PAPER 3B: GOODS AND SERVICES TAX

STATUTORY UPDATE FOR JANUARY 2025 EXAMINATION

For the sake of brevity, Central Goods and Services Tax, Integrated Goods and Services Tax, Central Goods and Services Tax Act, 2017, Integrated Goods and Services Tax Act, 2017, Central Goods and Services Tax Rules, 2017 and Integrated Goods and Services Tax Rules, 2017 have been referred to as CGST, IGST, CGST Act, IGST Act, CGST Rules and IGST Rules respectively.

The provisions of the CGST Act, 2017 and the IGST Act, 2017 as amended by the Finance Act, 2023 including significant notifications and circulars issued and other legislative amendments made, which have become effective up to 30.06.2024, are applicable for January 2025 examination.

The amendments made by the Annual Union Finance Acts in the CGST Act, 2017 and IGST Act, 2017 are made effective from the date notified subsequently. Thus, only those amendments made by the relevant Finance Acts which have become effective till 30.06.2024 are applicable for January, 2025 examination. ***Accordingly, all the amendments made by the Finance Act, 2023 are applicable for January 2025 examination.***

Further, since the amendments made by the Central Goods and Services Tax (Amendment) Act, 2023 and Integrated Goods and Services Tax (Amendment) Act, 2023, (enacted as on 18.08.2023) have become effective from 01.10.2023, the same are also applicable for January 2025 examination.

The subject matter of June edition of the Study Material of Goods and Services Tax is based on the provisions of the CGST Act and the IGST Act as amended by the notifications and circulars issued up to 30.04.2023. The amendments made vide relevant Finance Acts, which have become effective till 30.04.2023, and significant notifications and circulars issued upto 30.04.2023 have been incorporated in the Study Material. Further, students are advised to read all the amendments made by the Finance Act, 2023 given at the end of relevant chapters for January 2025 examinations as all such amendments have become effective.

The significant notifications and circulars issued between 01.05.2023 and 30.06.2024 in GST laws as well as the amendments made by the CGST

Amendment Act, 2023 and IGST Amendment Act, 2023, are given in this Statutory Update.

For the ease of reference, the amendments have been grouped into Chapters which correspond with the Chapters of the Study Material.

CHAPTER 2

SUPPLY UNDER GST

1. Casinos, horse racing and online gaming excluded from the purview of Schedule III to clarify their taxability [Entry 6 of Schedule III amended]

Earlier, as per Entry 6 of Schedule III, actionable claims were outside the purview of GST. However, the betting, gambling and lottery were an exception. Thus, only lottery, betting and gambling were treated as supply. All other actionable claims were outside the ambit of definition of supply.

In 50th GST Council meeting, the taxability of three other actionable claims namely, online money gaming, casinos, and horse racing and rate and value applicable thereon, were discussed. Thereafter, it was recommended that Entry 6 of Schedule III needs to be amended to clarify the taxability of these actionable claims. Further, the rate applicable on them is 28% and valuation would be prescribed under Valuation Rules.

With effect from 01.10.2023, Entry 6 has been amended by the **CGST Amendment Act, 2023**.

Earlier Entry 6 provided as follows:

"Actionable claims, other than ***betting, gambling and lottery***."

Amended Entry 6 provides as follows:

"Actionable claims, other than ***specified actionable claims***."

Thus, ***specified actionable claims*** qualify as supply. All other actionable claims are outside the ambit of definition of supply.

In order to define the term specified actionable claim, new clause (102A) has been inserted to section 2, which defines this term as follows:

Specified actionable claim means the actionable claim involved in or by way of—

(i) betting;

(ii) ***casinos;***

(iii) gambling;

(iv) ***horse racing;***

(v) lottery; or

(vi) ***online money gaming***;

The terms online money gaming has been defined by the newly inserted clause (80B) to section 2, as follows:

Newly inserted section 2(80A) defines specified online gaming as follows:

Online money gaming means **online gaming** in which players pay or deposit money or money's worth, including **virtual digital assets**, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force.

The terms online gaming and virtual digital asset used in the above definition have been defined by the newly inserted clauses (80A) and (117A) to section 2, as follows:

Online gaming means offering of a game on the internet or an electronic network and includes online money gaming **[Section 2(80A)]**.

Virtual digital asset shall have the same meaning as assigned to it in section 2(47A) of the Income-tax Act, 1961 **[Section 2(117A)]**.

Definition of supplier amended **[Section 2(105)]**

The definition of supplier has been amended to incorporate a proviso which provides that a person who organises or arranges, directly or indirectly, supply of **specified actionable claims**, including a person who owns, operates or manages digital/electronic platform for such supply, shall be

deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of CGST Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims.

The value of horse racing, casinos and online money gaming has been prescribed in the Valuation Rules *[Refer Chapter 6 – Value of Supply]*.

2. Supply of food and beverages at cinema halls taxable as restaurant service

Eating joint is a wide term which includes refreshment or eating stalls/ kiosks/ counters or restaurant at a cinema also.

The cinema operator:

(i) may run these refreshment/eating stalls/ kiosks/ counters/ restaurant themselves

or

(ii) they may give it on contract to a third party.

The customer may like to avail the services supplied by these refreshment/snack counters or choose not to avail these services. Further, the cinema operator can also install vending machines, or supply any other recreational service such as through coin-operated machines etc. which a customer may or may not avail.

It is hereby clarified that:

(i) supply of food or beverages in a cinema hall is **taxable as 'restaurant service'** as long as:

  (a) the food or beverages are supplied by way of or as part of a service, and

  (b) supplied independent of the cinema exhibition service.

(ii) where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of **composite supply**, the entire supply will attract GST at the rate applicable to service of

exhibition of cinema, the **principal supply**.

[Circular No. 201/13/2023 GST dated 01.08.2023]

3. Clarification on liability to pay GST in respect of warranty replacement of parts and repair services during warranty period.

Issue 1*

There are cases where the original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services.

Whether GST would be payable on such replacement of parts or supply of repair services, **without any consideration from the customer**, as part of warranty?

Clarification: The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and / or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods.

As such, where 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 further GST is chargeable** on such replacement of parts and/ or repair service during warranty period.

