

Tax Flash News

19 July 2023

Clarifications pursuant to the 50th GST Council meeting

The 50th GST Council meeting was held on 11 July 2023 in New Delhi. At this meeting, the GST Council made various recommendations which included trade facilitation measures. In reference to those decisions, CBIC has issued several circulars clarifying the applicability of GST on several areas such as warranty claims, shares held in a subsidiary company, services between a head office and a branch office and addressing other compliance and procedural aspects.

Gist of major clarifications

1. Manner of calculation of interest in cases of wrong availment of IGST credit¹

It has been clarified that in cases of wrong availment of IGST credit, the balance of input tax credit in electronic credit ledger under the heads of IGST, CGST and SGST taken together, has to be taken in consideration while calculating such interest liability as per rule 88B of CGST Rules, 2017.

2. Mechanism to deal with differences in input tax credit for the period 1 April 2019 to 31 December 2021²

- a. A circular³ was issued earlier to prescribe a procedure for verification of input tax credit (ITC) in cases involving differences in input tax credit availed in FORM GSTR-3B vis-à-vis FORM GSTR-2A for the FY 2017-18 and 2018-19. In this backdrop, recent circular issued for periods between 1 April 2019 to 31 December 2021 are tabulated below:

Sr. No.	Rule 36(4) restriction on eligible ITC	Period	Clarification
1	None	1 April 2019 to 8 October 2019	Earlier circular will be applicable in toto
2	20%	9 October 2019 to 31 December 2019	<ul style="list-style-type: none"> ITC up to 20%, 10% and 5% mutatis mutandis admissible under rule 36(4) will be allowed subject to the production of the requisite certificate prescribed in the earlier circular. ITC availed in excess of eligible ITC of 20%, 10% and 5% mutatis mutandis admissible under rule 36(4) shall not be admissible even if the requisite certificate prescribed in earlier circular is submitted.
3	10%	1 January 2020 to 31 December 2020	
4	5%	1 January 2021 to 31 December 2021	

¹ Circular No. 192/04/2023-GST dated 17 July 2023

² Circular No. 193/05/2023-GST dated 17 July 2023

³ Circular No. 183/15/2022-GST dated 27 December 2022

5	--	1 January 2022 onwards	No ITC shall be allowed unless the same is reported by a supplier in FORM GSTR-1 and is communicated to the registered person in FORM GSTR-2B.
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- b. The above-prescribed instructions will apply only to the ongoing proceedings in scrutiny/ audit/investigation, etc. for the period 1 April 2019 to 31 December 2021. It will not apply to completed proceedings. However, it will apply in those cases during the period 1 April 2019 to 31 December 2021 where any adjudication or appeal proceedings are still pending.

3. TCS liability in case of multiple E-Commerce Operators (ECO) in one transaction⁴

- a. *Multiple ECOs are involved where the supplier side ECO is not the actual supplier*
In a situation where multiple ECOs (i.e. from the buyer side and seller side) are involved in a single transaction of supply through the ECO platform and where the supplier-side ECO is not the actual supplier of goods/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 made by the said supplier through supplier-side ECO platform.
- b. *Multiple ECOs are involved where the supplier side ECO is also the actual supplier*
In a situation where multiple ECOs are involved in a single transaction of supply through the ECO platform and the supplier-side ECO is also the actual supplier of the goods/services, the buyer-side ECO will collect TCS while making payment to the supplier for the supply.

4. Warranty/Extended Warranty with and without consideration⁵

- a. *Warranty*
- No GST is chargeable by the manufacturer/distributor in cases involving warranty replacement of parts and repair services during the warranty period without any consideration from customers. In such cases, no reversal of input tax credit is required to be made.
 - GST would be payable by the distributor in cases where the distributor replaces the parts under warranty and charges consideration for the parts replaced to the manufacturer by way of the issue of a tax invoice.
 - GST liability may be adjusted by the manufacturer in cases where the manufacturer issues a credit note for the parts replaced subject to provisions of section 34(2) of the CGST Act.
- b. *Extended Warranty*

Scenario	Clarification
Customer avails extended warranty at the time of original supply	<ul style="list-style-type: none"> This will be treated as a composite supply. Principal supply is the supply of goods. GST is payable accordingly.
Customer avails extended warranty after the original supply	<ul style="list-style-type: none"> This will be treated as a separate contract. GST would be payable by the service provider.

