the appeal, if any, filed against the said assessment order been decided.

Notification No. 24/2023-CT dt. 17.07.2023

5) Amendment in the option to be exercised by the GTAs to pay GST under forward charge

Notification No. 11/2017-CT(R) dt. 28.06.2017 and Notification No. 13/2017-CT(R) dt. 28.06.2017 have been amended as under:

- Goods Transport Agencies (GTAs) shall not be required to file Annexure V of *Notification No. 11/2017-CT(R) dt. 28.06.2017* for opting to pay GST under forward charge every year. Such option can be exercised by GTAs during the period from 1st January to 31st March of the preceding financial year as against the earlier due date of 15th March of the preceding financial year. Amendments have been made in Annexure V to this effect.
- If a GTA has exercised the option to pay tax under forward charge for a particular financial year, it shall be deemed that the option has been exercised for the next and future financial years also unless the GTA files a declaration in Annexure VI that it wants to revert to the reverse charge mechanism during 1st January to 31st March of the preceding financial year. Annexure VI titled as “*Form for exercising option by a Goods Transport Agency intending to revert under reverse charge mechanism to be filed before the commencement of any financial year to be submitted before the jurisdictional GST Authority*” has been inserted in *Notification No. 11/2017-CT(R) dt. 28.06.2017* for this purpose.
- Consequential changes have been made in Annexure III to *Notification No. 13/2017-CT(R) dt. 28.06.2017*.
- The above amendments have become effective from 27.7.2023.

Notification No. 08/2023-CT(R) dt. 26.07.2023

Notification No. 06/2023-CT(R) dt. 26.07.2023

6) Amendment in exemption Notification No. 12/2017-CT(R) dt. 28.06.2023

Hitherto, satellite launch services were exempted only when the same were provided by ISRO, Antrix Corporation limited and New Space India Limited (NSIL). With effect from 27th July, 2023, the said exemption has now been extended to all entities providing satellite launch services.

Notification No. 07/2023- CT(R) dt. 26.07.2023

7) Amendments in Notification No. 11/2017-CT (R) dt. 28.06.2017

- Hitherto, services by way of fumigation in a warehouse of agricultural produce were meant to be support services to agriculture, forestry, fishing, animal husbandry which were liable to nil rate of tax. With effect from 27th July, 2023, the said service is no more treated as support services to agriculture, forestry, fishing, animal husbandry.

- In construction services, (S. No. 3) in column (3), in item (ie), following explanation has been inserted, namely:-

“Explanation. –This item refers to sub-items of the item (iv), (v) and (vi), against serial number 3 of the Table as they existed in the notification prior to their omission vide *notification No. 03/2022-Central Tax (Rate) dated the 13th July, 2022.*”

Notification No. 06/2023-CT(R) dt. 26.07.2023

8) Rate changes with respect to goods

With effect from 27.7.2023, GST rate on following goods has been reduced to 5% (CGST + SGST):

- Un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion (from 18%)
- Fish soluble paste (from 18%)
- Linz-Donawitz (LD) Slag (from 18%)
- Imitation zari thread or yarn known by any name in trade parlance (from 12%)

Notification No. 09/2023-CT(R) dt. 26.07.2023

9) Amendment in Notification No. 26/2018- CT(R) dt. 31.12.2018 to give effect to the implementation of Foreign Trade Policy, 2023

Notification No. 26/2018- CT(R) dt. 31.12.2018 which seeks to exempt central tax on supply of gold, silver and platinum by nominated agencies to registered persons, has been amended to substitute the reference of Foreign Trade Policy, 2015-2020 with the recently implemented Foreign Trade Policy, 2023 and make other necessary consequential amendments.

Notification No.10/2023-CT(R) dt.26.07.2023

10) Applicability of ad-valorem rate as against retail sale price for the levy of Compensation Cess on certain products

The earlier ad-valorem rate as was applicable on 31st March, 2023 have been notified where it is not legally required to declare retail sale price for the levy of Compensation Cess on pan masala and certain tobacco products.

It has been clarified that the words “declared retail sale price”, with respect to the above goods, shall mean the retail sale price of such goods which are required to be declared in compliance with the provisions of the Legal

Metrology Act, 2009 or the rules made there under or under any other law for the time being in force.

Notification No. 3/2023-Compensation Cess (Rate) dt. 26.07.2023

11) Amendment in entry 52B relating to motor vehicles of compensation cess notification (Notification No. 1 /2017 – Compensation Cess (Rate) dt. 28.06.2017)

Entry no. 52B of *Notification No. 1 /2017 – Compensation Cess (Rate) dt. 28.06.2017* has been substituted to include all utility vehicles, by whatever name called including Sports Utility Vehicles (SUV), Multi Utility Vehicles (MUV), Multi-purpose vehicles (MPV) or Cross-Over Utility Vehicles (XUV) which satisfy the following parameters:

- **Length:** exceeding 4000 mm
- **Engine Capacity:** exceeding 1500cc
- **Ground clearance:** 170mm and above

Here, ground clearance shall mean ground clearance unladen condition.