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 will be payable** on such supply with respect to such additional consideration.

Issue 2

Whether GST would be payable on replacement of parts and/ or repair services **provided by a distributor** without any consideration from the customer, as part of warranty on behalf of the manufacturer?

Clarification: There may be instances where a distributor of a company provides replacement of parts and/ or repair services to the customer as part of warranty on behalf of the manufacturer and no separate consideration is

charged by such distributor in respect of the said replacement and/ or repair services from the customer. In such cases, as **no consideration is being charged by the distributor from the customer, no GST would be payable** by the distributor on the said activity of providing replacement of parts and/ or repair services to the customer.

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 will be payable** on such supply with respect to such additional consideration.

Issue 3*:

In the above scenario where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer, whether any supply is involved between the distributor and the manufacturer?

Clarification: There can be 4 instances as discussed below:-

(a) There may be cases **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 a tax invoice**, for the said supply made by him to the manufacturer. In such a case, **GST would be payable** by the distributor on the said supply by him to the manufacturer.

(b) There may be cases where the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty. In such a case, where the **manufacturer is providing such part(s) to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement, no GST is payable** on such replacement of parts by the manufacturer.

(c) There may be cases 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 section 34(2) of the CGST Act. Accordingly, the tax liability may be adjusted by the manufacturer.

(d) There may be cases where the **distributor replaces the goods or its parts to the customer under warranty by using his stock and then raises a requisition to the manufacturer** for the goods or the parts, as the case

may be. The manufacturer then provides the said goods or the parts, as the case may be, to the distributor through a delivery challan, without separately charging any consideration at the time of such replenishment. In such a case, **no GST is payable on such replenishment of goods or the parts,** as the case may be.

Issue 4*

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**, whether GST would be payable on such activity by the distributor?

Clarification: In such scenario, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair services in accordance with the provisions of section 2(93)(a) of the CGST Act, 2017.

Hence, **GST would be payable on such provision of service by the distributor to the manufacturer.**

Issue 5

Sometimes companies provide offers of Extended warranty to the customers which can be availed at the time of original supply or just before the expiry of the standard warranty period. Whether GST would be payable in both the cases?

Clarification: (a) If a customer enters into an agreement of extended warranty with the supplier of the goods 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 accordingly.

However, if the supply of extended warranty is made by a person different from the supplier of the goods, then supply of extended warranty will be treated as a separate supply from the original supply of goods and will be taxable as supply of services.

(b) In case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same shall be treated as a supply of services distinct from the original supply of goods and the supplier

of the said extended warranty shall be liable to discharge GST liability applicable on such supply of services.

**Note: The provisions pertaining to availability of input tax credit shall be discussed in Chapter-8: Input Tax Credit of the Statutory update.*

[Circular No. 195/07/2023 GST dated 17.07.2023 read with Circular No. 216/10/2024 GST dated 26.06.2024]

4. Clarification on taxability of shares held in a subsidiary company by holding company

The issue which arose for consideration is whether the holding of shares in a subsidiary company by the holding company will be treated as 'supply of service' and whether the same will attract GST or not.

It is clarified that securities are considered neither as goods nor as services in terms of definition of goods under section 2(52) and the definition of services under section 2(102). Further, securities include 'shares' as per definition of securities[1].

This implies that the securities held by the holding company in the subsidiary company are neither goods nor services. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services. For a transaction/activity to be treated as supply of services, there must be a supply as defined under section 7. It cannot be said that a service is being provided by the holding company to the subsidiary company, solely on the basis that there is a specific SAC[2] entry '997171' in the scheme of classification of services mentioning; "*the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest.*", unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7.

Therefore, **the activity of holding of shares of subsidiary company by the holding company *per se* cannot be treated as a supply of services** by a holding company to the said subsidiary company and cannot be taxed under GST.

[Circular No. 196/08/2023 GST dated 17.07.2023]

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[1] *Definition of securities under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956*

[2] *SAC (Services Accounting Codes)*

CHAPTER 3

CHARGE OF GST

1. Tax on services supplied by director of a company in his personal capacity such as renting of immovable property to the company/body corporate not payable under RCM

Tax on services supplied by director of a company/body corporate to the said company or the body corporate is payable by the company/body corporate under reverse charge mechanism (RCM).

It is hereby clarified that services supplied by a director of a company/body corporate to the company/body corporate in his private/personal capacity such as services supplied by way of renting of immovable property **are not taxable under RCM**.

Only those services supplied by director of company/body corporate, which are **supplied by him as or in the capacity of director of that company** or body corporate shall be **taxable under RCM** in the hands of the company or body corporate under *Notification No. 13/2017 CT(R) (Sl. No. 6) dated 28.06.2017*.

[Circular No. 201/13/2023 GST dated 01.08.2023]

2. Amendments in the list of notified services tax on which is payable under reverse charge by the recipient

Notification No. 13/2017 CT (R) dated 28.06.2017 as amended has notified specified categories of intra-State supply of services wherein whole of the tax shall be paid on reverse charge basis by the recipient of services.

With effect from 20.10.2023, the said list of services, tax on which is payable under reverse charge has been amended as follows:-

S. No.	Category of supply of service	Supplier of service	Recipient of Service
5	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, - (1) renting of immovable property, and (2) services specified below- (i) services by the Department of Posts ***and the Ministry of Railways (Indian Railways)*** (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.
5A	Services supplied by the Central Government ***excluding the Ministry of Railways (Indian Railways),*** State Government, Union territory or local authority by way of renting of immovable	Central Governm ent, State Government, Union territory or local authority	Any person registered under the CGST Act.

	property to a person registered under the CGST Act.		

Parallel amendments in reverse charge entries in case of inter-State supply of services have been carried out by amending *Notification No. 10/2017 IT(R) dated 28.06.2017*.

[Notification No. 14/2023 CT(R) dated 19.10.2023 and Notification No. 17/2023 IT(R) dated 19.10.2023]

3. Tax on passenger transportation services by omnibus except where the person supplying such services through ECO is a company, payable by ECO

The Government may, on the recommendations of the GST Council, notify specific categories of services the tax [CGST/SGST/IGST] on supplies of which shall be paid by the **electronic commerce operator (ECO)** if such services are supplied through it. Such services shall be notified on the recommendations of the GST Council [Section 9(5) of the CGST Act/Section 5(5) of the IGST Act].

