

THE GST Bulletin

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About The GST Bulletin

The GST Bulletin is a Weekly Newsletter from Team CGA Legal, a leading Indirect Tax Consultancy firm. The Newsletter is intending to keep its readers updated with all important legal and judicial updates in Goods & Services Tax and other Indirect Tax laws. The Newsletter also has a special column of GST Compliance Calendar for the month. Along with it, CGA Legal also sends various legal recommendations which have immense implications in improving the compliance of GST in your business.

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GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
<p>06/2023-CT(R) dt 26.07.2023</p>	<p>Seeks to amend GST Rate Notification for Services</p> <ul style="list-style-type: none"> • GTAs opting for Forward charge not required to give fresh declaration every year <ul style="list-style-type: none"> ✓ GTAs will not be required to file declaration for paying GST under forward charge every year. If they have exercised this option for a particular financial year, they shall be deemed to have exercised it for the next and future financial years unless they file a declaration that they want to revert to reverse charge mechanism (RCM). ✓ Form in Annexure-VI has been provided for exercising option by a Goods Transport Agency intending to revert under reverse charge mechanism to be filed before the commencement of any financial year to be submitted before the jurisdictional GST Authority. • Extending the due date for exercising option of payment under Forward charge by GTA <ul style="list-style-type: none"> ✓ The last date of exercising the option by GTAs to pay GST under forward charge shall be 31st March of preceding Financial Year instead of 15th March. ✓ 1st January of preceding Financial Year shall be the start date for exercise of option. • Services by way of fumigation in a warehouse of agricultural produce is outside the purview of the scope of Support services to agriculture, hunting, forestry, fishing, mining and utilities.
<p>07/2023-CT(R) dt 26.07.2023</p>	<p>Extending the Exemptions on satellite launch services</p> <p>It has been decided that GST exemption on satellite launch services supplied by ISRO, Antrix Corporation Limited and New Space India Limited (NSIL) be extended to such services supplied by organizations in private sector also to encourage start ups.</p>

GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
<p>08/2023-CT(R) dt 26.07.2023</p>	<p>Seeks to amend GST Reverse Charge Notification for Services</p> <ul style="list-style-type: none"> • Amendment in Annexure-III providing declaration by GTA for payment of tax under Forward Charge <ul style="list-style-type: none"> ✓ As GTAs will not be required to file declaration for paying GST under forward charge every year. Annexure-III has been suitably amended to provide as follows: <p style="text-align: center;"><i>I/we have taken registration under the CGST Act, 2017 and have exercised the option to pay tax on services of GTA in relation to transport of goods supplied by us from the Financial Year ____ under forward charge and have not reverted to reverse charge mechanism.</i></p>
<p>09/2023-CT(R) dt 26.07.2023</p>	<p>Seeks to amend GST Rate Notification for Goods</p> <p>In order to implement the decisions of the 50th GST Council Meeting, the GST rate on certain goods have been suitably amended w.e.f. 27-07-2023, some of which are as follows:</p> <ul style="list-style-type: none"> • The rate on Un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion has been reduced to 5%. • It has been decided to reduce the GST rate on fish soluble paste from 18% to 5% • GST rate on imitation zari thread or yarn known by any name in trade parlance has been reduced from 12% to 5%. • GST rate on LD slag has been reduced from 18% to 5% to encourage better utilisation of this product and for protection of environment.

GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
<p>10/2023-CT(R) dt 26.07.2023</p>	<p>Seeks to amend NN 26/2018-CT(R) dated 31-12-2018</p> <p>Consequent to the implementation of the Foreign Trade Policy, 2023, Notification No. 26/2018-CT(R) has been suitably amended to exempt central tax on supply of gold, silver or platinum by nominated agencies to registered persons in which the Nominated Agency and the recipient shall follow the conditions and observe the procedures as specified in the Foreign Trade Policy, 2023 read with Handbook of Procedures, notified by the Government of India in the Ministry of Commerce and Industry vide Public Notice No. 01/2023 dated the 1st April, 2023, Extraordinary, Part-I, Section 1 vide F. No. 01/75/171/00016/AM-23/FTP Cell dated the 1st April, 2023.</p>
<p>03/2023-CC(R) dt 26.07.2023</p>	<p>Seeks to amend the Rate of Compensation Cess on Goods</p> <p>In order to implement the decisions of the 50th GST Council Meeting, the GST Compensation Cess rate on certain goods have been suitably amended w.e.f. 27-07-2023.</p> <p>It has been notified that on pan masala, tobacco products etc, where it is not legally required to declare the retail sale price, the earlier ad valorem rate, as was applicable on March 31, 2023 may be notified in order for levy of Compensation Cess.</p> <p>Entry no. 52B in compensation cess notification has been amended to include all utility vehicles by whatever name called provided they meet the parameters of Length exceeding 4000 mm, Engine capacity exceeding 1500 cc and having Ground Clearance of 170 mm & above and to clarify by way of explanation that 'Ground clearance' means Ground Clearance in un-laden condition.</p> <p>Cess Rate for Pan Masala, Unmanufactured tobacco, Tobacco refuse, 'Hookah' or 'gudaku' tobacco, etc. notified.</p>

GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
18/2023- CT dt 17.07.2023	<p>Extension of Due Date – GSTR -1</p> <p>Due date for furnishing FORM GSTR-1 for April, May and June, 2023 extended to 31st July, 2023 for registered persons whose principal place of business is in the State of Manipur.</p>
19/2023- CT dt 17.07.2023	<p>Extension of Due Date – GSTR -3B Monthly Filers</p> <p>Due date for furnishing FORM GSTR-3B extended for April, May and June, 2023 extended to 31st July, 2023 for registered persons whose principal place of business is in the State of Manipur</p>
20/2023- CT dt 17.07.2023	<p>Extension of Due Date – GSTR – 3B Quarterly Filers</p> <p>Due date for registered persons furnishing FORM GSTR-3B on quarterly basis has been extended for the quarter ended 30th June,2023 extended to 31st July, 2023 for registered persons whose principal place of business is in the State of Manipur</p>
21/2023- CT dt 17.07.2023	<p>Extension of Due Date – GSTR -7</p> <p>Due date for furnishing FORM GSTR-7 for April, May and June, 2023 extended to 31st July, 2023 for registered persons whose principal place of business is in the State of Manipur</p>
22/2023- CT dt 17.07.2023	<p>Amnesty scheme for Non-filers of GSTR-4</p> <p>As per notification no 72/2017-CT dated 29.12.2017 registered persons who fail to furnish the return in FORM GSTR-4 for the quarters from July, 2017 to March 2019 or for the Financial years from 2019-20 to 2021-22 by the due date but furnish the said return between the period from the 01-April-2023 to 30-June-2023, the late had been waived which is in excess of two hundred and fifty rupees and shall stand fully waived where the total amount of central tax payable in the said return is nil. The said time limit for furnishing the return has now been extended from 30-June-2023 to 31-08-2023.</p>

GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
<p>23/2023- CT dt 17.07.2023</p>	<p>Amnesty scheme for Revocation of Cancellation of Registration where registration has been cancelled on or before the 31st day of December 2022</p> <p>RP whose registration has been cancelled on or before the 31st day of December, 2022 on account of non-furnishing of returns had failed to apply for revocation within period specified in Section 30 of CGST Act, 2017.</p> <p>The time limit for application for revocation of cancellation of such registration was granted upto the 30th day of June, 2023 vide NN 03/2023-CT dated 31-03-2023.</p> <p>The said time limit for application for revocation has been extended upto 31-08-2023.</p>
<p>24/2023- CT dt 17.07.2023</p>	<p>Amnesty scheme for deemed withdrawal of assessment orders issued under Section 62</p> <p>As per Notification No. 06/2023-CT dated 31-03-2023, the registered persons who failed to furnish a valid return within a period of thirty days from the service of the assessment order issued on or before the 28th day of February, 2023 under sub-section (1) of section 62 of the CGST Act, the said assessment order shall be deemed to have been withdrawn, if such registered persons follow the special procedures as specified below, namely,-</p> <ul style="list-style-type: none"> • the registered persons shall furnish the said return on or before the 30th June-2023; • the return shall be accompanied by payment of interest due under sub-section (1) of section 50 of the said Act and the late fee payable under section 47 of the said Act. <p>The said time limit for furnishing the return has been extended from 30-06-2023 to 31-08-2023</p>

GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
25/2023- CT dt 17.07.2023	Extension to Amnesty for GSTR-9 non-filers Notification no 07/2023-CT dated 31-03-2023 stands amended whereby the maximum late fees for non filers of GSTR-9 for any of the financial years 2017-18, 2018-19, 2019-20, 2020-21 or 2021-22 shall be INR 20,000 [INR 10,000 CGST & SGST Each] in case the return is filed between 01.04.2023 to 31.08.2023
26/2023- CT dt 17.07.2023	Extension to amnesty for GSTR-10 non-filers Notification no 08/2023-CT dated 31-03-2023 stands amended whereby the maximum late fees for non-filers of GSTR-10 shall be INR 1,000 [INR 500 CGST & SGST Each] in case the return is filed between 01.04.2023 to 31.08.2023

GST Updates – CBIC Circulars

Clarification on charging of interest under section 50(3) of the CGST Act, 2017, in cases of wrong availment of IGST credit and reversal thereof.

Circular No. 192/04/2023-GST Dated:17-7-2023

It has been clarified that 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 sub-section (3) of section 50 of CGST Act if, during the time period starting from such availment and up to such reversal, the balance of ITC in the electronic credit ledger, 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 electronic credit ledger 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 electronic credit ledger 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 electronic credit ledger under heads of IGST, CGST and SGST taken together falls below such amount of wrongly availed IGST credit, and will attract interest u/s 50(3) of CGST Act, 2017.

Further, it has been clarified that since ITC on Compensation cess can only be used for payment of Output liability on Compensation cess, credit of compensation cess available in electronic credit ledger cannot be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest u/s 50(3) of CGST Act, 2017.

GST Updates – CBIC Circulars

Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021

Circular No. 193/05/2023-GST Dated:17-7-2023

CBIC has earlier issued Circular No. 183/15/2022-GST dated 27th December, 2022, whereby the clarification was issued to deal with difference between ITC availed in GSTR-3B vs ITC reflecting in GSTR-2A was provided for FY 2017-18 and FY 2018-19. The circulars details the procedure to be followed while dealing with differences between ITC as per GSTR-3B vs GSTR 2A/2B;

Period	Statutory Requirement	Guidelines by CBIC
FY 2017-18 to FY 2018-19		Circular No. 183/15/2022-GST to be followed
01.04.2019 - 08.10.2019		Circular No. 183/15/2022-GST to be followed
09.10.2019 - 31.12.2019	Rule 36(4) allows availment of ITC 20 % above the Matched ITC with GSTR-2A	<ol style="list-style-type: none"> 1. In case of difference, No ITC to be allowed above 20 % of Matched ITC. 2. For the 20% ITC to be availed, Certificate* to be provided.
01.01.2020 - 31.12.2020	Rule 36(4) allows availment of ITC 10 % above the Matched ITC with GSTR-2A	<ol style="list-style-type: none"> 1. In case of difference, No ITC to be allowed above 10 % of Matched ITC . 2. For the 10% ITC to be availed, Certificate* to be provided
01.01.2021 - 31.12-2021	Rule 36(4) allows availment of ITC 5 % above the Matched ITC with GSTR-2A	<ol style="list-style-type: none"> 1. In case of difference, No ITC to be allowed above 5 % of Matched ITC . 2. For the 5% ITC to be availed, Certificate* to be provided

GST Updates – CBIC Circulars

Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021

Circular No. 193/05/2023-GST Dated:17-7-2023

Period	Statutory Requirement	Guidelines by CBIC
From 01.01.2022 onwards	Insertion of Sec 16(2)(aa) which mandates availment of ITC only when it is reflected in GSTR-2B	No ITC shall be allowed for the period 01.01.2022 onwards in respect of a supply unless the same is reported by his suppliers in their FORM GSTR-1 or using IFF and is communicated to the said registered person in FORM GSTR-2B.
COVID Relief for periods 1. Feb 2020 to Aug 2020 2. April 2021 to June 2021	Insertion of Proviso to Rule 36(4) which provided that the condition of rule 36(4) shall be applicable cumulatively for the period February to August, 2020 and ITC shall be adjusted on cumulative basis for the said months in the return for the tax period of September 2020. Similar relief provided for April 2021 to June 2021 and ITC shall be adjusted on cumulative basis for the said months in the return for the tax period of June 2021.	The same may be taken into consideration while determining the amount of ITC eligibility for the said tax periods.

