KIRTANE & PANDIT

Key GST Highlights

An Overview of Amendments post 53rd GST Council Meeting

August 2024

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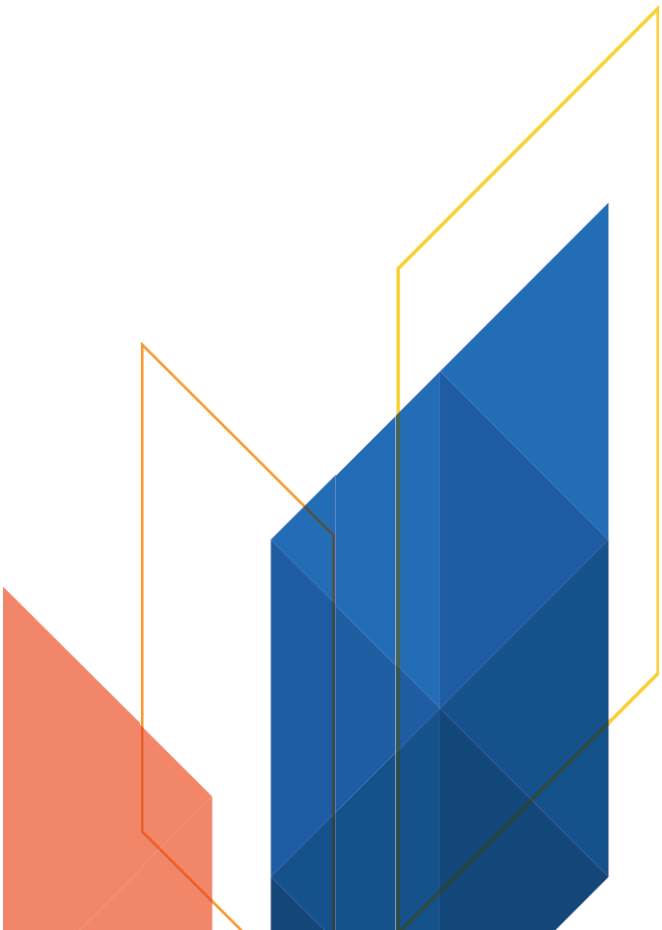

FOREWORD

The 53rd GST Council meeting, conducted on 22nd June 2024 laid down various recommendations regarding changes to the existing provisions under the GST Law. The CBIC has issued various circulars and notifications to give effect to these recommendations.

Further, the Hon'ble Finance Minister Nirmala Sitharaman presented the Union Budget for the Fiscal Year 2024-25 on 23rd July 2024. Various law related amendments have been proposed in the Finance Bill 2024.

Most of the changes have been proposed to give effect to the recommendations of the 53rd GST council meeting. Such proposals include retrospective relaxation of timeline for availing ITC pertaining to FY 17-18 to FY 20-21, common time limits for issuing notices and orders for cases under Section 73 and 74, conditional waiver of interest and penalty in respect of demands upto FY 19-20 and many more...

The key proposals of the Budget along with summary of Circulars and Notifications are set out below.

1. Finance Bill 2024 Updates

1.1 Insertion of Section 11A in the CGST Act for granting power not to recover duties not levied or short-levied as a result of general practice under GST Acts

- The section is designed to address scenarios where tax was not levied or was short-levied because the practice was generally accepted within the industry or by tax authorities.
- It aims to ensure that taxpayers are not penalized for following such practices, thereby fostering a fair and just tax environment.
- The power to grant such relief will be exercised through notifications based on recommendations from the GST Council.
- It will not apply in cases of fraud, wilful misstatement, or suppression of facts.

1.2 Amendment to section 31 to prescribe a time limit to issue self-invoice on account of RCM

- Section 31(3)(f) is proposed to be amended to **provide for a time limit (yet to be notified) to issue self-invoice** under section 9(3) and 9(4) of the CGST Act, 2017 **in respect of goods and services received from a supplier who is not registered** on the date of receipt of goods or services or both.
- An explanation is proposed to be inserted after clause (g) of the said section to clarify that the expression "**supplier who is not registered" shall include the supplier who is registered solely for the purpose of deduction of tax** under section 51.

1.3 Amendment to section 13 to provide for time of supply (TOS) in the cases of RCM

- This amendment gives a clarity on the time of supply of services liable to reverse charge where invoice is to be issued by the recipient.
- The amended section 13(3) of the Act is as follows:

  In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:--

  (a) The date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

  (b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof ***by the supplier, in cases where invoice is required to be issued by the supplier, or***

  (c) ***the date of issue of invoice by the recipient, in cases where invoice is to be issued by the recipient.***

Our Comments

- The earlier provision was ambiguous regarding TOS where invoice was to be issued by the recipient.
- Hence, the said amendment clarifies that the TOS shall be earlier of 61 days from the date of issue of invoice if invoice or date of payment if invoice is to be issued by the supplier.
- If the invoice is issued by the recipient, then TOS shall be earlier of the date of issue of such invoice issued by the recipient or the date of payment.

1.4 Amendments to Section 16 of the CGST Act, 2017

- **Insertion of Section 16(5) – Additional time limit to avail ITC:** Time limit for availing ITC pertaining to invoices/debit notes dated **FY 2017-18 to FY 20-21** is proposed to be **30th November 2021.**
- **Insertion of Section 16(6)** – Relaxation in availment of ITC under section 16(4) of CGST Act , where the returns for the period from date of cancellation of registration/ effective date of cancellation of registration till the date of revocation of cancellation of registration are filed beyond the due date to avail input tax credit under section 16(4) of CGST Act, 2017.

  ITC shall be available, if it was otherwise available as per section 16(4) on the date of order of cancellation.

1.5 Proposal to mandate filing of TDS Return every month

TDS deductors earlier were required to furnish return in FORM GSTR-7 for the months only in which such deductions have been made. The amendment mandates the filing of a return every month regardless of whether any tax deduction has been made, ensuring consistent compliance and preventing any lapses in return filing.

1.6 No refund on zero rated supply goods subjected to export duty whether made with or without payment of tax

- The second proviso to Section 54 (3) of the CGST Act, 2017 earlier read as under:
  *"Provided further that **no refund** of **unutilised input tax credit** shall be allowed in cases where the **goods exported out of India** are **subjected to export duty**"*
- This proviso has been omitted and a new subsection (15) has been inserted which reads as follows:
  (15) "Notwithstanding anything contained in sub-sections (3) and (4), no refund of unutilised input tax credit on account of zero rated supply of goods or of integrated tax paid on account of zero rated supply of goods shall be allowed where such zero rated supply of goods are subjected to export duty."

Our Comments

The earlier proviso restricted refund only on unutilised ITC on account of export of goods (and not goods supplied to SEZs). It did not speak about refund of tax paid on export of such goods.

The amendment clarifies restriction of refund on zero rated supplies, i.e. exports and supplies to SEZ on goods subject to export duty whether made with or without payment of GST.