Notification No. 17/2017 CT (R) dated 28.06.2017[7]*/ Notification No. 14/2017 IT (R) dated 28.06.2017*[8] as amended has notified the specific categories of services the tax on supplies of which shall be paid by the electronic commerce operator (ECO) **if such services are supplied through ECO**.

One of such notified categories of services is services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motor cycle, omnibus or any other motor vehicle;

With effect from 20.10.2023, services by way of transportation of passengers by an omnibus has been excluded from the above entry and a separate category of services has been introduced for transportation of passengers by an omnibus. This has been undertaken as follows:

Above category of services has been amended as under:-

Services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motorcycle, ***or any other motor vehicle except omnibus.***

Further, following new category of services has been introduced:

Services by way of transportation of passengers by an omnibus except where the person supplying such service through ECO is a company.

The term "Company" has the same meaning as assigned to it in section 2(20) of the Companies Act, 2013.

Thus, **with effect from 20.10.2023**, the tax on services by way of transportation of passengers by an omnibus provided by a company through ECO is not payable by ECO. It will be payable by the company itself.

[Notification No. 16/2023 CT(R) dated 19.10.2023 and Notification No. 19/2023 IT(R) dated 19.10.2023]

CHAPTER 4

PLACE OF SUPPLY

1. Place of supply of goods purchased Over the Counter in one State and transported to another State by the buyer [Section 10 of the IGST Act amended]

There are cases where an unregistered person purchases goods over the counter (OTC) in one State and thereafter, transports the goods to another State (generally, the State where he resides). For instance, migrant workers, tourists, etc. who come to a State for work, tourism, etc. and purchase goods in that State to take it to their respective State. Similarly, in automobile sector, the residents of a State may travel to another State to purchase vehicle from that State to take advantage of lower registration charges and road tax, which vary from State to State and thereafter, take the vehicle to their State.

For bringing in clarity in respect of the determination of place of supply (POS) in such cases, **with effect from 01.10.2023,** IGST Amendment Act, 2023 has amended section 10 of the IGST Act to insert new clause (ca) in said section which provides as follows:

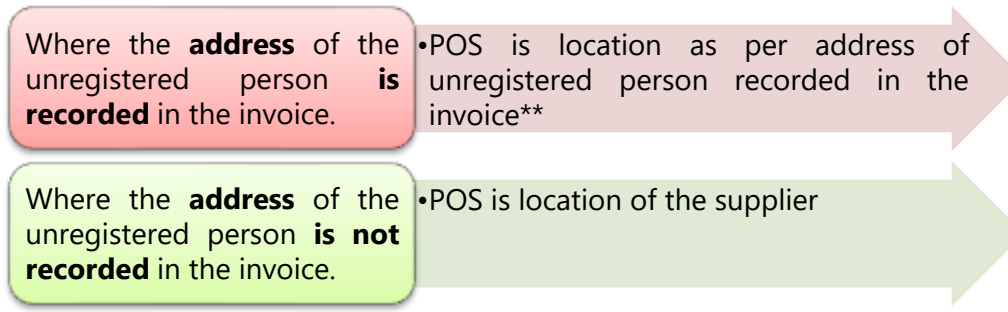
Where the supply of goods is made to a person other than a registered person, the place of supply shall, notwithstanding anything contrary contained in clause (a) or clause (c) of section 10, be the location as per the address of the said person recorded in the invoice issued in respect of the said supply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

For the purposes of this clause, recording of the name of the State of the said

person in the invoice shall be deemed to be the recording of the address of the said person.

Above provision has been summarized as follows:

POS in case of OTC sales to unregistered persons is as follows:



**Simply mentioning the State of unregistered person instead of complete address would be sufficient.

2. Clarification regarding place of supply in case of supply of services in respect of advertising sector

Advertising companies are often involved in procuring space on hoardings/ bill-boards erected and mounted on buildings/land, in different States, from various suppliers ("vendors") for providing advertisement services to its corporate clients. There may be variety of arrangements between the advertising company and its vendors as below:

(i) **Issue:** There may be a case wherein there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure. What will be the place of supply of services provided by the vendor to the advertising company in such case?

Clarification: The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth. Further, place of supply of any service provided by way of supply (sale) of space on an immovable property or grant of rights to use an immovable property shall be governed by the provisions of section 12(3)(a) of the IGST Act.

As per section 12(3)(a) of the IGST Act, the place of supply of services

directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or coordination of construction work shall be the location at which the immovable property is located.

Therefore, the **place of supply of service provided by way of supply of sale of space on hoarding/ structure for advertising or for grant of rights to use the hoarding/ structure for advertising in this case would be the location where such hoarding/ structure is located**.

(ii) **Issue:** There may be another case where the advertising company wants to display its advertisement on hoardings/ billboards at a specific location availing the services of a vendor. The responsibility of arranging the hoardings/ billboards lies with the vendor who may himself own such structure or may be taking it on rent or rights to use basis from another person. The vendor is responsible for display of the advertisement of the advertisement company at the said location.

During this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure. In this case, what will be the place of supply of such services provided by the vendor to the advertising company?

Clarification: In this case, as the service is being provided by the vendor to the advertising company and there is no supply (sale) of space/ supply (sale) of rights to use the space on hoarding/structure (immovable property) by the vendor to the advertising company for display of their advertisement on the said display board/structure, the said service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property.

Accordingly, the place of supply of the same shall not be covered under section 12(3)(a) of IGST Act. Vendor is in fact providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on his structure possessed/taken on rent by him at the specified location.

Therefore, **such services provided by the vendor to advertising**

company are purely in the nature of advertisement services in respect of which place of supply shall be determined in terms of section 12(2) of IGST Act.

3. Clarification regarding place of supply of goods (particularly being supplied through e-commerce platform) to unregistered persons where billing address is different from the address of delivery of goods.