Note : *- In case the ITC difference is more than INR 5 lacs - CA/CMA certificate
In case the ITC difference is Less than INR 5 lacs - Supplier Self Certificate

The above instructions will apply only to the ongoing proceedings in scrutiny/ audit/ investigation, etc. for the period 01.04.2019 to 31.12.2021 and not to the completed proceedings. However, these instructions will apply in those cases during the period 01.04.2019 to 31.12.2021 where any adjudication or appeal proceedings are still pending.

GST Updates – CBIC Circulars

Clarification on TCS liability under Sec 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction

Circular No. 194/06/2023-GST Dated:17-7-2023

The circular clarifies the liability to deduct TCS in case of Open Network for Digital Commerce (ONDC). In the case of the ONDC Network or similar other arrangements, there can be multiple ECOs in a single transaction - one providing an interface to the buyer and the other providing an interface to the seller. In this setup, buyer-side ECO could collect consideration, deduct their commission and pass on the consideration to the seller-side ECO. It has been clarified;

- 1. In case where Supplier side ECO is not the supplier himself-** Where the supplier-side ECO himself is not the supplier of the said goods or services, the compliances under section 52 of CGST Act, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply made by the said supplier through him.
- 2. In case where Supplier side ECO is the supplier himself:** In such a situation, TCS is to be collected by the Buyer-side ECO while making payment to the supplier for the particular supply being made through it.

GST Updates – CBIC Circulars

Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period

Circular No. 195/07/2023-GST Dated: 17-7-2023

The issue with respect to GST liability or reversal of ITC has been raised in case of replacement goods /services are supplied to customers free of charge and as such no separate consideration is charged and received at the time of replacement. The circular clarifies the following;

S. No	Issue	Clarification
1	<p>There are cases where the original equipment manufacturer [OEM] 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.</p> <p>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?</p>	<p>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.</p> <p>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.</p> <p>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.</p>

GST Updates – CBIC Circulars

Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period

Circular No. 195/07/2023-GST Dated:17-7-2023

S.No.	Issue	Clarification
2	Whether in such cases, the manufacturer is required to reverse the ITC in respect of such replacement of parts or supply of repair services as part of warranty, in respect of which no additional consideration is charged from the customer?	Since, 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. Therefore, these supplies cannot be considered as exempt supply and thus no reversal of ITC is required.
3	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?	<p>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.</p> <p>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.</p>
4	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 and whether the distributor would be required to reverse the input tax credit in respect of such replacement of parts?	(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.

GST Updates – CBIC Circulars

Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period

Circular No. 195/07/2023-GST Dated:17-7-2023

S.No.	Issue	Clarification
		<p>(b) 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 CGST Act. In such case, no reversal of input tax credit by the distributor is required in respect of the same.</p> <p>(c) 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.</p> <p>(d) 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 sub-section (2) of section 34 of the CGST Act. 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.</p>

GST Updates – CBIC Circulars

Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period

Circular No. 195/07/2023-GST Dated:17-7-2023

S.No.	Issue	Clarification
5	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?	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 sub-clause (a) of clause (93) to section 2 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 input tax credit of the same, subject to other conditions of CGST Act.
6	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?	a) If a customer enters into an agreement of extended warranty with the manufacturer at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly. b) However, in case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same is a separate contract and GST would be payable by the service provider, whether manufacturer or the distributor or any third party, depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services).

GST Updates – CBIC Circulars

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

Circular No. 196/08/2023-GST Dated:17-7-2023

Trade has asked for clarification that whether the holding of shares in a subsidiary company by the holding company will be treated as 'supply of service' under GST and will be taxed accordingly or whether such transaction is not a supply. It has been clarified that since Securities are considered neither goods nor services in terms of definition of goods under clause (52) of section 2 of CGST Act and the definition of services under clause (102) of the said section. 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. Thus, since the transaction of holding shares does not qualify as supply under section 7 of CGST Act, 2017, 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.