1.7 Insertion of Section 74A (Applicable FY24-25 and onwards) and a providing a sunset clause to section 73 and 74 of the CGST Act, 2017

- A new Section 74A is proposed to replace existing Sections 73 and 74 of the CGST Act, 2017. The new section is introduced to propose one due date only for adjudication instead of existing two different due dates under Section 73 and Section 74.
- Notice under Section 74A, can be issued within a period of **42 months from the due date of furnishing of Annual Return** of financial year to which such tax/ITC pertains, or within **42 months from the date of erroneous refund.**
- The proper officer shall issue the order within 12 months of issue of notice, further extendable by a period of 6 months

Summary of Section 74A is as follows:

Particulars	Where fraud/wilful misstatement/suppression of facts is not involved	Where fraud/wilful misstatement/ suppression of facts is involved
Penalty Amount	**10% of tax due** or **ten thousand rupees**, whichever is **higher.**	**Equivalent to the amount of tax due from such person.**
Option of tax payment to avoid Show Cause Notice **(prior to issue of notice)**	Taxpayer may pay the **tax** amount along with **interest** before the service of notice and intimate the proper officer.	Taxpayer may pay the **tax** amount along with **interest and 15% of the penalty** before the service of notice, and intimate the proper officer. No notice will be served.
Option of tax payment to conclude proceedings **(after the issue of notice)**	Taxpayer may pay the **tax** amount along with **interest** payable within **60 days of issue of notice. No penalty** shall be payable.	Taxpayer, within **60 days of issue of notice** may pay the **tax** amount along with **interest** payable and **penalty equivalent to 25% of tax payable.**

Particulars	Where fraud/wilful misstatement/suppression of facts is not involved	Where fraud/wilful misstatement/ suppression of facts is involved
Option of tax payment to conclude proceedings **(after the issue of order)**	Taxpayer is required to pay the amount of tax along with interest and 10% penalty.	Taxpayer, within **60 days of communication of order** may pay the **tax** along with **interest** payable and **penalty equivalent to 50% of the amount of tax payable.**

1.8 Reduction in the amount of pre-deposit when filing appeals

- **Before the Appellate Authority:** 10% of tax in dispute upto maximum of 20 crores CGST and 20 crores SGST. (Earlier provision: 10% of tax in dispute upto maximum of 25 crores CGST and 25 crores SGST)
- **Before the GSTAT:** 10% of tax in dispute upto maximum of 20 crore CGST and 20 crore SGST (Earlier provision: 20% of tax in dispute upto maximum of 50 crore CGST and 50 crore SGST)

1.9 Extension in the scope of Appellate Tribunal

- In the amendment proposed to Section 109 of the CGST Act, 2017, the scope of the GSTAT is to be extended to include examination of cases related to anti-profiteering. Such matters shall be **examined/adjudicated only by the Principal Bench.**
- Subject to certain provisions, the President shall also **distribute the business of the GSTAT** among the Benches or transfer the cases by way of general or special order.

1.10 Transitional Arrangement for ITC

- Section 140(7) of the CGST Act, 2017 is proposed to be amended to include that ITC In respect of services received by an Input Service Distributor prior to the appointed day is eligible for distribution irrespective of when the invoices are received. This shall prevent the loss of legitimately available ITC and ensures that the legislative intent of GST transition is upheld.

1.11 New Entry in Schedule III to the CGST Act, 2017

- It has been proposed that the activity of **apportionment of co-insurance premium** by the lead insurer to the co-insurer for insurance services jointly supplied by them to the insured shall not be treated as supply as per Para 9 of the Schedule III, subject to the condition that the lead insurance discharges the tax liability on the entire amount of premium paid by the insured.
- On similar lines, services by **insurer to reinsurer for which ceding/reinsurance commission** is deducted from the reinsurance premium paid to the reinsurer are proposed to be included in Schedule III, subject to the condition that tax shall be paid on gross reinsurance premium inclusive of such ceding/reinsurance commission by the reinsurer.

1.12 GST Amnesty related provisions

- Section 128A has been proposed to be inserted to provide a **one-time waiver of interest and penalties** relating to demands raised under Section 73 for the period from **1st July 2017 to 31st March 2020**, subject to the condition that the **taxpayer shall pay full amount of tax demanded in the order** and **additional tax payable**, if any, **as per the order of Appellate Authority** by a specific date.
- This covers notices issued under Section 73(1) and statements issued under Section 73(3) which are **presently under adjudication at appellate level and no order has been passed** and notices issued under Section 74(1) where the **allegations of fraud/wilful misstatement/ suppression of facts have been subsequently dropped.**
- Conclusion of proceedings under this section shall be subject to the condition that any existing **appeals/writ petitions pending before the Appellate Authority shall be withdrawn.**
- In cases where any amount has been already paid towards interest or penalty, **no refund shall be available** in respect of the same.
- Waiver shall not be applicable in cases or **erroneous refund** or in cases where the charges of fraud/wilful misstatement/suppression of facts have been established during appellate or court proceedings.

2. Notification

2.1 Notification 12/2024-Central Tax (dated 10/07/2024)

Amendments to CGST Rules inter alia for valuation of corporate guarantee, Manner and conditions for ISD, Appeals to GSTAT, Introduction of GSTR 1A

Valuation of services by way of Corporate Guarantee:

Rule 28(2) of the CGST Act, 2017 has been amended to provide the following:

- Services from a supplier to a related person **Located in India** by way of providing corporate guarantee to any bank or financial institution on the behalf of such related person to be valued at higher of **actual consideration or one percent** of guarantee offered **per annum.**
- Provided that where recipient is eligible for full ITC, the value declared in the invoice shall be deemed to be the value of supply of said services.
- The amendments seek to clarify the following (Revised rule 28 read with circular no. 225/19/2024-GST dated 11 July 2024):
  (a) The **rule is not applicable in case of export of corporate guarantee services**
  (b) The rule applies to a related person located in India, hence it shall also be **applicable on import of corporate guarantee services.**
  (c) The **one percent value shall be calculated per annum or proportionately if the guarantee is provided for a part of the year.**
- These amendments have been brought into effect **retrospectively w.e.f. 26th October 2023.**

Introduction of GSTR-1A and Reduction of B2CL Threshold (Rule 59 to the CGST Rules, 2017):

Introduction of GSTR-1A: A new optional facility is introduced by way of FORM GSTR-1A to facilitate the taxpayers to amend the details in FORM GSTR-1 for a tax period and/ or to declare additional details, if any, before filing of return in FORM GSTR-3B for the said tax period. This will facilitate taxpayer to add any particulars of supply of the current tax period missed out in reporting in FORM GSTR-1 of the said tax period or to amend any particulars already declared in FORM GSTR1 of the current tax period to ensure that correct liability is auto-populated in FORM GSTR-3B.

Reduction of B2CL Threshold: With effect from 1st August 2024, the invoice wise details shall be reported in GSTR-1 in respect of inter-state supplies made to unregistered persons having invoice value more than **Rupees One Lakh** (instead of earlier Rs. 2.5 Lakh)

Nexus between Auto-generated GSTR-2B of recipient with amendments made by supplier in GSTR-1A:

Clause (iia) is inserted in Rule 60(7) to provide that **Auto-generated GSTR-2B** of a recipient for current month shall contain the **additional details/amendments furnished by his supplier in GSTR-1A of the preceding month.**

Interest not payable on balance lying in Cash Ledger as on the date of filing return:

Proviso to Rule 88B(1) inserted to provide that **amount credited to the Electronic Cash Ledger** on or before the due date of filing return **shall not be considered for the calculation of interest** if the said amount is lying in the said ledger from the due date till the time of filing return.

