



## The Institute of Chartered Accountants of India

### GST & Indirect Taxes Committee

## GOODS & SERVICES TAX UPDATE - 250

### Clarification in respect of input tax credit availed by electronic commerce operators where services specified under Section 9(5) of CGST Act, 2017 are supplied through their platform

ECO, required to pay tax under section 9(5) of the CGST Act makes supplies under two counts-

- i) Supplies notified under section 9(5) for which he is liable to pay tax as if he is the supplier of the said services.
- ii) Supply of his own services by providing his electronic platform for which he charges platform fee /commission etc. from the platform users.

Question no. 6 of *Circular No. 167/23/2021 – GST dated 17.12.2021* clarified that the ECO shall not be required to reverse input tax credit on account of restaurant services on which it pays tax under section 9(5). It has also been clarified that the input tax credit will not be allowed to be utilized for payment of tax liability under section 9(5) and whole of the tax liability under section 9(5) will be required to be paid in cash.

The principle, which has been outlined in question no. 6 of *Circular No. 167/23/2021 – GST dated 17.12.2021*, also applies to the supplies made in respect of other services specified under section 9(5).

Therefore, it has been clarified that ECO, who is liable to pay tax under section 9(5) in respect of specified services, is not required to reverse the input tax credit on his inputs and input services proportionately under section 17(1) or section 17(2) of CGST Act to the extent of supplies made under section 9(5) of the CGST Act. It is further clarified that the ECO will be required to pay the full tax liability on account of supplies under section 9(5) only through electronic cash ledger. The credit availed by him in relation to the inputs and input services used to facilitate such supplies cannot be used for discharge of such tax liability under section 9(5). However, such credit can be utilized by him for discharge of tax liability in respect of supply of services on his own account.

[\*Circular No. 240/34/2024-GST dt. 31.12.2024\*](#)

## Clarification on availability of input tax credit as per clause (b) of sub-section (2) of section 16 in respect of goods which have been delivered by the supplier at his place of business under Ex-Works Contract

**Issue:** In automobile sector, the contract between the automobile dealers and the Original Equipment Manufacturers (OEMs) is generally an Ex-Works (EXW) contract, and as per the terms of the contract, the property in goods (i.e. vehicles) passes to the dealer at the factory gate of the OEM, when the goods are handed over to the transporter at the instance of the dealer, and the delivery on the part of the OEM is complete at his factory gate. The transport may be arranged by the OEM on behalf of the dealer and where insurance is arranged, it may also be done on behalf of the dealer. Any claim in case of loss has to be lodged by the dealer. The dealer also duly accounts for the invoice in his books of accounts on such delivery of the vehicles at the factory gate of the OEM. The dealer avails ITC on the date the vehicles are billed to him and handed over to the transporter by the OEM at his factory gate.

However, some field formations are taking a view that ITC can be availed by the dealer only after the vehicles are physically received by him at his business premises and show cause notices have been issued to a number of dealers, demanding tax for wrongful availment of ITC for contravention of provisions of section 16(2)(b) of the CGST Act.

**Clarification:** Section 16(2) is a non-obstante clause which enlists the conditions, failing which the registered person is not entitled to ITC in respect of supply of goods or services or both. One of the conditions as per clause (b) of the said sub-section (reproduced below) is that a registered person is not entitled to claim ITC in respect of any supply of goods or services or both unless he has “received” the said goods or services or both. The Explanation to the said clause provides for deemed receipt of goods and services in certain scenarios.

From a plain reading of the section 16(2)(b), it is quite apparent that there is no reference of any particular place where goods are required to be “received” by the registered person.

Explanation to section 16(2)(b) provides that the goods would be deemed to have been “received” by the registered person for the purpose of this clause, where:

- a) the goods are delivered by the supplier to a recipient or to any other person on the direction of such registered person, whether acting as an agent or otherwise;
- b) such direction may be given before or during movement of goods; and
- c) the goods may be delivered either by way of transfer of documents of title to goods or otherwise.

In the instant case, as per the terms of the EXW contract between the dealer and the OEM:

- a) the goods are being handed over by the OEM to the transporter at his factory gate for onward transmission to the dealer;

- b) transport is arranged by OEM on the behalf of dealer; and
- c) if insurance is arranged, it is done on the behalf of dealer and any claim in case of loss has to be lodged by the dealer.

