
CIRCULARS ISSUED PURSUANT TO 50th GST COUNCIL MEETING

The 50th GST Council (the ‘**Council**’) meeting was held on 11th July, 2023, under the chairmanship of Union Finance and Corporate Affairs Minister Smt. Nirmala Sitharaman. The Council *inter-alia* made various recommendations relating to taxation of casinos, horse race and online gaming, measures for streamlining compliances in GST, recommendations relating to GST rates on Goods and Services and other measures for facilitation of trade. Taxpayers may refer to press release issued by the Council for key highlights of the meeting on the following link:

<https://gstcouncil.gov.in/press-release-50th-gst-council-meeting>

Pursuant to the recommendations of the Council, the Central Board of Indirect Taxes & Customs (‘**CBIC**’) has issued several circulars clarifying issues related to GST laws as follows:

1. As per Circular No. 192/04/2023-GST dated 17.07.2023, it is clarified that when the balance of ITC under the heads of IGST, CGST and SGST of electronic credit ledger taken together falls below such wrongly availed amount of IGST credit, then it will amount to utilization of such wrongly availed IGST credit and will attract interest as per sub-section (3) of section 50 of CGST Act, read with section 20 of IGST Act, 2017 and sub-rule (3) of rule 88B of CGST Rules, 2017. Further, credit of compensation cess available in electronic credit ledger cannot be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest in respect of wrongly availed and utilized IGST, CGST or SGST credit.
2. In terms of Circular No. 193/05/2023-GST dated 17.07.2023, clarification is provided to deal with difference in ITC availed in Form GSTR-3B as compared to that detailed in Form GSTR-2A for the period 01.04.2019 to 31.12.2021, subject to subsequent amendments to rule 36(4) of CGST Rules, 2017 allowing additional credit to the tune of 20%, 10% and 5%, as the case may be, during the period from 09.10.2019 to 31.12.2019, 01.01.2020 to 31.12.2020 and 01.01.2021 to 31.12.2021, respectively, subject to certain terms and conditions, in respect of invoices/supplies that were not reported by the concerned suppliers in their Form GSTR-1 or invoice furnishing facility (IFF). Further, w.e.f. 01.01.2022, consequent to insertion of clause (aa) to sub-section (2) of section 16 of the CGST Act, ITC can be availed only up to the extent communicated in Form GSTR-2B.
3. Circular No. 194/06/2023-GST dated 17.07.2023, on the other hand clarifies that when there are multiple E-commerce Operators in one transaction and where the supplier-side ECO himself is not the supplier of the said goods or services, the compliances under section 52 of CGST Act, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply. Further 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 this supply. Where the supplier-side ECO is himself the supplier of the said goods or services, the Buyer-side ECO will be required to collect TCS, as applicable, in accordance with section 52 of CGST Act and make other compliances under section 52 of CGST Act.
4. As per Circular No. 195/07/2023-GST dated 17.07.2023, clarification is issued on availability of ITC in respect of warranty replacement of parts and repair services during warranty period by the manufacturer or distributor under the following cases:

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- Where the manufacturer offers warranty and provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, no further GST is chargeable on such replacement of parts and/ or repair service during warranty period. Further, the manufacturer would not be required to reverse the ITC in respect of the said replacement parts or on the repair services provided. However, if any additional consideration is charged by the manufacturer from the customer, either for replacement of any part or for any service, then GST would be payable on such supply with respect to such additional consideration.
 - Where the distributor as part of warranty on behalf of the manufacturer provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, no GST is payable on such replacement of parts and/ or repair service. However, if any additional consideration is charged by the distributor from the customer, either for replacement of any part or for any service, then GST would be payable on such supply with respect to such additional consideration.
 - Where the distributor replaces the part(s) to the customer under warranty either by using his stock or by purchasing from a third party and charges the consideration for the part(s) so replaced from the manufacturer, by issuance of tax invoice for the said supply made by him to the manufacturer, GST would be payable by the distributor on the said supply by him to the manufacturer and the manufacturer would be entitled to avail ITC, subject to requisite conditions under CGST Act and no reversal of ITC would be required. Further, where the distributor replaces the part(s) to the customer under warranty and the manufacturer provides the said part(s) to the distributor without separately charging any consideration at the time of such replacement, no GST is payable on such replacement of parts by the manufacturer and no reversal of ITC is required. However, where the distributor replaces the part(s) to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note in respect of the parts so replaced subject to provisions of sub-section (2) of section 34 of the CGST Act, the tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.
 - Where 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 either by way of issue of tax invoice or a debit note, GST would be payable and the manufacturer would be entitled to avail the benefit of ITC.
 - Where a customer enters into an agreement of extended warranty with the manufacturer at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable. Where a customer enters into an agreement of extended warranty with the manufacturer at any time after the original supply, then the same is a separate contract and GST would be payable depending on the nature of the contract.
5. As per Circular No. 196/08/2023-GST dated 17.07.2023, it is clarified that the activity of holding of shares of subsidiary company by the holding company cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST laws. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services.

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6. Circular No. 197/09/2023-GST dated 17.07.2023 provides clarification on various refund related issues as follows:
- Availability of refund of accumulated input tax credit under section 54(3) of CGST Act for a tax period shall be restricted to input tax credit as per invoices reflected in FORM GSTR-2B for the said tax period or for any of the previous tax periods and on which the input tax credit is available. The aforesaid restrictions shall be applicable for the refund claims for the tax period of January 2022 onwards.
 - Value of goods exported out of India to be included while calculating “adjusted total turnover” under sub-rule (4) of Rule 89 of CGST Rules.
 - Where exporters have voluntarily made payment of due integrated tax, along with applicable interest, in cases where goods could not be exported or payment for export of services could not be received within time frame as prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A of CGST Rules, the said exporters would be entitled to claim refund of the integrated tax so paid. Refund application may be filed under the category “Any Other” on the GST portal.
7. As per Circular No. 198/10/2023-GST, it is clarified that a registered person is required to issue e-invoice for supplies made to 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 in case its turnover exceeds the prescribed threshold for generation of e-invoice.
8. As per Circular No. 199/11/2023-GST, it is clarified that in respect of common input services procured by HO from a third party 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. However, as per the present provisions of the CGST Act and CGST Rules, it is not mandatory for the HO to distribute such input tax credit by ISD mechanism. HO can also issue tax invoices under section 31 of CGST Act to the concerned BOs in respect of common input services procured from a third party by HO but attributable to the said BOs and the BOs can then avail ITC on the same subject to the provisions of section 16 and 17 of CGST Act. It is further clarified that in cases where full input tax credit is available to the recipient and if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules. Further, in respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases where full input tax credit is not available to the concerned BO.

For any further information/ clarification, please feel free to write to:

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