The said relaxation is applicable only for payment of interest due to late filing of return.

Refund of IGST on account of upward revision in price subsequent to export:

Rule 89(1A) of the CGST Rules, 2017 has been inserted to provide that, any person claiming refund for additional IGST paid on account of **upward revision in prices** of export of such goods for which refund has already been sanctioned, may file **RFD-01 through the common portal within the expiry of two years from the relevant date.**

Where the relevant date as per Section 54 of the CGST Act, 2017 was before the date when this subrule came into force, application for refund can be filed **before the expiry of two years from the date on which this subrule came into force.**

Such an application may be accompanied by documentary evidences as required under Rule 89(2)(bb) of the CGST Rules, 2017, to establish that refund is due to the taxpayer.

Provisions for export of services under Bond/LUT (Rule 96A of the CGST Rules, 2017)

The earlier rule 96A(1)(b):

- Where a registered person avails the option to **export services without payment of tax**, but the payment for such services in convertible foreign exchange is not received within one year from the date of invoice, or such further period as may be allowed by the Commissioner, he shall pay **pay the tax** amount along with **interest** within a period of **fifteen days** from the date of such expiry.

  The time limit of one year is proposed to be amended as below:

  (a) One year from the date of issue of export invoice, or
  (b) Expiry of period as allowed under the Foreign Exchange Management Act, 1999 (42 of 1999) including any extension of such period as permitted by the Reserve Bank of India, **Whichever is later**
  OR
  (c) such further period as allowed by the Commissioner.

  Hence, the time limit of one year is extended as allowed by the provisions of FEMA and RBI

E-way bill generation by unregistered persons

- **Enrolment:** Where an unregistered person is required/opts for generating an e-way bill, he shall submit the details electronically on the common portal in form **ENR-03.**

  Upon validation of such details, a unique enrolment number will be generated and communicated to such unregistered person.

- E-way bill can then be generated using such enrolment number.

Adjustment of negative liability of previous period

In Table 6.1 of Form GSTR-3B for the payment of tax, a new column proposed to be inserted to adjust negative liability reported in any of the previous tax periods.

Amendments to provisions related to resolution of tax disputes

Rule 110, 111 & 109C of the CGST Rules, 2017 have been substituted to provide for revised procedures relating to appeals before the GSTAT.

2.2 Notification 13/2024-Central Tax (dated 10/07/2024)

Aadhar Authentication for obtaining registration

This notification seeks to rescind Notification 27/2022-CT dated 26/12/2022, thereby meaning that Aadhar authentication for registration as provided under Rule 8(4A) of the CGST Rules, 2017 is no longer restricted to the states of Andhra Pradesh, Gujarat and Puducherry. Henceforth, it shall be implemented on a pan India basis.

2.3 Notification 14/2024-Central Tax (dated 10/07/2024)

Applicability of Annual Return for FY 2023-24

The exemption from filing of annual return in FORM GSTR-9 for taxpayers having aggregate annual turnover upto two crore rupees provided till FY 2022-23 has been extended to FY 2023-24.

3. Circular

3.1 Circular 207/1/2024-GST (dated 26th June 2024)

Reduction of Government Litigation - fixing monetary limits for appeals or applications

To reduce litigation by Government department, the Board specifically mandates that appeals should not be pursued **by the tax authorities** where the amount involved is below a certain monetary limit subject to certain exceptions. Accordingly, these limits have been specified as under:

Appellate Forum	Monetary Limit (amount involved in INR)
GSTAT High Court Supreme Court	20,00,000 1,00,00,000 2,00,00,000

- **Principles to be considered :**

Case	Amount to be considered
Demand of Tax with or without penalty and/or interest	The aggregate of the amount of tax in dispute
Demand of Interest only	The amount of interest
Imposition of Penalty only	The amount of penalty
Imposition of Late fee only	The amount of Late fee
Demand of Interest, Penalty and/or Late fee (without Tax)	The aggregate of amount of interest, penalty and late fee
Erroneous Refund	The amount of refund in dispute
Composite Order disposing more than one appeal/demand notice	The total amount of all appeals (not individual)

- **Exceptions :**

Cases where the decision to file an appeal is to be taken on merits, irrespective of monetary amount involved:

- Where any provisions from GST Acts are held to be ultra vires the Constitution of India.
- Where any Rules or Regulations made under GST Rules are held to be ultra vires the Parent Act.
- Where any orders, notifications, circulars, instructions issued by the Govt/Board are held to be ultra vires the Act/Rules.
- Where any matter related to valuation, classification, refunds, POS or any other is recurring and involves interpretation of Act/Rules.
- Where strictures/adverse comments have been passed and/or cost has been imposed against the Govt/Dept or their officers; or
- Any other case or class of cases, where in the opinion of the Board, it is necessary.

3.2 Circular 209/3/2024-GST (dated 26th June 2024)

Clarification w.r.t. Section 10(1)(ca) of IGST Act, 2017 - Place of Supply in case of supply of Goods to un-registered person

- Section 10(1)(ca) was inserted as a non-obstante provision overriding 10(1)(a) and 10(1)(c) explaining that the place of supply for supplies to other than registered person shall be the address mentioned in the invoice and the location of supplier where address is not mentioned in the Invoice.
- The industry has seeked clarification for POS in cases where billing address and delivery address is different (especially in the cases of E-commerce Operators).

Accordingly, it is clarified that in such cases involving supply of goods to an unregistered person, where the billing address and delivery address of the said unregistered person are different, the **place of supply of goods shall be the address of delivery** of goods recorded on the invoice.

- Also, in such cases involving supply of goods to an unregistered person, where the billing address and delivery address are different, the supplier may record the delivery address as the address of the recipient on the invoice for the purpose of determination of place of supply.

Relevant Provisions

- **Section 10 of the IGST Act, 2017:**

The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under:

- *Sec 10 (a) : Where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.*

- *Sec 10 (c) : Where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient.*

- *Sec 10 (ca) : Where the supply of goods is made to a person other than a registered person, the place of supply shall, notwithstanding anything contrary contained in clause (a) or clause (c), be the location as per the address of the said person recorded in the invoice issued in respect of the said supply and the location of the supplier where the address of the said person is not recorded in the invoice.*

3.3 Circular 210/4/2024-GST (dated 26th June 2024)

Clarification on valuation of supply of import of services by a related person where recipient is eligible for full Input Tax Credit

- As per entry 4 of Schedule I of CGST Act, 2017, Import of services from a related person/his establishment outside India in the course of business amounts to supply even when made without consideration.

- Representations have been raised by the trade and industry stating that demands have been raised by field formations against taxpayers seeking tax on RCM basis for activities undertaken by related persons outside India basis an expansive interpretation of the above entry.

- Rule 28 of CGST Rules, 2017 prescribes the value of supply of goods/services supplied between a distinct/related person.

- Whereas, the second proviso of the said Rule states that where a recipient is entitled to 100% credit in respect of services from related/distinct person, the value of the said supply as declared in the invoice shall be deemed to be the open market value.

- Circular 199/11-2023-GST clarifies that if Branch Office is eligible for full input tax credit and the Head Office has not issued any invoice to the Branch Office, the open market value of such supply may be deemed to be declared NIL.