Notification No. 3/2023-Compensation Cess (Rate) dt. 26.07.2023

12) Amendments made in the CGST Act, 2017 & IGST Act, 2017 vide the Finance Acts, notified

A. The amendments made vide Finance Act, 2023 in the following sections of the CGST Act, 2017 will become effective from **1st October, 2023:**

- Section 10 (Composition Levy)
- Section 16 (Eligibility and conditions for taking input tax credit)
- Section 17 (Apportionment of credit and blocked credits)
- Section 23 (Person not liable for registration)
- Section 30 (Revocation of cancellation of registration)
- Section 37 (Furnishing details of outward supplies)
- Section 39 (Furnishing of returns)
- Section 44 (Annual return)
- Section 52 (Collection of tax at source)
- Section 54 (Refund of tax)
- Section 56 (Interest on delayed refunds)
- Section 62 (Assessment of non-filers of returns)
- Section 122 (Penalty for certain offences)
- Section 132 (Punishment for certain offences)
- Section 138 (Compounding of offences)
- Section 158A (Consent based sharing of information furnished by taxable person)
- Retrospective exemption to certain activities and transactions in Schedule III to the CGST Act, 2017

B. The amendments made vide Finance Act, 2023 in the following sections of the CGST Act, 2017 have become effective from **1st August, 2023:**

- Section 109 (Constitution of Appellate Tribunal and Benches thereof)
- Section 110 (President and Members of Appellate

Tribunal, their qualification, appointment, conditions of service, etc.)

- Section 114 (Financial and administrative powers of President)
 - Section 117 (Appeal to High Court)
 - Section 118 (Appeal to Supreme Court)
 - Section 119 (Sums due to be paid notwithstanding appeal, etc.)
- C. The amendments made vide Finance Act, 2023 in the following sections of the IGST Act, 2017 will become effective from **1st October, 2023:**
- Section 2(16) (Definition of Non-taxable online recipient)
 - Section 2(17) (Online information and database access or retrieval services)
 - Section 12 (Place of supply of services where location of supplier and recipient is in India)
 - Section 13 (Place of supply of services where location of supplier or recipient is outside India)
- D. The amendment made vide the Finance Act, 2021 in section 16 of the IGST Act, 2017 relating to zero rated supply will become effective from **1st October, 2023.**

Notification No. 28/2023 CT dt. 31.07.2023 and Notification No. 27/2023- CT dt. 31.07.2023

13) Procedure for filing an appeal against the order passed pursuant to the directions of the Hon'ble Supreme Court in the case of Union of India v/s Filco Trade Centre Pvt. Ltd., SLP(C) No.32709-32710/2018.

An appeal against the order passed by the proper officer under section 73 or 74 of the said Act in accordance with *Circular No. 182/14/2022-GST, dated 10th November, 2022* pursuant to the directions of the Hon'ble Supreme Court in the case of *Union of India v/s Filco Trade Centre Pvt. Ltd., SLP(C) No.32709-32710/2018* shall be made as follows:

- a) An appeal shall be presented manually in duplicate before the Appellate Authority in Annexure-1 as specified in the notification within the time specified under section 107(1) and 107(2) of the CGST Act, 2017 from the date of issuance of notification or the date of said order, whichever is later.
- b) An appellant is not required to deposit any amount as a precondition for filing an appeal.
- c) The appeal needs to be accompanied by relevant documents duly signed by the person specified in Rule 26(2) of the CGST Rules, 2017 including a self-certified copy of the order.
- d) If the appeal fulfils all the requirements, an acknowledgement, indicating the appeal number, shall be issued manually in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf. An appeal shall be treated as filed only when the aforesaid acknowledgement is issued.
- e) The Appellate Authority shall, along with its order,

issue a summary of the order in the Form appended to this notification as Annexure-2.

Notification No. 29/2023 CT dt. 31.07.2023

14) Special procedure to be followed by a registered person engaged in manufacturing of pan masala and tobacco products

A special procedure has been prescribed for registered persons engaged in the manufacture of pan masala and certain other tobacco products. Such registered persons will have to submit the following details on the common portal:

Form	Description	Time limit to furnish the details, if registration taken	
		before 31.07.2023	after 31.07.2023
FORM SRM-I	Details of packing machines being used for filling and packing of pouches or containers	Within 30 days from 31.07.2023	Within 15 days from the date of grant of registration
FORM SRM-IA	If the production capacity of the manufacturing unit or machines is declared to any other government department or any other agency or organization	Within 30 days from 31.07.2023	Within 15 days of filing the declaration with the Government department or any other agency or organisation
FORM SRM-IIA	Additional filling and packing machine being installed in the registered place of business	Within 24 hours of such installation	
FORM SRM-IIB	Existing filling or packing machine being removed from the registered place of business	Within 24 hours of such removal	
FORM SRM-IV	Monthly statement depicting the details of inputs used and the final goods, electricity consumption and production of goods	On or before the tenth day of the month succeeding such month	