Clarification on refund related issues

Circular No. 197/09/2023-GST Dated:17-7-2023

Consequent to Introduction of Sec 16(2)(aa) of CGST Act which mandates eligibility of ITC subject to its reflection in GSTR-2B, master circular on refund 135/05/2020-GST dated 31.03.2020 is modified is follows;

1. Refund of accumulated input tax credit under Section 54(3) on the basis of that available as per FORM GSTR 2B:-

(a) It has been decided that availability of refund of the accumulated input tax credit under section 54(3) of CGST Act for a tax period shall be restricted to input tax credit as per those invoices, the details of which are reflected in **FORM GSTR-2B** of the applicant for the said tax period or for any of the previous tax periods and on which the input tax credit is available to the applicant. Thus, reflection of ITC in GSTR-2A also stands modified accordingly.

GST Updates – CBIC Circulars

Clarification on refund related issues

Circular No. 197/09/2023-GST Dated:17-7-2023

(b) The above restriction applicable for the said tax period or for any of the previous tax periods, shall be applicable for the refund claims for the tax period of January 2022 onwards. The circular will not result in reopening of refund claims which have already been disposed of.

2. Requirement of the undertaking in FORM RFD 01 inserted vide Circular No. 125/44/2019-GST dated 18.11.2019

The applicant is required to file an undertaking while filing RFD-01 in accordance with Rule 89(1) which required applicant to amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of section 42 of the CGST Act . It has been clarified that since Section 42 has been omitted and Section 41 has been amended wherein the concept of provisionally accepted input tax credit has been done away with, revised undertaking has been inserted.

Consequently, requirement of following documents earlier required to be filed with RFD-01 has also been done away with;

- i. “Undertaking in relation to sections 16(2)(c) and section 42(2)” wherever mentioned in the column “Declaration/Statement/Undertaking/Certificates to be filled online” may be read as “Undertaking in relation to sections 16(2)(c)”.
- ii. “Copy of GSTR-2A of the relevant period” wherever required as supporting documents to be additionally uploaded stands removed/deleted.
- iii. “Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period” wherever required as supporting documents to be additionally uploaded stands removed/deleted.

GST Updates – CBIC Circulars

Clarification on refund related issues

Circular No. 197/09/2023-GST Dated:17-7-2023

3. Manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of CGST Rules consequent to Explanation inserted in sub-rule (4) of Rule 89 vide Notification No. 14/2022- CT, dated 05.07.2022.

It is clarified that consequent to Explanation having been inserted in sub-rule (4) of rule 89 of CGST Rules vide Notification No. 14/2022- CT dated 05.07.2022, the value of goods exported out of India to be included while calculating “adjusted total turnover” will be same as being determined as per the Explanation inserted in the said sub-rule.

4. Clarification in respect of admissibility of refund where an exporter applies for refund subsequent to compliance of the provisions of sub-rule (1) of rule 96A:

It is clarified that as long as goods are actually exported or as the case may be, payment is realized in case of export of services, even if it is beyond the time frames as prescribed in sub-rule (1) of rule 96A, the benefit of zero-rated supplies cannot be denied to the concerned exporters. Accordingly, it is clarified that in such cases, on actual export of the goods or as the case may be, on realization of payment in case of export of services, the said exporters would be entitled to refund of unutilized input tax credit in terms of sub-section (3) of section 54 of the CGST Act, if otherwise admissible. The refund application in the said scenario may be made under the category “Excess payment of tax”. However, till the time the refund application cannot be filed under the category “Excess payment of tax” due to non-availability of the facility on the portal, the applicant may file the refund application under the category “Any Other” on the portal.

GST Updates – CBIC Circulars

Clarification on issue pertaining to e-invoice

Circular No. 198/10/2023-GST Dated:17-7-2023

It is clarified that the Government Departments or establishments/ Government agencies/ local authorities/ PSUs, registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the CGST Act, are to be treated as registered, under the GST. Accordingly, the registered persons to whom E-invoicing is applicable are 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) of CGST Rules.

Clarification regarding taxability of services provided by an office of an organisation in one State to the office in another State

Circular No. 199/11/2023-GST Dated:17-7-2023

The circular seeks to clarify taxability issues of Inter-unit services. CBIC has clarified;

1. Distribution of Common Input services availed by HO from third party attributable to both HO & Branch offices: Such services can be distributed either through ISD mechanism or issue of Tax invoice and avail ITC on the same. Thus, HO has the option to avail any of the above mechanisms. However, such services can be distributed through ISD or Tax invoice can be issued only if the said services have actually been provided to the concerned BOs.