- In this view, Circular 210/4/2024-GST states that same treatment as clarified under Circular 199/11/2023-GST, may also be provided in cases import of services from related persons where full ITC is available.

- The second proviso of Rule 28(a) as referred to by the Circular is applicable in all the cases involving distinct/related persons. It is evident that this proviso applies equally in the case of Import of Services between related persons.

Hence, it is clarified that where a foreign affiliate is providing services to a related domestic entity without consideration, and full ITC is available to the related domestic entity, the value declared in the self-invoice generated by the domestic entity shall be deemed to be the open market value. Further, where no self-invoice is generated by the entity, the open market value shall be deemed to be NIL.

Relevant Provisions

- **Schedule I Entry 4 of the CGST Act, 2017**

  Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business

- **Second Proviso to Rule 28(a)**

  Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

3.4 Circular 211/5/2024-GST (dated 26th June 2024)

Clarification for time limit for availment of ITC on RCM basis

- Representations have been made by the trade and industry to seek clarification regarding time limit as prescribed by Section 16(4) in respect of RCM.

- Where an activity was performed by an overseas related person for a domestic entity for which no consideration was payable, such an activity was not considered as supply by the said domestic person. In this case, no invoice is issued as well as no tax is paid by the domestic entity. Later on, either on their own, or on the basis of clarifications/orders issued by Dept, or on the basis of Court judgements, it was highlighted that tax was payable on RCM basis. The said recipient thus issues the invoice, pays the tax and claims ITC.

- However, some of the field formations were of the view that the relevant year of such invoice is the year in which such services are availed, and accordingly, since the time limit for availment has expired, such ITC has lapsed (earlier of : 30th November of following financial year or date of filing Annual Return for that financial year)

- A combined reading of the provisions of Section 16(4) leads to the conclusion that ITC can be availed by the recipient only on the basis of Invoice or debit note or other duty paying document. In the case of RCM supplies received from unregistered persons, the invoice has to be issued by the recipient himself.

  In order to ensure uniformity in implementation of law across the field formations, the Board has clarified that the relevant financial year for the ascertainment of time limit to avail ITC on RCM basis shall be the financial year in which the entity has issued a self-invoice and not the one to which such services pertain.

Relevant Provisions

- **Section 16(4) of the CGST Act, 2017 as amended vide Finance Act, 2022**

  A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

- **Section 16(2)(a) of the CGST Act, 2017**

  No registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed.

3.5 Circular 212/6/2024-GST (dated 26th June 2024)

Mechanism for providing evidence of condition for ITC reversal by supplier in case of post-sale discounts by way of Tax Credit Notes

- In cases where discounts are offered by way of Tax Credit Notes after the supply has been affected, the said discount is not to be included in the value of supply only if the conditions specified by 15(3)(b)(ii) are fulfilled.

- The said section specifies the conditions for exclusion of discount amount from the value of supply. One of these conditions is that the recipient shall reverse the ITC attributable to such discount. However, currently there is no mechanism in place to ensure the compliance of this condition.

- Till such time a functionality is made available on the common portal for verifying that the attributable portion of ITC to the taxable credit note has been reversed by the recipient, the supplier may **procure a CA/CMA certificate stating that the reversal has been duly made.**

- The said certificate shall include the details of the credit note and the invoice against which it has been issued.

- Such certificate shall contain the UDIN of CA/CMA that can be verified from respective websites.

- In case the amount of **tax involved** in the discount given by the supplier by way of tax credit notes for a FY is **less than INR 5,00,000/-**, the supplier may procure an **undertaking from the recipient** instead of CA/CMA Certificate.

Relevant Provisions

- **Section 15(3) of the CGST Act, 2017**

The value of the supply shall not include any discount which is given -

a. Before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

b. After the supply has been effected, if-

i. Such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

ii. Input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

3.6 Circular 213/7/2024-GST dated 26th June 2024

Clarification on taxability of ESOP/ESPP/RSU by company to employees through overseas holding company

- Representations have been made by field formations to seek clarification regarding the taxability of ESOP/ESPP/RSU of holding company being allotted to employees of Indian subsidiary.

- As a part of compensation package fixed in terms of employment, employees are often (directly) allotted the shares/securities of their foreign holding company and subsequently, the cost of such shares are reimbursed by the Indian subsidiary. Questions are being raised as to whether this transaction constitutes as import of financial services and whether it can be considered as liable to GST.

- ESOP and ESPP are options given to employees for purchase of shares after certain vesting conditions are met with. RSU (Restricted Stock Units) take the form of awards/rewards upon meeting performance targets.

- Securities are neither considered to be goods nor services under the GST Act, thus neither a supply of goods nor services.

Hence, this transaction is neither a supply of goods nor services. However, if the foreign holding company charges any additional fee/markup, then the same shall be considered to be in the nature of consideration for facilitating a transaction in securities, GST will be leviable on this transaction, and payable by the domestic subsidiary on RCM basis.

Relevant Provisions

- **Section 2(52) of the CGST Act, 2017**

  "Goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

- **Section 2(102) of the CGST Act, 2017**

  "Services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

- **Schedule III Entry 1 of the CGST Act, 2017**

  Services by an employee to the employer in the course of or in relation to his employment.

3.7 Circular 214/8/2024-GST dated 26th June 2024

Clarification on reversal of input tax credit for the portion of the life insurance premium not included in taxable value

- In the cases of life insurance policies such as the "Unit Linked Insurance Policy" that provide a component of investment and a component of insurance, question arises as to whether the amounts not includible in the taxable value of life insurance services warrant a corresponding reversal under Rule 42 or 43.

- According to Rule 32(4) of the CGST Rules, 2017, the value of supply of such life insurance services shall be the gross premium charged from a policy holder reduced by the amount allocable to investment/savings.

- The definition of exempt supply considers 3 limbs - Nil rated supply, Supply wholly exempt from tax, Non-taxable supply.

- The service of providing life insurance is neither Nil rated, not declared to be wholly or partially exempt by virtue of any notification.

- It is also not the case that life insurance services are not leviable to tax under CGST/IGST Act, 2017.

- As some portion of the consideration is not includible in the taxable value as per a methodology provided by the rules, it cannot be said that the consideration becomes attributable to a non-taxable or exempt supply.

Thus, it has been clarified that there is no requirement for reversal of ITC as per Rules 42 or 43 for the said amount.

Relevant Provisions

- **Rule 32(4) of the CGST Rules**

  The value of supply of services in relation to life insurance business shall be, -

  a. The gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service;

  b. In case of single premium annuity policies other than (a), ten per cent. of single premium charged from the policy holder; or

  c. In all other cases, twenty-five per cent. of the premium charged from the policy holder in the first year and twelve and a half per cent. of the premium charged from the policy holder in subsequent years:

  Provided that nothing contained in this sub-rule shall apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance.

3.8 Circular 215/9/2024-GST dated 26th June 2024

Clarification on taxability of salvage/wreck value earmarked in the claim assessment of the damage caused to motor vehicle

- Insurance companies engaged in providing general insurance services insure the cost of repairs/damages classifiable into two categories :
  a. Total/Constructive loss
  b. Partial loss.

- Here, the question arises whether GST is payable by the insurance company on the salvage/wreckage value earmarked in the claim assessment of damage caused to motor vehicles.