Issue: Mr. A (unregistered person) located in X State places an order on an e-commerce platform for supply of a mobile phone, which is to be delivered at an address located in Y State. Mr. A, while placing the order on the e-commerce platform, provides the billing address located in X state. In such a scenario, what would be the place of supply of the said supply of mobile phone, whether the State pertaining to the billing address i.e. State X or the State pertaining to the delivery address i.e. State Y?

Clarification: The place of supply of goods in accordance with the provisions of section 10(1)(ca) of the IGST Act, 2017 shall be the address of delivery of goods recorded on the invoice i.e. State Y in the present case where the delivery address is located.

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 of the said supply of goods.

[Circular No. 209/3/2024 GST dated 26.06.2024]

CHAPTER 5

EXEMPTIONS FROM GST

Entry Nos. referred to in this chapter correspond to entries in Notification No. 12/2017 CT (R) dated 28.06.2017 which grants exemption from GST for intra-State supply of specified services. However, these entry numbers have been given only for reference purposes and are not relevant for examination purpose.

1. Amendments in the services exempted from GST

Notification no. 12/2017 CT(R) dated 28.06.2017 provides list of services exempted from CGST. Parallel exemptions from IGST have been granted to inter-State supply of services vide *Notification No. 9/2017 IT(R) dated 28.06.2017*.

The amendments in the list of exempted services have been highlighted in bold italics/in strikethrough form, hereunder:

(i) Amendments in the existing exemptions

Following existing exemptions have been amended:

Sl. No.	Description of services	Effective from
19C	Satellite launch services ~~***supplied by Indian Space Research Organisation, Antrix***~~	27.07.2023

	~~**Corporation Limited or New Space India Limited.**~~	
6	Services by the Central Government, State Government, Union territory or local authority excluding the following services— (a) services by the Department of Posts ***and the Ministry of Railways (Indian Railways);*** (b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (c) transport of goods or passengers; or (d) any service, other than services covered under entries (a) to (c) above, provided to business entities.	20.10.2023
7	Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017. Explanation.- For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to- (a) services,- (i) by the Department of Posts ***and the Ministry of Railways (Indian Railways);*** (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) of transport of goods or passengers; and	20.10.2023

	(b) services by way of renting of immovable property.	
8	Services provided by the Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority. However, nothing contained in this entry shall apply to services- (i) by the Department of Posts ***and the Ministry of Railways (Indian Railways);*** (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) of transport of goods or passengers.	20.10.2023
9	Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed ` 5,000. However, nothing contained in this entry shall apply to– (i) services by the Department of Posts ***and the Ministry of Railways (Indian Railways);*** (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers. Further, in case where continuous supply of service* is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where	20.10.2023

	the consideration charged for such service does not exceed ` 5,000 in a FY. *as defined in section 2(33)	

(ii) New exemptions introduced

Following new services have been exempted from CGST:

Sl. No.	Description of services	Effective from
3B	**Services provided to a Governmental Authority by way of —** **(a) water supply;** **(b) public health;** **(c) sanitation conservancy;** **(d) solid waste management; and** **(e) slum improvement and upgradation.**	20.10.2023

Parallel amendments in exemptions from IGST to inter-State supply of services have been carried out by amending *Notification No. 9/2017 IT(R) dated 28.06.2017*.

[Notification No. 07/2023 CT(R) dated 26.07.2023, Notification No. 13/2023 CT(R) dated 19.10.2023, Notification No. 07/2023 IT(R) dated 26.07.2023 and Notification No. 16/2023 IT(R) dated 20.10.2023]

CHAPTER 6

TIME OF SUPPLY

1. Clarification on time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects of National Highways Authority of India (NHAI) in Hybrid Annuity Mode (HAM) model

Issue: Under the Hybrid Annuity Mode (HAM) model of **National Highways Authority of India (NHAI)**, the concessionaire has to construct the new road and provide Operation & Maintenance of the same which is generally over a period of 15-17 years and the payment of the same is spread over the years. What is the time of supply for the purpose of payment of tax on the said service under the HAM model?

Clarification: Under the Hybrid Annuity Model (HAM) of concession agreements, the highway development projects are under Design, Build, Operate and Transfer model (DBOT), wherein the concessionaire is required to undertake new construction of Highway, as well as the Operation and Maintenance (O&M) of Highways. The payment terms for the construction portion as well as the O&M portion of the contract are provided in the agreement between National Highways Authority of India (NHAI) and the concessionaire.

A HAM contract is a single contract for construction as well as operation and maintenance of the highway. The payment terms are so staggered that the concessionaire is held accountable for the repair and maintenance of the highway as well. The contract needs to be looked at holistically based on the services to be performed by the concessionaire and cannot be artificially split into two separate contracts for construction and operation and maintenance, based on the payment

terms. The concessionaire is bound contractually to complete not only the construction of the highway but also to operate and maintain the same.

In HAM contract, the payment is made spread over the contract period in installments and payment for each installment is to be made after specified periods, or on completion of an event, as specified in the contract. The same appears to be covered under the 'Continuous supply of services' as defined under section 2(33) of the CGST Act, 2017.

It is clarified that the tax liability on the concessionaire under the HAM contract, including on the construction portion, would arise at the time of issuance of invoice, or receipt of payments, whichever is earlier, if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract, as applicable. If invoices are not issued on or before the specified date or the date of completion of the event specified in the contract, tax liability would arise on the date of provision of the said service (i.e., the due date of payment as per the contract), or the date of receipt of the payment, whichever is earlier.

It is also clarified that as the installments/annuity payable by NHAI to the concessionaire also includes some interest component, the amount of such interest shall also be includible in the taxable value for the purpose of payment of tax on the said annuity/installment in view of the provisions of section 15(2)(d) of the CGST Act, 2017.

[Circular No. 221/15/2024 GST dated 26.06.2024]

CHAPTER 7

VALUE OF SUPPLY

1. Tax to be paid on specified actionable claims at the time of receipt of payment for such supplies by the suppliers

Notification No. 66/2017 CT dated 15.11.2017 was earlier issued to exempt all registered persons from the requirement of payment of tax at the time of receipt of advances in case of supply of goods and provides for payment of tax in such cases at the time of supply as specified in section 12(2)(a).