The details as tabulated below are also required to be maintained by these registered persons in each place of business, in the format as specified in the forms:

Form	Particulars
FORM SRM-IIIA	Daily record of inputs being procured and utilized in quantity and value terms along with the details of waste generated as well as the daily record of reading of electricity meters and generator set meters
FORM SRM-IIIB	Shift-wise record of machine-wise production, product-wise and brand-wise details of clearance in quantity and value terms

Brand name has been defined to mean brand name or trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is issued in relation to such specified goods for the purpose of indicating or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

Notification No. 30/2023 CT dt. 31.07.2023

15) Applicability of biometric based Aadhaar authentication extended to Puducherry

Notification No. 27/2022-CT dt. 26.12.2022 lays down that the provisions of rule 8(4A) of CGST Rules, 2017 shall not apply in all the States and Union territories except the State of Gujarat thereby, implying that biometric based Aadhaar authentication and taking of photograph for completion of registration application shall be applicable only in Gujarat. The applicability of this notification has now been extended to Puducherry.

Notification No. 31/2023-CT dt. 31.07.2023

16) Exemption from filing of Annual Return

Registered persons with aggregate turnover upto Rs. 2 crores in the financial year 2022-23 have been exempted from filing of annual return in Form GSTR-9 for the said financial year.

Notification No. 32/2023-CT dt. 31.07.2023

17) Consent based sharing of information by the common portal through ‘Account Aggregator’

Section 158A of the CGST Act, 2017 articulates consent-based sharing of information that a taxable person has furnished, by the common portal with such other systems as may be notified by the Government. The Central Government on the recommendations of the Council has notified ‘Account Aggregator’ as the system with which information may be shared by the common portal based on consent under section 158A.

For the purpose of this notification, ‘Account Aggregator’ means a non-banking financial company which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the RBI under section 45JA of the RBI Act, 1934 and defined as such in the Non-Banking Financial Company – Account Aggregator (Reserve Bank) Directions, 2016.

This notification shall be applicable w.e.f. 01.10.2023.

Notification No. 33/2023-CT dt. 31.07.2023

18) Requirement of mandatory registration waived for persons supplying goods through an ECO, subject to certain conditions

Exercising the power under section 23(2) of the CGST Act, 2017, the Central Government has specified the persons making supply of goods through an electronic commerce operator (ECO) who is required to collect tax at source under section 52 of the CGST Act, 2017 and having an aggregate turnover in the preceding and current financial year not exceeding the amount of aggregate turnover above which a supplier is liable to be registered in the State/Union territory, as the category of persons exempted from obtaining registration, subject to the following conditions:

- a) such persons shall not make any inter-state supply of goods;
- b) such person shall not make supply of goods through ECO in more than one State or Union Territory;
- c) such persons shall be required to have PAN under Income Tax Act, 1947 and will have to declare the same on the portal along with the address of the place of business and the State or Union territory in which he seeks to make such supply, which shall be subject to validation on the common portal;
- d) on successful validation of the details furnished, such person will be granted an enrolment number on the portal. Such persons shall not be granted more than one enrolment number in a State or Union Territory;
- e) no supplies shall be made by the persons through ECO unless he has obtained the enrolment number.
- f) Where such persons are subsequently granted registration under section 25 of the CGST Act, the enrolment number shall cease to be valid from the effective date of registration.

This notification shall be applicable with effect from 1st October, 2023.

Notification No. 34/2023- CT dt. 31.07.2023

19) Appointment of common adjudicating authority in respect of show cause notices of M/s BSH Household Appliances Manufacturing Pvt Ltd.

In exercise of powers conferred under section 5 of the CGST Act, 2017 and section 3 of the IGST Act, 2017, the Board has appointed a common adjudicating authority in respect of show cause notices of M/s BSH Household Appliances Manufacturing Pvt Ltd. for its offices in Mumbai, Chennai and Karnataka.

Notification No. 35/2023- CT dt. 31.07.2023

20) Government notifies goods and services which may be exported on payment of IGST, and the refund can be claimed of the tax so paid

Pursuant to amendment made by the Finance Act, 2021 in 16(4) of the IGST Act, 2017 becoming effective from October 1, 2023, all the goods or services (other than following goods) have been notified, which may be exported on payment of integrated tax and on which the supplier of such goods may claim the refund of tax so paid:

S. No.	Description of Goods
1.	Pan-Masala
2.	Certain specified tobacco products
3.	Following essential oils other than those of citrus fruit namely: (a) Of peppermint (Mentha piperita); (b) Of other mints: Spearmint oil (ex-mentha spicata), Water mint-oil (ex-mentha aquatic), Horsemint oil (ex-mentha sylvestries), Bergament oil (ex-mentha citrate), Mentha arvensis

Notification No. 01/2023- IT dt. 31.07.2023

Circulars

1) Clarification with regard to charging of interest under section 50(3) of the CGST Act, 2017 in cases of wrong availment of IGST credit and reversal thereof

As per section 50(3) of CGST Act, 2017, if the registered person has wrongly availed and utilised the Input Tax Credit (ITC), then he shall be liable to pay interest at the rate not exceeding 24% on the amount of ITC wrongly availed and utilised.

