



The Institute of Chartered Accountants of India GST & Indirect Taxes Committee

GOODS & SERVICES TAX UPDATE - 187

1) 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](#)

2) 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](#)

3) 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 196/04/2023-GST dated 17.07.2023](#)

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