In such a scenario, the property in the said goods can be considered to have been passed on to the dealer by the OEM upon handing over of the said goods to the transporter at his factory gate, meaning thereby that the goods can be considered to have been delivered to the registered person (the dealer), through the transporter, by the supplier (the OEM) at his factory gate and the supply of the said goods can be considered to have fructified at the factory gate of the OEM, even though the goods may be physically received by the registered person (the dealer) after the transit period. Accordingly, it is clarified that as per Explanation to section 16(2)(b), the registered person (the dealer) can be considered to have “received” the said goods at the time of such handing over of the goods by the supplier to the transporter, at his factory gate, for their onward transmission to the said registered person (the dealer).

In case the goods are found to have been diverted for non-business purposes at any stage, either before physically receiving the said goods at his business premises or subsequently, the registered person shall not be entitled to input tax credit on such goods in terms of sub-section (1) of section 16 of CGST Act. Further, if at any time after “receiving” the goods, such goods are lost, stolen, destroyed, written off or disposed of by way of gift or free samples, the registered person would not be entitled to the input tax credit in respect of such goods as per provisions of clause (h) of sub-section (5) of section 17 of CGST Act.

**[Circular No. 241/35/2024-GST dt. 31.12.2024](#)**

**Clarification on place of supply of Online Services supplied by the suppliers of services to unregistered recipients**

Section 12 of the IGST Act provides that except in cases specified in sub-sections (3) to (14) of the said section, when the services are supplied to a registered person, the place of supply of services shall be the location of the recipient and when the services are supplied to an unregistered person, the place of supply of the said services shall be the location of the recipient, if his address is available on record, and shall be the location of the supplier, if the address is not available on record.

A conjoint reading of section 12(2)(b) of the IGST Act, section 31(2) of the CGST Act and proviso to rule 46(f) of CGST Rules leads to a conclusion that in respect of supply of services made to unregistered persons, irrespective of the value of the said supply, the supplier is required to mandatorily record the name of the State of the unregistered recipient on the tax invoice, in cases involving supply of online money gaming or supply of taxable services by or through an electronic commerce operator or supply of online information and database access or retrieval (OIDAR) services. Recording of the name of State of the unregistered recipient on the tax invoice in respect of such supply of services shall be deemed as the address on record of the recipient for the purpose of determining place of supply of the said services under section

12(2)(b) of IGST Act. Accordingly, in such cases, the place of supply of such services shall be considered as the location of the recipient of the services as per provisions of clause (i) of section 12(2)(b) of IGST Act.

It has been also observed that a combined reading of the definitions of ‘electronic commerce’ and ‘electronic commerce operator’ as per section 2(44) and section 2(45) of CGST Act, along with rule 46(f) of CGST Rules, leads to an understanding that all services supplied to unregistered recipients over digital or electronic network, either by the supplier using his own digital or electronic facility / platform or through any other electronic or digital platform owned and operated by an independent electronic commerce operator, will be covered under proviso to rule 46(f) of CGST Rules.

Therefore, in respect of supply of any such online/ digital services, OIDAR services and online money gaming to unregistered recipients, the suppliers are mandatorily required to record the name of the State of the recipient on the tax invoice, irrespective of the value of supply of such services, and to declare place of supply of the said services as the location of the recipient (based on the name of State of the recipient) in their details of outward supplies in FORM GSTR-1/1A.

For the purpose of recording the name of the State of the recipient on tax invoice in respect of such supplies made to unregistered persons for such online services, supplier should devise suitable mechanism to ensure collection of such details from unregistered recipient before making any supplies to him.

It is also mentioned that if the supplier fails to issue an invoice in accordance with the said provisions by not recording correct mandatory particulars, including recording of name of State of unregistered recipient in respect of such supplies, he may be liable to penal action under the provisions of section 122(3)(e) of CGST Act.

**[Circular No. 242/36/2024-GST dt. 31.12.2024](#)**

***Vice – Chairman  
GST & Indirect Taxes Committee***

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GST & Indirect Taxes Committee***

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