- In the instant case, insurance companies are providing the service of insuring the motor vehicle for any damages and are charging consideration in the form of insurance premium. Thus, they are responsible for getting the damaged vehicle repaired or compensating the loss to the extent covered by insurance terms.

- Any deductions made by the company in the final claim amount is pre-decided and mutually agreed upon while signing the insurance contract. The company's liability to compensate the insured is limited to Insured's Declared Value (-) Salvage/wreck value. Thus, the ownership of salvage/wreck remains with the insured person and not the insurance company.

  Accordingly, the deduction of salvage value as per the terms of the contract and cannot be said to be the consideration for any supply made by the insurance company. Thus, in the absence of consideration, there does not appear to be any supply and no GST liability arises for the same.

  In cases where the insurance contract provides for the full settlement of IDV without any deduction from salvage value, the salvage becomes the property of insurance company, and thus it is to be disposed off by them. Here, GST on disposal/sale of the salvage is to be discharged by the insurance company.

Relevant Provisions

- **Section 7 of the CGST Act, 2017**

  All forms of supply of goods or services or both made or agreed to be made for a consideration by a person in the course or furtherance of business.

3.9 Circular 216/10/2024-GST dated 26th June 2024

Clarification for GST liability and ITC Availability in cases involving Warranty and Extended Warranty

1) Taxability of replenishment by manufacturer to distributor in respect of repair services under warranty:

- Circular 195/7/2023-GST dated 17/07/2023 clarifies the GST liability and ITC reversal requirements only in cases where warranty involves replacement of 'parts' and not goods as such.
- Accordingly, wherever 'any part' or 'part(s)' has been mentioned in Para 2 of the aforementioned Circular, it shall be read as 'goods or its parts as the case may be'.
- The said circular clarifies only in cases where the distributor provides replacement of parts on behalf of the manufacturer.
- It does not cover a scenario where the distributor replaces the goods or parts to the customer out of his own stock and is subsequently replenished by the manufacturer for such replacement vide a delivery challan.
- To specifically clarify this scenario, point (d) shall be inserted against Sr. No. 4 of original circular as under:
- **In certain cases, the distributor replaces goods/parts to the customer under warranty and then raises a requisition to the manufacturer, who then provides the goods/parts through delivery challan without charging any additional consideration at the time of replenishment. In this case, no GST is payable on such replenishment and no ITC is required to be reversed by the manufacturer.**

2) Extended Warranty:

- Where the agreement for extended warranty has been made at the time of supply of original goods, and the supplier of extended warranty is different from supplier of goods, extended warranty should be treated as a **separate and independent transaction** from supply of goods. **These two cannot be treated as a composite supply.**
- Supply of extended warranty is an assurance to customers that the goods will operate free from defect during the coverage period and in case any defect should arise, the same will be repaired/replaced by supplier of extended warranty. Since the requirement to repair/replace the goods is not known at the time of initial sale, **this contract is in the nature of 'assurance' services rather than actual repair/replacement of parts.**
- Further, it has been clarified that in cases **where supply of extended warranty has been made subsequently, it should be treated as a supply of services separate from the original supply of goods. Thus, the supplier of extended warranty shall be required to discharge GST liability applicable on such supply of services.**

3.10 Circular 217/11/2024-GST dated 26th June 2024

Entitlement of ITC to the insurance companies on expenses incurred for repair of motor vehicles reimbursement mode of insurance claim settlement

- The insurance companies engaged in providing general insurance services settle the claims in two modes:
  a. Cashless
  b. Reimbursement
  Under both modes, the invoice is to be raised in the name of the **insurance company.**

- In the cashless mode, the insurance company accounts for repair liability, and directly make the payment of approved repair damage to the network garages.

- Under the reimbursement mode of settlement, the insured avails the services from a non-network garage without any credit facility. Accordingly, the insured pays for the same and subsequently gets reimbursement for the approved amount from the insurance company.

- In the case of reimbursement mode, irrespective of the fact that the first payment is made by the insured to the garage, the liability to pay for the approved cost of insurance claim lies with the insurance company.

- Accordingly, it appears from Section 17(5) and Section 16(2) of the CGST Act, 2017 that **ITC is available to the insurance company in both cashless and reimbursement mode basis the invoices issued by garages in their name.**

- In cases where two separate invoices are being raised, one to the insurance company and other to the insured for any amount in excess of the approved cost of insurance claim, **ITC would be available to the insurance company only in respect of the invoice issued to them.** Where one single invoice is raised for both such amounts, the insurance company would be **entitled to ITC only to the extent of reimbursement of approved claim cost and not on the full invoice value.**

- Where the **invoice is not raised in the name of insurance company, the ITC would not be available to them in accordance with Section 16(2) of the CGST Act, 2017.**

Relevant Provisions

- **Section 17(5)(ab) of the CGST Act, 2017**

  ITC in respect of services of repair of motor vehicles shall be available where received by a taxable person engaged in the supply of general insurance services in respect of motor vehicles insured by him.

- **Section 16(2) of the CGST Act, 2017**

  Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless :

  a. he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed.

3.11 Circular 218/12/2024-GST dated 26th June 2024

Clarification for taxability of loans provided by foreign affiliates to domestic entities

- By the virtue of Entry 4 of Schedule I of the CGST Act, 2017, it has been established that supply of goods/services or both between related persons in the course of business constitutes a supply even if made without consideration.
- Thus, it is evident that the services of granting loan by an entity to its related party is a supply under GST.
- However, services by way of extending loans in so far as the consideration is represented by way of interest or discount are exempted under Notification 12/2017-CT (Rate).
- There may be cases where processing fee or administrative cost for processing the loan application is charged on a one-time basis to cover the costs in credit assessment and analysing the financial standing and credibility of the applicant. This may include obtaining an understanding of applicant's business and their financial information and analysing their financial forecasts.
- When an entity is extending loan to a related entity, it may not require following of such detailed procedures as are being followed by an independent lender. All the requisite information may be readily available within the group. Thus, it is not desirable to place loan processing services provided by independent lenders vis-a-vis loans provided by related parties on an equal footing.

  Accordingly, it has been clarified that in cases where no consideration other than interest or discount is being charged for provision of loan to related parties, it cannot be said that there is a supply of services in the form of processing/ administering/facilitating the loan.

  In cases where any additional fee over and above interest or discount is being charged in the nature of processing fee, the same may be considered to be the consideration, and the services by way of extending loans to related parties would be liable to GST.

Relevant Provisions

- **Schedule I Entry 4 of the CGST Act, 2017**

  Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

3.12 Circular 219/13/2024-GST dated 26th June 2024

Clarification on availability of ITC on ducts and manholes used in network of optical fiber cables (OFCs)

- Representations have been received from Celluar Operators Association that some tax authorities have denied the ITC on ducts and manholes used in network of optical fiber cables on the grounds that they are in the nature of immovable property (other than Plant and Machinery).
- Ducts and manholes are basic components of OFCs used in providing telecommunication services. In the view of explanation to Section 17 of the CGST ACt, 2017, it appears that these ducts and manholes are covered by the definition of Plant and Machinery.
- Moreover, these have not been specifically excluded from Plant and Machinery in the Explanation to Section 17, as they are neither in the nature of land, building or civil structures, nor in the nature of telecommunication towers or pipelines laid outside factory premises.
- **Accordingly, it has been clarified that availment of ITC for ducts and manholes used in OFCs is not restricted.**

Relevant Provisions

- **Section 17(5)(c) of the CGST Act, 2017**

Works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service.

