

**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. 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]**

## 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-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<sup>3</sup> 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]