With effect from 01.10.2023, said notification has been amended to **exclude registered persons making supply of specified actionable claims** *[as discussed in Chapter 2 - Supply under GST]* from the said exemption, so that in case of specified actionable claims, the tax can be paid at the time of receipt of payment for such supplies by the suppliers.

[Notification No. 50/2023 CT dated 29.09.2023]

CHAPTER 8

INPUT TAX CREDIT

1. Clarification on availability of input tax credit (ITC) in respect of warranty replacement of parts and repair services during warranty period.

Issue 1

There are cases where the original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of goods or its 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.

Whether in such cases, the manufacturer is required to reverse the input tax credit in respect of such replacement of goods or its parts, as the case may be or supply of repair services as part of warranty, in respect of which no additional consideration is charged from the customer?

Clarification: In such cases, the value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of goods or its parts, as the case may be and / or repair services to be incurred during the warranty period.

Therefore, these supplies cannot be considered as exempt supply and accordingly, the manufacturer, who provides replacement of goods or its parts, as the case may be and/ or repair services to the customer during the warranty period, is not required to reverse the ITC in respect of the said replacement of goods or its parts, as the case may be or on the repair services provided.

Issue 2

Where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer, whether the distributor would be required to reverse the ITC in respect of such replacement of parts?

Clarification: There can be 4 instances as discussed below:-

(a) There may be cases 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 a tax invoice, for the said supply made by him to the manufacturer.

In such a case, GST would be payable by the distributor on the said supply by him to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of the CGST Act, 2017. In such case, no reversal of ITC by the distributor is required in respect of the same.

(b) There may be cases where the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty.

In such a case, where the **manufacturer is providing such part(s) to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement, no GST is payable** on such replacement of parts by the manufacturer. Further, no reversal of ITC is required to be made by the manufacturer in respect of the parts so replaced by the distributor under warranty.

(c) There may be cases 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 section 34(2) of the CGST Act, 2017. Accordingly, 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.**

(d) There may be cases where the **distributor replaces the goods or its parts to the customer under warranty by using his stock and then raises a requisition to the manufacturer** for the goods or the parts, as the case

may be. The manufacturer then provides the said goods or the parts, as the case may be, to the distributor through a delivery challan, without separately charging any consideration at the time of such replenishment. In such a case, **no GST is payable on such replenishment of goods or the parts,** as the case may be. Further, **no reversal of ITC** is required to be made by the manufacturer in respect of the goods or the parts, as the case may be, so replenished to the distributor.

Issue 3

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**, whether ITC is available on such activity?

Clarification: In such scenario, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair services in accordance with the provisions of section 2(93)(a) of the CGST Act, 2017.

Hence, GST would be payable on such provision of service by the distributor to the manufacturer and the **manufacturer would be entitled to avail the ITC** of the same, subject to other conditions of the CGST Act, 2017.

[Circular No. 195/07/2023 GST dated 17.07.2023 read with Circular No. 216/10/2024 GST dated 26.06.2024]

2. Clarification on time limit under Section 16(4) of the CGST Act, 2017 in respect of RCM supplies received from unregistered persons

It is clarified that in cases of supplies received from unregistered suppliers, where tax has to be paid by the recipient under reverse charge mechanism (RCM) and where invoice is to be issued by the recipient of the supplies in accordance with section 31(3)(f) of the CGST Act, 2017 **the relevant financial year for calculation of time limit for availment of input tax credit under the provisions of section 16(4) of the CGST Act, 2017 will be the financial year in which the invoice has been issued by the recipient under section 31(3)(f) of CGST Act**, subject to payment of tax on the said supply by the recipient and fulfilment of other conditions and restrictions of section 16 and 17 of the CGST Act, 2017. In case, the recipient issues the invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax. Further, in cases of such delayed issuance of invoice by

the recipient, he may also be liable to penal action under the provisions of Section 122[3] of the CGST Act, 2017.

[Circular No. 211/5/2024 GST dated 26.06.2024]

3. Clarification on availability of input tax credit on ducts and manholes used in network of optical fiber cables (OFCs) in terms of section 17(5) of the CGST Act, 2017

Issue: Whether the input tax credit on the ducts and manholes used in network of optical fiber cables (OFCs) for providing telecommunication services is barred in terms of clauses (c) and (d) of section 17(5) of the CGST Act, read with Explanation to section 17 of the CGST Act, 2017?

Clarification: Ducts and manholes are basic components for the optical fiber cable (OFC) network used in providing telecommunication services. The OFC network is generally laid with the use of **PVC ducts/sheaths** in which OFCs are housed and **service/connectivity manholes**, which serve as nodes of the network, and are necessary for not only laying of optical fiber cable but also their upkeep and maintenance. **In view of the Explanation in section 17 of the CGST Act, 2017 it appears that ducts and manholes are covered under the definition of "plant and machinery" as they are used as part of the OFC network for making outward supply of transmission of telecommunication signals from one point to another.**

Moreover, ducts and manholes used in network of optical fiber cables (OFCs) have not been specifically excluded from the definition of "*plant and machinery*" in the Explanation to section 17 of the CGST Act, 2017 as they are neither in nature of land, building or civil structures nor are in nature of telecommunication towers or pipelines laid outside the factory premises.

Accordingly, it is clarified that availment of input tax credit is not restricted in respect of such ducts and manhole used in network of optical fiber cables (OFCs), either under clause (c) or under clause (d) of section 17(5) of the CGST Act, 2017.

[Circular No. 219/13/2024 GST dated 26.06.2024]

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[3] *Section 122 of the CGST Act, 2017 shall be discussed in detail at the Final level.*

CHAPTER 9

REGISTRATION

1. Requirement of the presence of the applicant for physical verification of business premises done away with [Proviso to rule 9(1) amended and rule 25 substituted]

Proviso to rule 9(1) has amended to do away with the requirement of the presence of the applicant for physical verification of business premises. Thus, as per amended proviso to rule 9(1), where—

(a) a person[4], fails to undergo Aadhaar authentication or does not opt for Aadhaar authentication; or

(aa) a person, who has undergone Aadhaar authentication, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or

(b) the proper officer deems it fit to carry out physical verification of places of business,

the registration shall be granted within 30 days of submission of application, after physical verification of the place of business, ~~***in the presence of the said person***~~ in the manner provided under rule 25 and verification of such documents as the proper officer may deem fit.