As per explanation provided in sub-rule (3) of rule 88B of CGST Rules, ITC shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of ITC wrongly availed. Further, the extent of such utilisation of ITC shall be such amount by which the balance in electronic credit ledger falls below the amount of ITC wrongly availed.

Issue:

For the purpose calculating of interest under rule 88B, whether the balance of ITC available in electronic credit ledger under the head of IGST only needs to be considered or total ITC available in electronic

credit ledger, under the heads of IGST, CGST, SGST and compensation cess taken together, has to be considered?

Clarification with respect to utilization of CGST, SGST and IGST taken together

The total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together shall be considered -

- for calculation of interest under rule 88B, and
- for determining as to whether the balance in the electronic credit ledger has fallen below the amount of wrongly availed input tax credit of IGST, and
- for determining to what extent, balance in electronic credit ledger has fallen below the said amount of wrongly availed credit.

Clarification with respect to utilization of Compensation Cess

The ITC in respect of compensation cess on supply of goods and service cannot be utilized for payment of any tax under CGST, SGST and IGST heads and/or reversals of credit under the said heads. Accordingly, credit of compensation cess available in electronic credit ledger shall not be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest under sub-rule (3) of rule 88B of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.

Circular No. 192/04/2023-GST dt. 17.07.2023

2) Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.03.2021

A) For the period 01.04.2019 to 08.10.2019

Since rule 36(4) came into effect from 09.10.2019 only, hence, the guidelines provided by *Circular No. 183/15/2022-GST dated 27th December, 2022* shall be applicable, as a whole, for the period from 01.04.2019 to 08.10.2019.

B) For the period 09.10.2019 to 31.12.2019

In this period, rule 36(4) allowed availment of additional Input tax credit by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers in GSTR-1 to the extent of 20% of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers in FORM GSTR-1 or using IFF. Accordingly, the guidelines provided by *Circular No. 183/15/2022-GST dated 27.12.2022* shall be applicable for verification of the condition of section 16(2)(c) related to payment of tax charged to the Government subject to the fulfillment of condition as specified in rule 36(4) as applicable during that period.

C) For the period from 01.01.2020 to 31.12.2020

In this period, rule 36(4) allowed availment of additional Input tax credit by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers in GSTR-1 to the extent of 10% of the eligible credit available in respect

of invoices or debit notes the details of which have been furnished by the suppliers in FORM GSTR-1 or using IFF. Accordingly, the guidelines provided by *Circular No. 183/15/2022-GST dated 27.12.2022* shall be applicable for verification of the condition of section 16(2)(c) related to payment of tax charged to the Government subject to the fulfillment of condition as specified in rule 36(4) as applicable during that period.

D) For the period from 01.01.2021 to 31.12.2021

In this period, rule 36(4) allowed availment of additional Input tax credit by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers in GSTR-1 to the extent of 5% of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers in FORM GSTR-1 or using IFF. Accordingly, the guidelines provided by *Circular No. 183/15/2022-GST dated 27.12.2022* shall be applicable for verification of the condition of section 16(2)(c) related to payment of tax charged to the Government subject to the fulfillment of condition as specified in rule 36(4) as applicable during that period.

It has been further clarified that consequent to insertion of clause (aa) to sub-section (2) of section 16 of the CGST Act and amendment of rule 36(4) of CGST Rules w.e.f. 01.01.2022, no ITC shall be allowed for the period 01.01.2022 onwards in respect of a supply unless the same is reported by his suppliers in their FORM GSTR-1 or using IFF and is communicated to the said registered person in FORM GSTR-2B.

Further, it may be noted that proviso to rule 36(4) was inserted vide *Notification No. 30/2020-CT dated 03.04.2020* to provide that the condition of rule 36(4) shall be applicable cumulatively for the period February to August, 2020 and ITC shall be adjusted on cumulative basis for the said months in the return for the tax period of September 2020. Similarly, second proviso to rule 36(4) of CGST Rules was substituted vide *Notification No. 27/2021-CT dated 01.06.2021* to provide that the condition of rule 36(4) shall be applicable cumulatively for the period April to June, 2021 and ITC shall be adjusted on cumulative basis for the said months in the return for the tax period of June 2021. The same may be taken into consideration while determining the amount of ITC eligibility for the said tax periods.

Furthermore, these instructions will apply only to the ongoing proceedings in scrutiny/ audit/ investigation, etc. for the period 01.04.2019 to 31.12.2021 and not to the completed proceedings. However, these instructions will apply in those cases during the period 01.04.2019 to 31.12.2021 where any adjudication or appeal proceedings are still pending.

Circular No. 193/05/2023-GST dt. 17.07.2023

3) Clarification on TCS liability under section 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction.