Explanation - The expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes-

i. Land, building or any other civil structures;
ii. Telecommunication towers; and
iii. Pipelines laid outside the factory premises.

3.13 Circular 220/14/2024-GST dated 26th June 2024

Clarification on place of supply applicable for custodial services provided by banks to FPIs

- In case of custodial services provided by banking and financial institutions to FPIs, representations were made by field formations to seek clarification as to whether the place of supply of these transactions need to be determined in accordance with Section, 13(8)(a) of the IGST Act, 2017.

- The question arises whether FPIs can be considered to be the account holders or not in order to determine the applicability of the said Section.

- According to the SEBI (Custodian of Securities) Regulations 1996, custodian services include maintaining of accounts of securities, collecting benefits accruing in respect of securities, maintaining and reconciling such records on behalf of the client and keeping them informed about the decisions being taken.

- As per Explanation to the said Section, it is evident that 'account' means account bearing interest to the depositor and includes a non-resident external account/non-resident ordinary account.

- Similar provisions existed in the erstwhile Service tax regime under Rule 98(a) of the Service Tax Place of Provision of supply Rules . The Education guide under the Service tax law clarified the scope of the term account holder. This guide specifically clarified for the exclusion of custodial/depository services from those services generally provided by a bank/financial institution to an account holder.

- Since the provisions of Rule 98(a) are similar to Section 13(8)(a) of the IGST Act, the Education Guide is equally applicable under the GST regime.

Accordingly, it has been clarified here that services provided by banks/financial institutions to FPIs are not to be treated as services provided to account holders and hence will not fall under the scope of Section 13(8)(a). Thus, in this case, the place of supply has to be determined under the default Section 13(2) of the IGST Act, 2017.

Relevant Provisions

- **Section 13(8)(a) of the IGST Act, 2017**

The place of supply of the following services shall be the location of the supplier of services, namely:
(a) Services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders.

- **Section 13(2) of the IGST Act, 2017**

The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services.

3.14 Circular 221/15/2024-GST dated 26th June 2024

Clarification on time of supply of services of construction of roads and maintenance thereof under Hybrid Annuity Mode (HAM) Model

- Under the HAM model of NHAI, the concessionaire is required to develop the projects under DBOT model (Design, Build, Operate, Transfer). Subsequently, they also have to undertake the Operation and Maintenance of constructed highways. This contract usually spans over a period of 15-17 years.

- These two contracts cannot be artificially split into two separate contracts for construction and maintenance on the basis of terms of payment and need to be looked at holistically.

- In this contract, the payment made is spread over the contract period in instalments and appears to be covered under the definition of 'Continuous Supply of Services'.

- In the light of Section 13(2) read with Section 31(5) of the CGST Act, 2017, the time of supply for this contract is as under :
  - **Where the invoice is issued within time** - Earlier of Date of issuance of invoice or Date of receipt of payment.
  - **Where the invoice not is issued within time** - Earlier of Date of provision of service or Date of receipt of payment.

- In case of continuous supply of services, the date of provision of services may be deemed as the due date of payment of invoice as specified by the contract.

- It is also clarified that where such instalments payable by NHAI to the concessionaire include some interest component, it is includible in the taxable value for the purpose of payment of tax as per Section 15(2)(d).

Relevant Provisions

- **Section 2(33) of the CGST Act, 2017**

  "Continuous supply of services" means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify.

- **Section 13(2) of the CGST Act, 2017**

  The time of supply of services shall be the earliest of the following dates, namely:-

  a) The date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

  b) The date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

  c) The date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

- **Section 31(5) of the CGST Act, 2017**

  Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services -

  a) Where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;

  b) Where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;

  c) Where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

3.15 Circular 224/18/2024-GST dated 11th July 2024

Guidelines for payment of pre-deposit and recovery of outstanding dues, in cases wherein first appeal has been disposed of, till Appellate Tribunal comes into operation

1. Issues faced due to non-constitution of the GSTAT:

- Since the taxpayers are not able to appeal before the Appellate Tribunal and make the payment of pre-deposit, tax officers are taking the view that there is no stay against recovery proceedings as per section 112(9) of CGST Act. In some cases, despite the payment of the pre-deposit amount by the taxpayer, either by crediting the Electronic LiabilityLedger or through GST DRC-03, the officers are resorting to recovery proceedings for the balance amount upon completion of the stipulated time period.
- In order to facilitate the payment of pre-deposit amount and to avail the benefit of stay from recovery, it is clarified here that the taxpayers can navigate to ***Services >> Ledgers>> Payment towards demand*** on their dashboard, where they can make the payment against individual demands. This amount will be mapped against selected demand and would be reduced from balance liability and later adjusted against the pre-deposit amount at the time of filing appeal.

2. Requirements for availing the benefit of stay against recovery proceedings:

- The taxpayer would also be required to file a declaration/undertaking that he will file an appeal against the said order before the Appellate Tribunal as and when it comes into operation within the timelines of Section 112 read with CGST (Ninth Removal of Difficulties) Order, 2019. On providing the said declaration and payment of pre-deposit, the recovery of remaining amount will stand stayed.
- Failing to file such declaration or to pay the pre-deposit amount will amount to the presumption that taxpayer is not willing to file an appeal against the order. Thus, recovery proceedings can be initiated as per the provisions of law. Similarly, if the taxpayer makes payment of pre-deposit and submits an undertaking but fails to file an appeal as per the mentioned timelines, the remaining amount of demand will be recovered as per the provisions of law.

3. Facility for adjustment of payments made through GST DRC-03:

- In cases of inadvertent payment of amounts intended to be paid towards a demand, through Form GST DRC-03, an application may be filed in Form GST DRC-03A, and the amount shall be adjusted as if the said payment was made towards the demand on the date of such intimation through Form GST DRC-03. Such adjustment cannot be made where proceedings have already been concluded by issuance of an order in GST DRC-05 as per Rule 142(3) of the CGST Rules, 2017.
- Presently, the aforementioned functionality is not available on the common portal. Till such time it is made available, where the payment is inadvertently made through GST DRC-03, the taxpayer may intimate the proper officer about the same, and the recovery proceeding will stand stayed. Once the functionality is made available, the taxpayer shall file an application in GST DRC-03A at the earliest. In case the taxpayer fails to do so, the proper officer may proceed to recover the amount payable as per Sections 78 and 79 of the CGST Act, 2017.

Relevant Provisions

- **Section 112 of the CGST Act, 2017**

1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

(8)No appeal shall be filed under sub-section (1), unless the appellant has paid-

a. In full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

b. A sum equal to twenty per cent. of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, subject to a maximum of fifty crore rupees, in relation to which the appeal has been filed.

(9)Where the appellant has paid the amount as per sub-section (8), the recovery for the balance amount shall be deemed to be stayed till the disposal of the appeal.

- **Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019**

  For the removal of difficulties, it is hereby clarified that for the purpose of calculating:
  The "three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal" in sub-section (1) of section 112, the start of the three months period shall be considered to be the later of the following dates:
  i. Date of communication of order; or
  ii. The date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office.