Thus, now, **presence of the applicant is not required for physical verification**.

Corresponding amendment has been made in rule 25. Substituted rule 25 provides as follows:

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[4] *other than a person exempted from aadhaar authentication as notified under sub-section (6D) of section 25*

(i) Where the proper officer is satisfied that the physical verification of the place of business of a person is required AFTER the grant of registration:, he may get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in prescribed form on the common portal **within a period of 15 working days following the date of such verification**.

(ii) Where the physical verification of the place of business of a person is required BEFORE the grant of registration in the circumstances specified in the proviso to rule 9(1) *[as given above]:* the proper officer shall get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in prescribed form on the common portal **at least 5 working days prior to the completion of the time period specified** in the said proviso.

[Effective from 04.08.2023]

[Notification No. 38/2023 CT dated 04.08.2023]

2. Details of bank account required to be furnished by the applicant (i) within 30 days of grant of registration or (ii) before filing of GSTR- 1/ IFF, whichever is earlier [Rule 10A amended]

While filing the application for registration, a person is required to furnish the details of his bank account. Rule 10A provides that the details of bank account can be provided soon after obtaining certificate of registration and a GSTIN, but not later than specified time limit. Earlier, this time limit was **45 days** from the date of grant of registration or the **due date** of furnishing **return under section 39**, whichever is earlier.

This time limit has now been amended. Amended rule 10A provides that the registered person (except TDS deductor/TCS collector), after obtaining certificate of registration and a GSTIN, is allowed to furnish information with respect to details of bank account on the common portal, ***within a period of 30 days from the date of grant of registration, or before furnishing the details of outward supplies of goods or services or both under section 37***

in Form GSTR-1 or using IFF (Invoice Furnishing Facility), whichever is earlier.

[Effective from 04.08.2023]

[Notification No. 38/2023 CT dated 04.08.2023]

3. System based suspension of registration in case of failure to furnish the details of valid bank account within stipulated time. Automatic revocation on furnishing said details [Rule 21A(2A) substituted and third proviso to rule 21A(4) inserted]

Rule 21A(2A) has been amended to provide for system based suspension of the registration in respect of such registered persons who do not furnish details of valid bank account under rule 10A within the time period prescribed in the said rule. Further, third proviso to rule 21A(4) has been inserted to provide for automatic revocation of suspension in such cases upon compliance with provisions of rule 10A.

The detailed amendments are as under:

Earlier, rule 21A(2A) provided that where,

(a) (i) a comparison of the returns furnished by a registered person under section 39 with:

- the details of outward supplies furnished in Form GSTR-1; or
- the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their Form GSTR-1,

(ii) or such other analysis, as may be carried out on the recommendations of the Council,

show that there are significant differences or anomalies indicating contravention of the provisions of the CGST Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be suspended.

Said person shall be intimated in prescribed form by sending a communication to his e-mail address provided at the time of registration or as amended from time to time. In this intimation for suspension and notice

for cancellation of registration, the said differences and anomalies are highlighted and said person is asked to explain, within a period of 30 days, as to why his registration shall not be cancelled.

Rule 21A(2A) has been substituted to provide as follows:

Where,-

(a) (i) a comparison of the returns furnished by a registered person under section 39 with:

- the details of outward supplies furnished in Form GSTR-1 or
- the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their Form GSTR-1,

OR

(ii) such other analysis, as may be carried out on the recommendations of the Council,

show that there are significant differences or anomalies indicating contravention of the provisions of the CGST Act or the rules made thereunder, leading to cancellation of registration of the said person, or

(b) there is a contravention of the provisions of rule 10A by the registered person,

the registration of such person shall be suspended.

Said person shall be intimated in prescribed form by sending a communication to his e-mail address provided at the time of registration or as amended from time to time. In this intimation for suspension and notice for cancellation of registration, the said differences and anomalies are highlighted and said person is asked to explain, within a period of 30 days, as to why his registration shall not be cancelled.

Further, third proviso has been inserted to rule 21A(4) to provide that where the registration has been suspended as above for contravention of provisions of rule 10A and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be

revoked upon compliance with the provisions of rule 10A.

[Effective from 04.08.2023]

[Notification No. 38/2023 CT dated 04.08.2023]

4. Time-limit for filing application for revocation of cancellation of registration increased to 90 days and extension of 180 days permitted on sufficient reason being shown [Rule 23(1) amended]

A need was sensed to extend the time limit for filing application for revocation of cancellation of registration, as a facility for the benefit of MSME Sector since several taxpayers could not file their application for revocation of cancelation of registration within the time limit specified under section 30. Representations were received by the Department to the effect that the earlier time limit of 30 days (normal period of revocation) plus 30 days (extension by Additional/Joint Commissioner) plus 30 days (extension by Commissioner) for applying for revocation of cancellation of registration under section 30 was quite less and there was a need to increase this time limit. In large number of cases, small taxpayers could not apply in time for revocation due to lack of funds or other reasons, adversely affecting business and there was a need to bring them again in mainstream by giving them a chance to revive their registrations.

Consequently, the time limit for making an application for revocation of cancellation of registration has been raised from 30 days to 90 days and Commissioner or an officer authorized by him in this behalf can further extend this time period for a further period not exceeding 180 days on sufficient reason being shown.

In order to carry out this amendment, section 30(1) has been accordingly amended to remove the earlier time limit provided to apply for revocation as well as for extension of said time limit and gave power to prescribe the same through the rules. Simultaneously, rule 23(1) has also been amended to provide the revised new time limits to apply for revocation of cancellation of registration as well as extension of the same.