Where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform, the compliances under section 52 including collection of TCS will be done as follows:

a) where the supplier-side ECO himself is not the supplier in the said supply.

In such a situation, the compliances under section 52 of the CGST Act, 2017 including collection of TCS is to be done by the supplier-side ECO who releases payment to the supplier for a particular supply made by the supplier through him. In this case, the buyer-side ECO will neither be required to collect TCS nor will be required to make other compliances in accordance with section 52 of CGST Act with respect to that supply.

b) where the supplier-side ECO is himself the supplier of the said supply.

In such a situation, TCS is to be collected by the buyer-side ECO while making payment to the supplier for the supply being made through it.

Circular 194/06/2023-GST dated 17.07.2023

4) Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period.

Case1: The original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of parts and/or repair services to the customer during the warranty

The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and / or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods. Therefore, in cases where no separate consideration is charged by the manufacturer at the time of such replacement/repair services, no GST is to be levied on such replacement of parts and/or repair service during warranty period. However, GST is levied in case additional consideration is charged for the same.

These supplies cannot be considered as exempt supply as original supply is likely to include the cost of replacement/repair services to be incurred during warranty. Hence, the manufacturer, who provides replacement of parts and/or repair services to the customer during the warranty period, is not required to reverse the input tax credit in respect of the said replacement parts or on the repair services provided.

Case 2: The distributor provides replacement of parts and/or repair services to the customer as part of warranty on behalf of the manufacturer without charging any consideration from the customer.

Where no consideration is charged by the distributor from the customer, no GST is payable by the distributor on the said replacement/ repair services provided during warranty period. In case additional consideration is charged, GST shall be payable.

The treatment relating to the input tax credit and output liability relating to the replaced products will be as follows:

a) In cases where the distributor replaces the part to the

customer under warranty either by using his stock or by purchasing it from third party and charges the consideration of the same from the manufacturer, by issuance of a tax invoice then GST would be levied on the consideration charged by the distributor from the manufacturer. The manufacturer is eligible to take input tax credit of the same, subject to other GST provisions. Further, no reversal of input tax credit by the distributor is required in respect of the same.

b) In case where the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty, then no GST would be payable, if no additional consideration is charged by the manufacturer in respect of parts replaced. Further, no reversal of input tax credit is required by the manufacturer is required in respect of same.

c) In cases where the distributor replaces the part to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note u/s 34 in respect of the parts replaced. The tax liability may be adjusted by the manufacturer, subject to the condition that the distributor has reversed the ITC availed against the parts so replaced.

Case 3: The distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such repair services

As per section 2(93)(a) of the CGST Act, 2017, in this case, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair service. Hence, GST shall be payable by the distributor on such supply of service to the manufacturer and the manufacturer would be entitled to claim input tax credit in respect of the said supply.

Case 4: Extended warranty services provided by manufacturers/distributors to the customers which can be availed at the time of original supply or before the expiry standard warranty period

- If the customer enters into an agreement for extended warranty at the time of original supply, then it would be considered as composite supply (principal supply being supply of goods). GST would be payable on the consideration for such extended warranty along with the principal supply at the rate applicable on the principal supply.
- If the customer enters into an agreement for extended warranty at any time after the original supply, then it would be considered as separate contract. GST would be payable by the service provider whether it be manufacturer or distributor or any third party depending on the nature of the contract.

Circular 195/07/2023-GST dated 17.07.2023

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

Securities are considered as neither goods nor services as per section 2(52) and 2(102) of the CGST Act, 2017. Further, securities include 'shares' as per definition of securities u/s 2(h) of Securities Contracts (Regulation) Act, 1956. This implies that the securities held by the holding company in the subsidiary company are neither goods nor services. Therefore, purchase or sale of shares or securities, is neither a supply of goods nor services.

The SAC entry '997171' in the scheme of classification of services mentioning; "the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest.", does not construe that merely by holding the shares of subsidiary company, the services are being provided by holding company to the subsidiary, unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7 of CGST Act. Therefore, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

Circular 196/08/2023-GST dated 17.07.2023

6) Clarification on certain refund-related issues

A) Refund of accumulated Input Tax Credit under section 54(3) on the basis of that available in Form GSTR-2B

The Central Board of Indirect Taxes and Customs vide *Circular No. 197/09/2023-GST dated 17th July, 2023* has issued the following clarifications on following refund related issues:

- a) It was decided vide *Circular No.135/05/2020-GST dated the 31st March, 2020* that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Now, it has been decided that since the availment of input tax credit has been linked to GSTR-2B w.e.f. 01.01.2022 by amending rule 36(4), availability of refund of the accumulated input tax credit under section 54(3) of CGST Act for a tax period shall be restricted to input tax credit as per those invoices, the details of which are reflected in FORM GSTR-2B of the applicant for the said tax period or for any of the previous tax periods and on which the input tax credit is available to the applicant. Accordingly, para 36 of *Circular No. 125/44/2019-GST dated 18.11.2019*, which was earlier modified vide Para 5 of *Circular No. 135/05/2020-GST dated 31.03.2020*, stands modified to this extent. Consequently, *Circular No.139/09/2020-GST dated 10.06.2020*, which provides for restriction on refund of accumulated input tax credit on those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM

GSTR-2A of the applicant, also stands modified accordingly.