- **Section 78 of the CGST Act, 2017**

  Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated.

3.16 Circular 225/19/2024-GST dated 11th July 2024

Clarification on various issues pertaining to taxability and valuation of supply of services of providing corporate guarantee between related persons

- As per the Council Recommendations, sub-rule (2) was inserted in Rule 28 of CGST Rules, 2017 to provide a specific clause for valuation of corporate guarantee to any banking/financial institution by any entity on behalf of their related person. (Notification 52/2023-CT)

- Further, clarity was provided regarding the applicability of the said sub-rule in Circular 204/16/2023 and subsequently, Rule 25(2) has been amended retrospectively with effect from 26th October 2023.

- In this regard, various issues pertaining to taxability and valuation of supply of services of corporate guarantee have been clarified here:

1. Taxability and valuation of corporate guarantee prior to insertion of sub-rule 2:

It has been clarified that the supply of service of providing corporate guarantee as mentioned **was taxable even before the insertion of the subrule (2) and the valuation was to be done as per Rule 28 of the CGST Rules as it existed at that time.**

2. Valuation and availability of ITC in case of partial disbursal of loan:

The activity of providing corporate guarantee is not linked with the actual disbursal of loan since the service provided pertains to taking the risk of default. **Hence, the valuation should be based on the amount guaranteed and not on the amount of loan actually disbursed**. Further, **the recipient of the service shall be entitled to avail ITC** subject to other conditions irrespective of whether or not the loan is actually disbursed.

3. Takeover of corporate guarantee by other banking/financial institution:

In the supply of service of corporate guarantee, the supplier is the entity providing the guarantee and the recipient is the related entity for whom such guarantee is provided. **In case there is a takeover of existing loans by a different bank/financial institution, there will be no GST implication since the recipient and the supplier remain the same.** Where the corporate guarantee is being renewed, or the takeover is followed by issue of fresh guarantee, then GST would be payable on the same.

4. Valuation in case of multiple co-guarantors:

In case of multiple co-guarantors, the GST would be **payable proportionately** on the basis of amount guaranteed by each co-guarantor.

5. Mechanism for payment of GST:

IIt is further clarified that where guarantee is provided by **domestic corporate entities**, GST would be payable under **forward charge**, and where it is provided by foreign corporate entity, GST would be payable on **RCM basis.**

6. Applicability of Rule 28(2) and its proviso:

It is clarified here that the value of supply of service of providing guarantee shall be one percent per annum or the actual consideration, whichever is higher.

Accordingly, the **value of supply shall be higher of one percent of amount guaranteed multiplied by the number of years** for which it is offered or actual consideration. Where the corporate guarantee is provided for less than one year, GST shall be **payable in proportion of the period for which services are provided. This liability shall be payable at the time of issue of guarantee itself.**

The proviso to Rule 28(2) shall be applicable in the case of corporate guarantee services, thus implying that where full ITC is available to the recipient, the value declared in the invoice shall be the value of supply of such services.

The amendment done in subrule (2) shall not apply in cases where the recipient of services is located outside India.

Relevant Provisions

- **Rule 28(2) of the CGST Rules, 2017**

*Notwithstanding anything contained in sub-rule (1), the value of supply of services by a supplier to a recipient who is a related person **located in India**, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be one per cent of the amount of such guarantee offered **per annum**, or the actual consideration, whichever is higher.*

- **Proviso to Rule 28(2) of the CGST Rules, 2017**

Provided that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the value of said supply of services.

3.17 Circular 226/20/2024-GST dated 11th July 2024

Mechanism for refund of additional IGST paid on account of upward revision in price of the goods subsequent to exports

- It has been represented by the trade and industry that where the prices of exported goods undergo upward revision subsequent to export, due to various reasons such as linking of prices with international index or as per contractual terms, additional IGST is payable along with interest, but there is no mechanism allowing the taxpayer to claim a refund in respect of the same.
- **Filing and processing of refunds of IGST on account of upward rate revision:**
  - The refund of IGST paid on account of export of goods is processed by the proper officer of Customs in an automated manner without manual intervention. However, presently there is no mechanism for processing refund of additional IGST due to upward revision as discussed above.
  - The GSTN is in the process of developing a separate category under which such type of refund application can be made. However, till the time such category is made available, such exporter may file the application for such refund in RFD-01 under the category **"Any other"** with remarks "Refund of additional IGST paid on account of increase in price subsequent to export of goods" on the common portal which will be processed by the jurisdictional officer of the exporter.
  - This application may be filed along with any other documents to establish the admissibility of refund.
- **Time limit for filing of refund:**
  - Rule 89(1B) of the CGST Rules, 2017 inserted vide Notification No. 12/2024-CT dated 10/07/2024 provides that the application of refund for additional IGST paid can be filed before the expiry of two years from the relevant date.
  - In cases where the relevant date as per clause (a) of Explanation (2) to Section 54 of the CGST Act, 2017, was before the date on which the above-mentioned subrule has come into force, the refund application may be filed before the expiry of two years from the date on which this subrule was inserted.

- **Documents required to be submitted along with the refund claim:**

a) Copy of shipping bill or bill of exports;
b) Copy of original invoices;
c) Copy of contract/ other document(s), as applicable, indicating requirement for the revision in price of such goods subsequent to exports;
d) Copy of the original invoices as well as relevant debit note(s)/ supplementary invoices;
e) Proof of payment of additional IGST and applicable interest and details of the relevant FORM GSTR-1/ FORM GSTR-3B furnished by the applicant in which the said debit note(s)/ supplementary invoice(s) were declared and tax and interest thereon had been paid by the applicant;
f) Proof of receipt of remittance of additional foreign exchange (FIRC) issued by Authorised Dealer-I banks;
g) A certificate of a practising chartered accountant or a cost accountant certifying therein that the said additional foreign exchange remittance is on account of such upward revision in price of the goods subsequent to export;
h) Statement 9A of FORM GST RFD 01; and
i) Statement 9B of FORM GST RFD 01.

- **Processing by proper officer:**

- The proper officer shall verify that the exporter has reported the details of export invoice in Form GSTR-1 and has paid the amount along with applicable interest in Form GSTR-3B. He shall also verify the revised value declared in Form GSTR-1/GSTR-3B and details of foreign exchange remittances received thereof
- He shall scrutinize the application with respect to completeness and eligibility and if he is satisfied, he shall issue the refund sanction order under GST RDF-06 and payment order under GST RFD-05.

- **Downward revision in price of exported goods:**

- In certain cases where there is downward revision in price of goods subsequent to export with payment of IGST, the exporter is required to deposit the refund of IGST received in proportion to the price reduction along with applicable interest.
- The proper officer, while granting the refund shall also verify whether the exporter has deposited excess refund amount due to downward revision in rate if any during the relevant tax period.

Relevant Provisions

- **Section 54 of the CGST Act, 2017**

(14) Notwithstanding anything contained in this section, no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.

Explanation:
(2) "relevant date" means-
a) In the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods, -
i. If the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or
ii. If the goods are exported by land, the date on which such goods pass the frontier; or
iii. If the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India.