Amended portion of rule 23(1) provides as follows:

A registered person, whose registration is cancelled by the proper officer on his own motion, may, subject to the provisions of rule 10B, submit an

application for revocation of cancellation of registration, in prescribed form, to such proper officer, ***within a period of 90 days from the date of the service of the order of cancellation of registration.***

However, such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended by the Commissioner or an officer authorised by him in this behalf, not below the rank of Additional Commissioner or Joint Commissioner, as the case may be, ***for a further period not exceeding 180 days.***

[Effective from 01.10.2023]

[Notification No. 38/2023 CT dated 04.08.2023]

5. Rule 8(1) amended

Rule 8(1) has been amended to exclude a person supplying online money gaming from a place outside India to a person in India from declaring their PAN and State/Union territory for applying for registration.

[Effective from 01.10.2023]

[Notification No. 51/2023 CT dated 29.09.2023]

6. Unregistered persons with aggregate turnover upto threshold limit permitted to supply goods through an ECO.

As per section 24(ix), persons who supply goods and/or services, other than services notified under section 9(5), through such ECO who is required to collect TCS under section 52 is required to obtain registration mandatorily. However, persons making supplies of services through an ECO [other than supplies specified under section 9(5)] are exempted from obtaining registration with aggregate turnover up to ` 20 lakh (` 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland). No such exemption was available for a person supplying goods through such ECO. Thus, as per the prevalent position, unregistered persons were not permitted to make supply of goods through an ECO (who is required to collect TCS). However, other suppliers supplying goods offline were allowed exemption from registration upto the threshold limit.

Consequently, it was decided to provide an exemption upto threshold limit to the suppliers supplying goods online through ECOs provided they are making only intra-State supply; since inter-State supplier of goods has to otherwise obtain compulsory registration.

The GST Council in its 47th meeting, had in-principle approved the scheme of allowing unregistered persons to make supply of goods through ECOs. They would be required to declare their PAN and principal place of business so that it can be verified from the PAN that the turnover is less than the threshold limit.

Accordingly, **with effect from 01.10.2023, *Notification No. 34/2023 CT dated 31.07.*2023** provided that the persons making supplies of goods through an ECO who is required to collect TCS under section 52 and having an aggregate turnover in the preceding financial year and in the current financial year not exceeding the threshold limit in accordance with the provisions of section 22(1), are exempted from obtaining registration, subject to the following conditions, namely:

(i) such persons shall **not make any inter-State supply** of goods;

(ii) such persons shall **not make supply** of goods through ECO **in more than one State/Union territory**;

(iii) such persons shall be required to have a **PAN issued** under the Income-tax Act, 1961;

(iv) such persons shall, before making any supply of goods through ECO, **declare on the common portal**:

a. their **PAN**

b. **address** of their place of business and

c. **State/UT in which such persons seek to make such supply**,

which shall be subjected to validation on the common portal;

(v) such persons have been **granted an enrolment number** on the common portal on successful validation of the PAN declared above;

(vi) such persons shall **not be granted more than one enrolment number** in a State/UT;

(vii) no supply of goods shall be made by such persons through ECO unless such persons have been granted an enrolment number on the common portal; and

(viii) where such persons are subsequently granted registration under section 25, the enrolment number shall cease to be valid from the effective date of registration.

7. Risk-based biometric aadhaar authentication of registration applicants – Pilot project in Gujarat extended to Puducherry and Andhra Pradesh

In order to improve the registration process, biometric based aadhaar authentication of the high-risk applicants who opt for authentication of Aadhaar number was introduced on a pilot basis in the State of Gujarat.

An applicant who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph:

(i) of the applicant where the applicant is an individual or

(ii) of such individuals where the applicant is not an individual,

along with the verification of the original copy of the documents uploaded with the application in Form GST REG-01 at one of the notified Facilitation Centres.

The application shall be deemed to be complete only after completion of the process laid down hereunder.

An acknowledgement shall be issued to the applicant only after completion of biometric-based authentication.

The above biometric based aadhaar authentication of the high-risk applicants who opt for authentication of Aadhaar number has been extended to the States of Puducherry and Andhra Pradesh.

[Notification No. 54/2023 CT dated 17.11.2023]

CHAPTER 10

TAX INVOICE; CREDIT AND DEBIT NOTES

1. Threshold limit for e-invoicing reduced to ` 5 crore

With effect from 01.10.2020, e-invoicing was made mandatory for all registered businesses with an aggregate turnover (based on PAN) in any preceding financial year from 2017-18 onwards greater than ` 500 crore for issue of all B2B invoices. Since then, the threshold limit of aggregate turnover for issuing the e-invoices is being progressively reduced.

With effect from 01.08.2023, such limit has been reduced to ` 5 crore. Thus, e-invoicing has been made mandatory for all registered businesses with an aggregate turnover in any preceding financial year from 2017-18 onwards greater than ` 5 crore.

[Notification No. 10/2023 CT dated 10.05.2023]

2. Applicability of e-invoicing to Government Departments/PSUs etc. registered solely for the purpose of deduction of tax at source as per provisions of section 51

The issue which arose for consideration was whether e-invoicing is applicable for supplies made by a registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, to Government Departments or establishments/ Government agencies/ local authorities/ PSUs which are registered solely for the purpose of deduction of TDS as per

provisions of section 51.

It is clarified that Government Departments or establishments/ Government agencies/ local authorities/ PSUs, which are required to deduct TDS under section 51, are liable for compulsory registration in accordance with section 24(vi).

Therefore, Government Departments or establishments/ Government agencies/ local authorities/ PSUs, registered solely for the purpose of deduction of TDS as per provisions of section 51, are to be treated as registered persons under the GST law as per provisions of section 2(94).

Accordingly, the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, is required to issue e-invoices for the supplies made to such Government Departments or establishments/ Government agencies/ local authorities/ PSUs, etc under rule 48(4).

[Circular No. 198/10/2023 GST dated 17.07.2023]

CHAPTER 13

PAYMENT OF TAX

1. Clarification on charging of interest under section 50(3) in cases of wrong availment of IGST credit and reversal thereof

The issues which arose for consideration are as to:

(i) whether in the cases of wrong availment of IGST credit by a registered person and reversal thereof, for the calculation of interest under rule 88B, whether the balance of ITC available in electronic credit ledger (ECL) under the head of IGST only needs to be considered or total ITC available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has to be considered.