- b) It has been further clarified that as the amendment in section 16(2) (aa) and rule 36(4) has been brought from 01.01.2022, the restriction regarding the admissibility of refund on the basis of GSTR-2B for the said tax period or for any of the previous tax period shall be applicable for refunds claim for the tax period from January 2022 onwards. Where the refund claims relating to the tax period from January, 2022 onwards has been disposed by the proper officer before the issuance of the circular, in accordance with the extant guidelines in force, the same shall not be reopened because of this clarification.

B) Modification of the undertaking in Form RFD-01 inserted vide Circular No. 125/44/2019- GST dt. 18.11.2019

- a) In view of the non-implementation of Forms GSTR-2 and GSTR-3 and omission of section 42 (matching, reversal and reclaim of input tax credit) of CGST Act w.e.f. 1st October, 2022, its reference in the undertaking in FORM GST RFD-01 in which the taxpayer undertakes to pay back to the Government the amount of refund along with interest in case it is found subsequently that the requirements of clause (c) of section 16(2) read with section 42(2) of the CGST/SGST Act have not been complied with in respect of the amount refunded, as well as para 7 of *Circular No. 197/09/2023- GST dt. 18.11.2019* is being deleted.
- b) Consequential amended to be made in Annexure-A to the *Circular No. 125/44/2019-GST dt.18.11.2019*.

C) Manner of calculation of Adjusted Total Turnover under sub-rule (4) of rule 89 of CGST Rules consequent to Explanation inserted in sub-rule (4) of rule 89 vide Notification No. 14/2022- CT dated 05.07.2022

It has been clarified that the value of zero rated/export supply of goods exported out of India, calculated as per amended definition of "Turnover of zero-rated supply of goods", needs to be taken into consideration while calculating "turnover in a state or a union territory", and accordingly, in "adjusted total turnover" for the purpose of sub-rule (4) of rule 89.

D) Clarification in respect of admissibility of refund where an exporter applies for refund subsequent to compliance of the provisions of sub-rule (1) of rule 96A

It has been clarified that as long as goods are actually exported or as the case may be, payment is realized in case of export of services, even if it is beyond the time frames as prescribed in sub-rule (1) of rule 96A, the benefit of zero-rated supplies cannot be denied to the concerned exporters. Hence, in such cases, on actual export of the goods

or as the case may be, on realization of payment in case of export of services, the said exporters would be entitled to refund of unutilized input tax credit in terms of section 54(3), if otherwise admissible.

It is also clarified that in such cases subsequent to export of the goods or realization of payment in case of export of services, as the case may be, the said exporters would be entitled to claim refund of the integrated tax so paid earlier on account of goods not being exported, or as the case be, the payment not being realized for export of services, within the time frame prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A. It is further clarified that no refund of the interest paid in compliance of sub-rule (1) of rule 96A shall be admissible.

It may further be noted that the refund application in the said scenario 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, the applicant may file the refund application under the category "Any Other".

Circular 197/09/2023-GST dated 17.07.2023

7) Clarification with respect to applicability of e-invoice where supply is made by a registered person who is required to generate e-invoice, to Government Departments or establishments/ Government agencies/ local authorities/ PSUs registered solely for the purpose of deduction of tax at source under section 51 of the CGST Act, 2017.

The Government Departments or establishments/ Government agencies / local authorities / PSUs, registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the CGST Act, are liable for compulsory registration in accordance with section 24(vi) of the CGST Act, 2017. Hence, they are treated as registered persons as per section 2(94) of the said Act.

Therefore, 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 such Government Departments or establishments/ Government agencies/ local authorities/ PSUs, etc. under rule 48(4) of CGST Rules.

Circular 198/10/2023-GST dt. 17.07.2023

8) Clarification on the 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

Issue: Whether Head Office (HO) can avail the input tax credit ('ITC') in respect of common input services procured from a third party but attributable to both HO and BOs (Branch Offices) or exclusively to one or more BOs, issue tax invoices under section 31 to the said BOs for the said input services and the BOs can then avail the ITC for the same or whether it is mandatory for the HO to follow the Input Service Distributor ('ISD') mechanism for distribution of such ITC?

Eg., A business entity which has Head Office (HO) located in State-1 and branch offices (BOs) located in other States. The HO procures some input services e.g., security service for the entire organization from a security agency (third party). HO also provides some other services on their own to branch offices (internally generated services).

Clarifications:

A) Input services procured from the third party for the entire organization by HO but attributable to both HO and BOs or exclusively to one or more BOs

HO has an option to distribute ITC in respect of such common input services by following ISD mechanism or it can issue tax invoice under section 31 of CGST Act to the concerned BOs and the BOs can then avail ITC on such common ITC subject to the provisions of section 16 and 17 of CGST Act.