2. Taxability of Internally generated services like Employee cost when full ITC is available to recipient BOs- In respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is eligible for full input tax credit. Further, in such cases where full input tax credit is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and this NIL value may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.

GST Updates – CBIC Circulars

Clarification regarding taxability of services provided by an office of an organization in one State to the office in another State

Circular No. 199/11/2023-GST Dated:17-7-2023

3. Taxability of Internally generated services like Employee cost when full ITC is not available to recipient Bos- In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases where full input tax credit is not available to the concerned BO. However, the same may not be applicable for other Internally generated services.

GST Technical Updates

E-Invoice Exemption Declaration Functionality Now Available

Dated : 24-07-2023

GSTN is pleased to inform you that the e-Invoice Exemption Declaration functionality is now live on the e-Invoice portal. This functionality is specifically designed for taxpayers who are by default enabled for e-invoicing but are exempted from implementing it under the CGST (Central Goods and Services Tax) Rules.

Salient features of this functionality are:

- a) The e-Invoice Exemption Declaration functionality is voluntary and can be accessed at the e-Invoice portal (www.einvoice.gst.gov.in).
- b) This functionality is applicable to taxpayers who are exempted from e-Invoicing as per the provisions of the CGST Rules.
- c) It is important to note that any declaration made using this functionality will not change the e-Invoice enablement status of the taxpayer.
- d) The responsibility to take decision vis-à-vis exemption with reference to various Notifications issued by the Government and report on the portal is of the person.

The facility to report exemption declaration is purely for business facilitation purposes.

GST Technical Updates

Geocoding Functionality Now Live for All States and Union Territories

Dated : 07-07-2023

GSTN is pleased to inform that the functionality for geocoding the principal place of business address is now live for all States and Union territories. This feature, which converts an address or description of a location into geographic coordinates, has been introduced to ensure the accuracy of address details in GSTN records and streamline the address location and verification process.

Here's how taxpayers can access and use this functionality:

- 1. Accessing the Functionality:** You can find this functionality under the Services/Registration tab in the FO portal.
- 2. Using the Functionality:** The system-generated geocoded address will be displayed, and you can either accept it or update it as per your requirements. In cases where the system-generated geocoded address is unavailable, a blank will be displayed, and you can directly update the geocoded address.
- 3. Viewing the Geocoded Address:** The geocoded address details will be saved separately under the "Place of Business" tab on the portal. They can be viewed under My profile>>Place of Business tab under the heading "Principal Geocoded" after logging into the portal. Please note that this will not change your existing addresses.
- 4. One-time Activity:** The geocoding link will not be visible on the portal once the geocoding details are submitted by you. This is a one-time activity, and once submitted, revision in the address is not allowed. The functionality will not be visible to the taxpayers who have already geocoded their address through new registration or core amendment. Please note that the address appearing on the registration certificate can be changed only through the core amendment process. This geocoding functionality would not impact the previously saved address record.
- 5. Availability:** This functionality is available for normal, composition, SEZ units, SEZ developers, ISD, and casual taxpayers who are active, cancelled, and suspended.

GST News

Online gaming investors say 28% GST will make business 'unviable'

Date: 19-07-2023

Large investors in India's online gaming sector are planning to come together and write to the government, raising concerns about the decision to levy 28% GST on the full face value of the bets for real money online games, people aware of the discussions said.

These investors are likely to caution the government that this steep tax could make the industry unviable, while disproportionately hurting small startups, one of the people briefed on the matter told ET.

Read more at:

https://economictimes.indiatimes.com/tech/startups/after-gaming-company-founders-investors-to-raise-concerns-with-govt-on-gst/articleshow/101881375.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

GST – Judicial Precedents

1. Supply

Whether the activity of electric vehicle charging amounts to supply of goods or services?