Since the amount of ITC available in ECL, under any of the heads of IGST, CGST or SGST, can be utilized for payment of liability of IGST, it is the total ITC available in ECL, under the heads of IGST, CGST and SGST taken together, that has to be considered for calculation of interest under rule 88B and for determining as to whether the balance in the ECL has fallen below the amount of wrongly availed ITC of IGST, and to what extent the balance in ECL has fallen below the said amount of wrongly availed credit.

Thus, in the cases where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability under section 50(3) if, during the time period starting from such availment and up to such reversal, the balance of ITC in the ECL, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in ECL individually falls below the amount of such wrongly

availed IGST credit.

However, when the balance of ITC, under the heads of IGST, CGST and SGST of ECL taken together, falls below such wrongly availed amount of IGST credit, then it will amount to the utilization of such wrongly availed IGST credit and the extent of utilization will be the extent to which the total balance in ECL under heads of IGST, CGST and SGST taken together falls below such amount of wrongly availed IGST credit, and will attract interest as per section 50(3) read with section 20 of the IGST Act, 2017 and of rule 88B(3).

(ii) whether the credit of compensation cess available in ECL shall be taken into account while considering the balance of ECL for the purpose of calculation of interest under rule 88B(3) in respect of wrongly availed and utilized IGST, CGST or SGST credit.

Since ITC in respect of compensation cess can be utilised only towards payment of compensation cess. Thus, credit of compensation cess cannot be utilized for payment of any tax under CGST or SGST or IGST heads and/ or reversals of credit under the said heads. Accordingly, credit of compensation cess available in ECL cannot be taken into account while considering the balance of ECL for the purpose of calculation of interest under rule 88B(3) in respect of wrongly availed and utilized IGST, CGST or SGST credit.

[Circular No. 192/04/2023 GST dated 17.07.2023]

CHAPTER 14

TAX DEDUCTION AT SOURCE AND COLLECTION OF TAX AT SOURCE

1. Details of TCS furnished by ECO to be made available electronically to only registered suppliers [Rule 67(2) amended]

Unregistered suppliers of services and now unregistered suppliers of goods also are allowed to make supplies through ECOs till the time their turnover does not exceed the prescribed threshold limit. Rule 67 has been amended to clearly bring out that the details of TCS furnished by ECOs in Form GSTR-8 shall be made available only to the registered suppliers, as the supplies by unregistered persons do not attract TCS.

Amended rule 67(2) provides as follows:

The details of tax collected at source under section 52(1) furnished by the ECO shall be made available electronically to each of the registered suppliers on the common portal after filing of Form GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

CHAPTER 15

RETURNS

1. Additional cases prescribed wherein a registered person is debarred from furnishing details of outward supplies in Form GSTR-1/IFF [Rule 59(6) amended]

Rule 59(6) stipulates the cases where a registered person is debarred from furnishing details of outward supplies in Form GSTR-1/IFF. Said rule has been amended to provide that a registered person will not be allowed to furnish GSTR-1/IFF unless (i) he has reversed the amount of excess ITC specified in the intimation under rule 88D(1) or has furnished the reply explaining reasons for any amount of excess ITC remaining to be reversed and (ii) he has not furnished details of a valid bank account as per rule 10A.

Newly inserted clauses (e) and (f) in rule 59 read as follows:

(e) a registered person, to whom an intimation has been issued on the common portal under the provisions of rule 88D(1) in respect of a tax period/periods, shall not be allowed to furnish GSTR-1/IFF for a subsequent tax period, unless he has either paid the amount equal to the excess ITC as specified in the said intimation or has furnished a reply explaining the reasons in respect of the amount of excess ITC that still remains to be paid, as required under the provisions of rule 88D(2);

(f) a registered person shall not be allowed to furnish GSTR-1/IFF, if he has not furnished the details of the bank account as per the provisions of rule 10A.

[Effective from 04.08.2023]

[Notification No. 38/2023 CT dated 04.08.2023]

2. Manner of dealing with difference in ITC available in auto-generated statement containing the details of ITC and that availed in return prescribed [New rule 88D introduced]

A mechanism has been devised which allows system-based intimation to the taxpayer about the excess availment of ITC in Form GSTR-3B vis-a-vis that reported in Form GSTR-2B, above a particular threshold and with provision for self-compliance on the portal by the said taxpayer. Consequently, new rule 88D has been introduced to give a system-based intimation to the registered person in those cases where difference between the ITC availed as per GSTR-3B and that available as per GSTR-2B exceeds such amount and such percentage as may be recommended by the Council. In such cases, the registered person shall be directed to pay an amount equal to the said excess amount of ITC availed along with interest or to give a reasonable explanation and if neither of these is done, then the amount can be demanded under section 73 or section 74.

This provision would help in safeguarding the revenue by controlling the difference in ITC availed in Form GSTR-3B and that available as per Form GSTR-2B of the taxpayers and will reduce the ITC mismatches.

New rule 88D provides as follows:

Where the amount of ITC availed by a registered person in the return for a tax period(s) furnished by him in Form GSTR-3B exceeds the ITC available to such person in accordance with the auto-generated statement containing the details of ITC in Form GSTR-2B in respect of the said tax period(s), by specified amount and percentage, the said registered person shall be given an intimation in prescribed form electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time. Said intimation shall highlight the said difference and will direct him to—

(a) pay an amount equal to the excess ITC availed in the said Form GSTR-3B, along with interest payable under section 50, through prescribed form, or

(b) explain the reasons for the aforesaid difference in ITC on the common portal,

within a period of 7 days.

Such registered person shall, upon receipt of said intimation, either,

(a) pay an amount equal to the excess ITC, as specified in intimation, fully or partially, along with interest payable, through prescribed form and furnish the details thereof, electronically on the common portal, or

(b) furnish a reply, electronically on the common portal, incorporating reasons in respect of the amount of excess ITC that has still remained to be paid,

within 7 days' period.

Where any amount specified in the intimation remains to be paid within 7 days' period and where no explanation/reason is furnished by the registered person in default or where the explanation/reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be liable to be demanded in accordance with the provisions of section 73/section 74.

[Effective from 04.08.2023]

[Notification No. 38/2023 CT dated 04.08.2023]