However, the distribution of ITC in respect a common input services procured from a third party can be made by the HO to a BO through ISD mechanism only if -

- it gets itself registered mandatorily as an ISD in accordance with section 24(viii) of the CGST Act, and
- the said input services are attributable to the said BO or have actually been provided to the said BO, and

B) Whether the cost of all components including salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs when full input tax credit is available to the BOs

In respect of internally generated services provided by the HO to BOs, the value declared in the invoice by HO shall be deemed to be the open market value of such services, in terms of second proviso to rule 28 of CGST Rules, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice.

C) Value of supply of internally generated services provided by HO to BOs in cases where HO is not issuing tax invoice, but full input tax credit is available to the concerned BO

In such cases, the value of 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 of CGST Rules.

D) Value of internally generated services where HO is issuing tax invoice to the BOs and full input tax credit is not available to the concerned BO

In respect of internally generated services provided by the HO to BO but full ITC is not available to the BO, the cost of salary of employees of the HO, involved in providing services to BOs is not mandatorily required to be included while computing the taxable value of supply of services.

Circular 199/11/2023-GST dt. 17.07.2023

ANNOUNCEMENT

CERTIFICATE COURSES ON GST

We are pleased to inform you that the GST & Indirect Taxes Committee of ICAI is organising the Certificate Course on GST as per below mention schedule & Locations:

Location	Noida	Mumbai
Dates	19-08-2023 => Saturday 20-08-2023 => Sunday 26-08-2023 => Saturday 27-08-2023 => Sunday 02-09-2023 => Saturday 03-09-2023 => Sunday 09-09-2023 => Saturday 10-09-2023 => Sunday 16-09-2023 => Saturday 17-09-2023 => Sunday	19-08-2023 => Saturday 20-08-2023 => Sunday 26-08-2023 => Saturday 27-08-2023 => Sunday 02-09-2023 => Saturday 03-09-2023 => Sunday 09-09-2023 => Saturday 10-09-2023 => Sunday 16-09-2023 => Saturday 17-09-2023 => Sunday
Time	10.00 am to 5.00 pm	10.00 am to 5.00 pm
Venue	ICAI Bhawan, Auditorium, A- 29 Sector-62, Noida-201309	ICAI Tower, BKC, Bandra East, Mumbai-400051
Fees	Rs. 9,000/- plus GST	Rs. 9,000 /- plus GST
Registration Link	https://learning.icai.org/committee/gst-certificate-course-at-noida23/	https://learning.icai.org/committee/gst/mum-physical23/
Details about the Course	https://idtc.icai.org/about-certificate-course.html	

30 CPE Hours (25 after the classes + 5 after the Assessment Test) will be provided to the participants. Members may write to us at gst@icai.in for any clarification.

The registration window has been opened for ICAI members and the same shall be on first-come-first-serve basis. Registration will be closed once the batch size reaches its full capacity.

For any questions or doubts, the FAQs for the Course, which are self-explanatory, may be referred to. For any further clarifications, members may write to us at gst@icai.in.

Invitation to write articles on GST

Chartered Accountants and other experts, with academic passion and flair for writing are invited to share their expertise on GST through ICAI-GST Newsletter. The article may be on any topic related to GST Law. While submitting the articles, please keep the following aspects in mind:

- 1) Article should be of 2000-2500 words.
- 2) An executive summary of about 100 words may accompany the article.
- 3) It should be original and not published/should not have been sent for publishing anywhere else.
- 4) Copyright of the selected article shall vest with the ICAI.

Please send editable soft copy of the article at gst@icai.in.