5. Share capital held by the holding company in its subsidiary company⁶

Securities held by the holding company in its subsidiary company is neither a supply of goods nor a supply of services. Therefore, the impugned transaction is not taxable under GST.

⁴ Circular No. 194/06/2023-GST dated 17 July 2023

⁵ Circular No. 195/07/2023-GST dated 17 July 2023

⁶ Circular No. 196/08/2023-GST dated 17 July 2023

6. Refund related issues⁷

a. Refund of accumulated ITC as per FORM GSTR-2B

- Clause (aa) in sub-section (2) of section 16 was inserted with effect from 1 January 2022 and a corresponding amendment was made to rule 36(4) of CGST Rules 2017.
- Consequent to these amendments, it is clarified that the refund of accumulated input tax credit (ITC) for a tax period is restricted to ITC on inward supplies reflected in FORM GSTR-2B.

b. Manner of calculation of Adjusted Total Turnover

- An explanation has been inserted in rule 89(4) of CGST Rules 2017⁸ on the value of goods exported out of India.
- It has been clarified that consequent to the insertion of this explanation, the value of goods exported out of India to be included while calculating “adjusted total turnover” in the formula under rule 89(4), will be determined as per this explanation.

c. Delay in exports of goods/receipt of consideration for export of services

- In case of delay in the export of goods or delay in receipt of consideration for the export of services beyond the time frame prescribed in rule 96A, the benefit of zero-rated supplies cannot be denied to the concerned exporters.
- Where a Company has paid taxes along with interest for delay in the export of goods or delay in receipt of consideration for export of services beyond the time frame prescribe in rule 96A but subsequently exports the goods or received the consideration then the Company will be eligible to refund of taxes paid to the Government. However, no refund of interest paid will be allowed.

7. E-invoicing for supplies to Government Departments, etc.⁹

It is clarified that registered persons whose turnover exceeds the prescribed threshold for the generation of e-invoicing are required to issue e-invoices for the supplies made to Government Departments or establishments/Government agencies/local authorities/PSUs, etc., registered solely for the purpose of TDS.

8. Services within a Company¹⁰

- In respect of common input services procured by the Head Office (HO) from a third party but attributable to both HO and Branch Office(s) (BO) or exclusively to one or more BO, HO has the option to distribute credit through ISD mechanism or raising of an invoice.
- Where HO distribute ITC to BO through the ISD mechanism, then HO is required to get itself registered as an ISD.
- The value of the supply of services between distinct or related persons needs to be determined as per rule 28 of the CGST Rules read with section 15 of the CGST Act. If recipient BO is eligible for full input tax credit, the value of supply of service declared in the invoice shall be deemed to be open market value (irrespective of the fact whether the cost of any particular component like employee cost, etc., has been included or not in the value of services in the invoice).
- In a case where full input tax credit is available to the recipient, it is clarified that if HO has not issued a tax invoice to the BO in respect of any particular service being rendered by HO to the said BO, the value of such service may be deemed to be declared as Nil by HO to BO and may be deemed to be open market value.
- In respect of internally generated service provided by HO to BO, the cost of salary of employees of the HO, involved in providing the said services to the BO, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in case where full input tax credit is not available to the concerned BO.

Our comments

The clarifications issued by CBIC have radical implications on the industry especially the clarification on warranty in light of the decision of the Supreme Court in the case of Tata Motors Ltd. v. The Deputy Commissioner of Commercial Taxes (SPL) & Anr.¹¹ and intra-company services. These would help industry in reducing litigation as several companies were receiving notices on these points.

⁷ Circular No. 197/09/2023- GST dated 17 July 2023

⁸ Notification No. 14/2022-Central Tax dated 5 July 2022

⁹ Circular No. 198/10/2023-GST dated 17 July 2023

¹⁰ Circular No. 199/11/2023-GST dated 17 July 2023

¹¹ TS-227-SC-2023-VAT

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