M/s. Chamundeswari Electricity Supply Corporation Limited [AAR Karnataka]

Held: The activity of electric vehicle charging involves charging of a battery i.e, conversion of electric energy to chemical energy in the premises of the applicant's Public Charging Stations (PCS). Electricity which is a moveable property and classified as goods, is not supplied as such to the consumer, rather it is converted into chemical energy. Recipient or the consumer does not receive electricity as such as in the case with any other supply of goods or moveable property. Consumer receives only chemical energy stored in the battery. It is a case of putting to use electrical energy at the PCS for its conversion into chemical energy. The applicant also measures the Energy Charges in the number of units of energy consumed for undertaking the said activity of charging of battery and not the amount of electricity transmitted to the consumer for his further application or usage. Thus, the activity of charging of electric vehicle does not amount to supply of electricity or supply of any moveable property, but it is a supply of service.

The activity does not involve further distribution or transmission of electricity. Therefore, during the activity of charging of battery for use in electric vehicle, the charging station does not perform any of the activities namely transmission, distribution or trading of electricity, which require licence under the provisions of the Electricity Act 2003 and hence the charging of batteries of electric vehicles through charging station does not require licence under the provisions of the Electricity Act 2003 - the charging stations do not require a licence for charging the battery of an EV and thus the said stations are not involved in transmission, distribution or trading of electricity. Therefore, even on this count also the impugned activity amounts to supply of service.

As the activity of charging battery of electrical vehicle is considered as supply of service, the applicability of Notifications 2/2017-Central Tax (Rate) and 12/2017-Central Tax (Rate) both dated 28.06.2017 does not arise to the instant case. Further, charging the batteries of such electric vehicles amounts to charging of the batteries of motor cars and thus the impugned activity squarely gets covered under SAC 998714 taxable at the rate of 18% (CGST-9% and KGST-9%) as per Notification No. 11/2017-Central Tax (Rate).

GST – Judicial Precedents

2. Exemption

Whether PG/Hostel Rent paid by inhabitants qualify for GST exemption, since they are used as residential dwelling?

M/s. Srisai Luxurious Stay LLP [AAR Karnataka]

Held: The term ‘residential dwelling’ is neither defined in the Notification nor in the CGST Act 2017/rules made there under. However, the Education guide on Taxation of services, issued by the CBIC under erstwhile Service Tax Law, at para 4.13.1 while answering the question “What is a ‘residential dwelling’?” directed to interpret the term ‘residential dwelling’ in terms of the normal trade parlance, as per which it is a residential accommodation, but does not include hotel, motel, inn, guest house, camp-site, lodge, house boat, or like places meant for temporary stay. Therefore, it could be inferred from the above that residential dwelling is a residential accommodation meant for permanent stay and does not include guest house, lodge or like places. In the instant case, the applicant in his own admission claims to be providing PG/hostel services which inter alia refer to ‘paying guest accommodation/hostel’ services and are akin to guest house and lodging services and therefore can’t be termed as ‘residential dwelling’.

Further, it is also an admitted fact that the accommodation being provided by the applicant, out of the immovable property taken on rent and claimed as residential dwelling, does not have individual kitchen facility to each of the inhabitant and also cooking of food by inhabitants is not allowed, which is an essential characteristic for any permanent stay. On this count as well, the impugned accommodation being provided does not qualify to be a residential dwelling and thus the question of using the same as residence does not arise - the services being provided by the applicant do not qualify for exemption under SI No. 12 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended.

GST – Judicial Precedents

3. Supply

GST on recoveries made from employees for canteen services

Kothari Sugars and Chemicals Limited [AAAR Tamil Nadu]

Held: The AAAR held that amount recovered by the Appellant for canteen services shall not become perquisite forming part of employment contract in absence of explicit contractual agreement for canteen facility. The AAAR also held that benefit of non-levy of GST as explained in Circular No. 172/04/2022-GST dated July 6, 2022 could only be extended to the extent of cost borne by the Appellant and not amount recovered for canteen services. The AAAR upheld that nominal amount recovered from employees towards canteen services shall attract GST.

4. Cancellation of Registration

ITC eligibility where supplier's GST registration was cancelled before supplies were made

Jai Balaji Paper Cones v. AC [Madras High Court]

Held: In this case, supplier's registration was cancelled before it raised invoices for supplies made to the Petitioner. The Petitioner contended that it paid value of goods & GST to supplier and thus, its ITC cannot be denied. The High Court held that the Petitioner was not entitled to claim ITC as supplier did not pay tax to the Government. The Court further held that the Petitioner is entitled to recover amount paid from supplier.



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