GST QUIZ

1. **Mr. A has exchanged currency ‘\$’ to currency ‘€’ through a registered person ‘X’ dealing in exchange of currency in India. Mr. X wants to discharge his GST liability. What will be the value of supply in this case?**
 - a) Amount of INR by converting ‘\$’ into INR
 - b) Amount of INR by converting ‘€’ into INR
 - c) Lesser of (a) and (b)
 - d) 1% of (c)
2. **Mr. Y sent inputs for job work to Mr. Z on 02.08.2023. He has neither received them back at expiry of period specified u/s 143(1) nor has supplied them from the place of business of Mr. Z. Now, it shall be deemed that such inputs have been supplied by Mr. Y to Mr. Z on**
 - a) 02.08.2023
 - b) 03.08.2024
 - c) 03.02.2024
 - d) 03.08.2026
3. **Where registered person is intimated the difference in outward supplies declared as per FORM GSTR-1 and FORM GSTR-3B in Part A of FORM DRC-01B, the registered person has the option to**
 - a) pay the differential tax liability along with interest under section 50, through FORM GST DRC-03
 - b) explain the difference in tax payable, on common portal
 - c) choose a combination of both (a) and (b) i.e., pay the accepted difference and provide explanation relating to the remaining amount
 - d) all the above options are available
4. **Mr. A has sent goods amounting to Rs. 1,00,000 to Mr. B on 02.08.2023 for sale on approval basis. Mr. B has received the goods on 05.08.2023. Mr. B provided the approval for the goods on 30.03.2024. The invoice relating to the same shall be issued on:**
 - a) 02.08.2023
 - b) 05.08.2023
 - c) 03.02.2024
 - d) 30.03.2024
5. **Can an appeal made to Appellate Tribunal be heard by a single member?**
 - a) No
 - b) Yes, an appeal can be heard by a single member if the disputed tax/ input tax credit/ fee/ penalty does not exceed Rs. 50,00,000 and the appeal does not involve any question of law.
 - c) Yes, an appeal can be heard by a single member in the absence of other members.
 - d) Yes, an appeal can be heard by a single member if the same does not any involve question of law.
6. **The tax liability of the taxable person who fails to obtain registration even though liable to do so will be assessed**
 - a) on provisional basis
 - b) to the best of the judgement of proper officer
 - c) on self-assessment basis
 - d) on summary assessment basis
7. **ABC Design Solutions, located and registered under GST in Bengaluru, Karnataka, provided interior design services to XYZ Corp., located and registered under GST in Delhi, for its office building located in Singapore. The place of supply of interior design services provided by ABC Design Solutions to XYZ Corp. is**
 - a) Bengaluru, Karnataka
 - b) Delhi
 - c) Singapore
 - d) Either Delhi or Singapore, at the option of recipient
8. **The time limit for claiming refund of tax under section 77 of the CGST Act, 2017 is**
 - a) 2 years from the date of payment of tax under wrong head
 - b) 2 years from the date of payment of tax under correct head
 - c) 1 year from the date of payment under correct head
 - d) 1 year from the date of payment under wrong head
9. **A registered person is eligible to opt for the composition scheme if**
 - a) he is not engaged in making any supply of services through an electronic commerce operator who is required to collect tax at source under section 52.
 - b) he is not engaged in making any inter-State outward supplies of goods or services
 - c) he is not engaged in making any supply of goods or services which are not leviable to tax under the CGST Act, 2017
 - d) in all the above cases
10. **In case the goods against an invoice are received in lots or instalments, the registered person is entitled to take input tax credit upon**
 - a) receipt of first lot
 - b) receipt of last lot or instalment
 - c) receipt of invoice
 - d) both (b) and (c)

The names of first five members who provided all the correct answers of the last Quiz within 48 hours are as under:

Name	Membership No.
Surender Pal	457984
Amit Rathore	572011
Dilip Badlani	403416
Aravind C B	220446
Karan Agrawal	457712

Please provide reply of the above MCQs in the link given below. The name of the first 5 members who provide all the correct answers within 48 hours of receipt of this Newsletter, would be published in the next edition.

Link to reply: <https://forms.gle/9Eh525VnJs6GZ7Fw7>



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)



ICAI Presents

GloPAC

24th-26th
Nov, 2023

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About the GloPAC (Global Professional Accountants Convention)

ICAI, in 2022, hosted the 21st World Congress of Accountants in a magnificent manner. Taking its success forward, ICAI through its 1st ever "Global Professional Accountants Convention" (GloPAC) aims to provide events of such grandeur where global accountancy community can stay connected and ahead of the ever changing dynamics of the world. The convention aims to bring together stake holders such as thinkers, policy makers, standard setters, industry & commerce groups and financial institutions from across the world to ponder upon and debate on the current issues and future trends concerning the accountancy profession.

THEMATIC ISSUES

Emerging Avenues for Professional Accountants

Unleashing India's Potential through export of CA Services

Sustainable Capital Market and Investments

Building Trust and Ethics

Strengthening Ecosystem for MSMEs and Entrepreneurship

Leveraging Technology for Practice Management

Future Ready Profession

How Accountants can lead ESG Initiatives

Be **there** To **Network, Exchange** Ideas, **Inspire**, Get **Inspired**,
Transform Yourself and the **World**.



GST & INDIRECT TAXES COMMITTEE OF ICAI

A ONE STOP DESTINATION FOR ALL INDIRECT TAXES

website: www.idtc.icai.org

The website of GST and Indirect Taxes Committee of ICAI viz. www.idtc.icai.org provides the users a well-set platform for sharing and gaining knowledge on GST and easy accessibility to the Committee. The Committee works relentlessly towards keeping the members abreast with the latest changes in all the indirect taxes laws vide various mediums like organising programmes, developing/ updating publications, sending regular updates, etc.

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- ❖ E-learning on GST
- ❖ Upcoming events
- ❖ Details of Certificate Courses, Programme, Seminars etc. on GST/Indirect Taxes
- ❖ Links of related important website

Your suggestions
on the website
are welcome
at gst@icai.in

Secretary

GST & Indirect Taxes Committee

The Institute of Chartered Accountants of India
ICAI Bhawan, A-29, Sector - 62, NOIDA (U.P.) India

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