- **Rule 89(1B) of the CGST Rules, 2017:**

Any person, claiming refund of additional integrated tax paid on account of upward revision in price of the goods subsequent to exports, and on which the refund of integrated tax paid at the time of export of such goods has already been sanctioned as per rule 96, may file an application for such refund of additional integrated tax paid, electronically in FORM GST RFD-01 through the common portal, subject to the provisions of rule 10B, before the expiry of two years from the relevant date as per clause (a) of Explanation (2) of section 54.

3.18 Circular 228/22/2024-GST dated 15th July 2024

Clarification regarding applicability of GST on certain services

- **GST exemption on the outward supplies made by Ministry of Railways**

  Basis the request of Ministry of Railways and recommendations of the GST Council, all supplies made by Indian Railways such as ale of platform tickets, facility of retiring rooms/waiting rooms, cloak room services and battery-operated car services was brought under forward charge and consequently exemptions available were withdrawn vide Notification 13/2023-CT(R) w.e.f. 20/10/2023. However, due to difficulties in the implementation of this notification, and basis the recommendations of the Council, the board has exempted such services, and accordingly, Notification 04/2024-CT(R) has been issued in this regard with effective date of implementation 15/07/2024. Further, any GST liability arising during the intervening period (20/10/2023 to 14/07/2024) is regularised on 'as is where is' basis.

- **GST exemption on transaction between Special Purpose Vehicles and Ministry of Railways**

  On similar lines of the above discussion, supply of services by SPVs to Indian Railways by way of allowing Indian Railways to use their infrastructure was clarified to be taxable. However, due to difficulties in implementation, these services are exempted vide Notification 4/2024-CT(R). Transactions during the intervening period (01/07/2024 to 14/07/2024) are regularised on 'as is where is' basis.

- **Applicability of GST on statutory collections made by RERA**

  It is clarified here that RERA is a 'governmental authority' and as per the exemption Notification 12/2017-CT(R), they fall under the scope of SI. No. 4 of the said notification, and hence statutory collections made by them should be treated as exempt.

- **Applicability of GST on incentive amount shared by acquiring bank with other stakeholders in the digital payment ecosystem under the notified incentive scheme**

  - Under the notified incentive scheme for promotion of RuPay debit cards and low value BHIM-UPI transactions, the Ministry of Electronics and information technology (MeitY) pays incentive to the acquiring banks who further share it with other payment system participants in proportion decided by NPCI. These PSPs may further choose to share the incentives with Third Party App Providers (TPAPs).
  - It was clarified by Circular 190/02/2023-GST that the incentive paid by MeitY to the acquiring bank is in the nature of subsidy and hence not taxable.
  - It is clarified here that the further sharing of acquiring banks with stakeholders upto the point where incentive is distributed in the manner and proportion of decided by NPCI is in the nature of subsidy and hence not taxable.

- **GST liability on re-insurance of specified general and life insurances**

  Certain specified general and life insurances are exempted from GST under SI. No. 35 and 36 of Notification 12/2017 -CT (R). Vide entry 36A of the said notification, reinsurance of the aforesaid services have also been exempted with effect from 25/01/2018. Further, as recommended by GST Council, the GST liability on these services is regularised for the period from 01/07/2017 to 24/01/2018 on 'as is where is' basis.

- **GST liability on re-insurance for which total premium is paid by the Government**

  Services provided to the Central/State Governments or Union Territories for which total premium is paid by such Central /State Governments or Union Territories are exempt under SI. No. 40 of Notification 12/2017-CT(R), and vide SI. No. 36A,reinsurance is also exempted with prospective effect from 27/07/2018. Accordingly, GST liability arising on account of both insurance and reinsurance services is regularised on 'as is where is' basis from 01/07/2017 to 26/07/2018.

- **Applicability of GST on retrocession services**

  Retrocession means a reinsurance transaction whereby a part of assumed risk is further ceded to Indian Insurer or a CBR (Cross Border Re-insurer). Accordingly, the GST Council has recommended to clarify that reinsurance includes retrocession services and therefore is exempt as per SI. No. 36A of Notification 12/2017-CT(R).

- **GST Liability on certain accommodation services**

  Upon the recommendations of the GST Council, it is clarified here that the supply of accommodation services having value of supply less than or equal to twenty thousand rupees per person per month for a minimum continuous period of ninety days is exempt under Notification 4/2024-CT(R). Further, GST liability arising on account of this issue during the period from 01/07/2017 to 14/07/2024 is regularised on 'as is where is' basis.

3.19 Circular 229/23/2024-GST dated 15th July 2024

Clarification regarding GST rates & classification of goods basis recommendation of GST Council

Basis the recommendations of the GST Council in its 53rd meeting, clarifications have been issued as under:

- **Solar cookers** that work on dual energy of solar energy and grid electricity are appropriately classifiable under heading 8516 attract a GST rate of **12%** vide Sl. No. 201A of Schedule II of notification No. 1/2017-Central Tax (Rate) dated the 28th June, 2017.

- **All types of sprinklers, including fire water sprinklers** attract GST at the rate of **12%** vide Sl. No. 195 B of Schedule II of notification No. 1/2017-Central Tax (Rate) dated the 28th June, 2017. In view of the prevailing genuine doubts, the issues for the past period are regularized on "as is where is basis.

- Sl. No. 199 of Schedule II of notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017 has been amended vide notification No. 2/2024-Central Tax (Rate), dated the 12th July, 2024 to specifically include 'parts' of Poultry-keeping machinery. Accordingly, **parts of Poultry-keeping machinery** are classifiable under tariff item 8436 91 00 and attract GST at the rate of **12%** and the issues for the past period are regularized on "as is where is basis".

- Amendments have been made to Notification No. 1/2017-Central Tax (Rate) and notification No. 2/2017-Central Tax (Rate), both dated the 28th June, 2017, vide notification No. 2/2024-Central Tax (Rate) dated 12th July 2024 and notification No. 3/2024-Central Tax (Rate) dated 12th July, 2024, respectively, to exclude the **supply of agricultural farm produce in package(s) of commodities containing quantity of more than 25 kilogram or 25 litres from the scope of 'pre-packaged and labelled'.** Consequently, supply of agricultural farm produce in package (s) containing quantity of more than 25 kilogram or 25 litre will not attract GST. The issues for the past period are regularized on" as is where is basis".

- Prior to 17th July, 2022, supplies of pulses and cereals attracted GST at rate of 5%, wherein the said goods were put up in a unit container and bearing a registered brand name and/or bearing a brand name on which an actionable claim or enforceable right in a court of law is available. The **issues for the past period from 01.07.2017 up to 17.07.2022 are hereby regularized on "as is where is" basis for supplies made to or by any agency engaged by Union Government or State Government/Union Territory for procurement and sale of such goods** under any programme/scheme duly approved by the Central Government or any State Government intended to distribute such goods **at free of cost or at subsidized rate to the eligible beneficiaries** like economically weaker sections subject to following conditions:

  1. The concerned supplier furnishes a **certificate from an officer** not below the rank of the Deputy Secretary to the Government of India or the Deputy Secretary to the State Government or Union Territory recommending that supplies have been made to Government agencies with the above-mentioned intent.

  2. **Input Tax Credit shall not be allowed on such inputs** and, if availed on such inputs, it shall be **reversed within a period of 180 days from the date of issuance of this Circular**, if the supplier intends to take the benefit under the proposed regularisation.

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