



16 GST Circulars dt 26.06.2024 53rd GST Council Meeting

GST with Saradha


Head - Indirect Tax Advisory




GGSH & Co. Chartered Accountants

(1). 207/1/2024-GST dated 26-06-2024

Reduction of Government Litigation - Fixing Monetary Limits for Filing Appeals by Department:

- GSTAT (GST Appellate Tribunal) - Rs. 20 lakhs
- High Court - Rs. 1 crore
- Supreme Court - Rs. 2 crores
- Above threshold is only based on TAX amount
- For orders without tax - Only on interest/penalty/late fee, limit is aggregate of these.
- EXCLUSIONS  (above monetary limit not applicable):
 - Cases involving constitutional issues
 - Significant precedents
 - Adverse comments against the Government
- Non filing of appeal on the ground of monetary limit shall not amount to acceptance of the decision by the Government, which they can litigate in other appeals.

Objective: Reduced litigations; Certainty to taxpayers on the finality of disputes;  Devil lies in the details “EXCLUSIONS”!

(2). 208/1/2024-GST dated 26-06-2024

Special Procedure for Manufacturers of certain goods

Ref: Notification No. 04/2024-Central Tax dated 05.01.2024

Relevant Industry: Manufacturers of Pan-masala, Tobacco, Hookah, etc.

- Manufacturers to declare year of purchase if the make and model numbers of old or second-hand machines are unavailable.
- Chartered Engineer's certification for electricity consumption ratings when specifications are not available.
- Special procedure does not apply to manual packing operations, including post-harvest packing of tobacco leaves

Objective:

Clarity and liberalization on additional compliance imposed for the industry.

(3). 209/1/2024-GST dated 26-06-2024

Place of supply for goods, if recipient is UNREGISTERED PERSONS

Ref: As per Clause (ca) of Section 10(1) of IGST Act w.e.f. 01.10.2023:

- POS shall be location of recipient (Even State is sufficient) recorded in the invoice
- If no such address / State is recorded in the invoice, then POS is location of the supplier

Circular clarification:

- Place of supply will be the delivery address if it differs from the billing address in the invoice
- E-commerce transactions: For orders placed online, the delivery address determines the place of supply

Objective: To ensure tax revenue to the consumption state. But circular not in line with the rule.

(4). 210/1/2024-GST dated 26-06-2024

Valuation of Supply of Import of Services by Related Persons

Ref: Second proviso to Rule 28 - in case of supplies between related persons, where full ITC is eligible for the recipient, any value declared in the invoice would be accepted as the open market value (Note: can even be zero).

Circular clarification:

- Above rule applicable for import of services also
- No Consideration: No GST is applicable, if the recipient can claim full ITC, since valuation can even be zero.
- If consideration: Registered persons in India to issue a self-invoice for services received from related foreign entities and pay tax on a reverse charge basis.

Objective: Implementing purpose-oriented compliances, acknowledging the principles of revenue neutrality.

(5). 211/1/2024-GST dated 26-06-2024

ITC Time limit u/s 16(4) on RCM supplies received from unregistered persons

- Time limit for availing ITC on RCM is computed u/s 16(4) from the date of self invoice.
- Despite delay in RCM payment, if self invoice is raised only now, ITC can be availed now.
- For delayed in payment of RCM, interest would be leviable.
- But ITC cannot be denied on the ground that RCM pertains to an earlier period, for which the time limit under Section 16 (4) is already over.

Objective:

A relief for several disputes across the nation raised by the department and gives opportunity for taxpayers to ratify genuine errors by paying RCM liability with interest, without fear of ITC denial.

(6). 212/1/2024-GST dated 26-06-2024

Post supply discount - Issuance of Credit note by supplier and reversal of ITC by recipient

- Supplier can raise Credit Note u/s 34 with GST liability reversal
- Secondary discounts (post supply discount) can be reduced from value u/s 15(3)(b), subject to reversal of such ITC by the recipient. But no mechanism in GST portal for supplier to verify reversal by recipient.

Circular Clarification:

Till suitable mechanism is introduced in the GST portal, the suppliers can obtain self certificates from the recipients to prove the ITC reversal compliance by recipient:

- Self certification by recipient, If the reversal tax amount is less than Rs. 5 lakhs in a FY
- Certification from recipient's CAs / CMAs, if more than Rs. 5 lakhs

Objective:

Settles dispute on this issue, but imposes additional compliance burden to establish proof.

(7). 213/1/2024-GST dated 26-06-2024

Taxability of ESOP/ESPP/RSU Provided by a Company to Employees through Overseas Holding Company

- No GST on such allotment of shares, since “securities” are excluded from the definition of goods as well as services.
- Further, ESOP/ESPP/RSU are part of employment remuneration for the employees and hence not a supply as per Entry 1 of Schedule III.
- Reimbursement of costs for shares issued by foreign holding companies to employees of Indian subsidiaries is not subject to GST.
- RCM liability is applicable as import of services, if the foreign holding company charges any additional fee for facilitating / arranging to issue such shares.

Objective:

Ensuring uniform tax treatment in such transactions. Settles dispute partly and raises concerns on the RCM taxability of additional fees.

(8). 214/1/2024-GST dated 26-06-2024

Valuation of Life insurance services and ITC Reversal on the Premium

Ref: Rule 32(4) of CGST Rules - in case of life insurance policies, the value of supply is only that portion of the premium which is attributable to risk cover. Such portion of the premium which is attributable to investment / savings is not included in the value.

Circular clarification:

- The portion of life insurance premium attributable to investment / savings is not exempt supply and hence not subject to ITC reversal.
- Only the portion of the premium included in the taxable value requires ITC reversal

Objective:

Providing clarity aligning with the rules and a sense of relief to insurers.

(9). 215/1/2024-GST dated 26-06-2024

Taxability of salvage/ wreck value earmarked in the claim assessment of the damage caused to the motor vehicle

- GST liability based on the ownership of salvage after insurance claim settlement.
- Deduction of salvage value from claim amount is not a consideration in the hands of the insurance company for any supply and hence the insurance company is not liable to pay any GST on such deductions. The damaged motor vehicle is the property of the owner, who can dispose it of in any manner
- When the insurance company pays the full IDV without deducting salvage value, the salvage becomes the insurance company's property and GST is applicable on disposal of such damaged motor vehicle.

Objective:

A clarity to ensure uniformity in tax treatment across the industry.

(10). 216/1/2024-GST dated 26-06-2024

Clarification on GST liability and ITC in Cases Involving Warranty/Extended Warranty

Ref: Previous Circular No. 195/07/2023-GST dated 17.07.2023

Further clarifications given in Circular 216:

- Apart from FOC parts replacement, even if the entire goods is replaced as warranty, GST is not applicable and ITC reversal not required
- Applicable for both distributors and manufacturers replacing the goods
- If extended warranty against payment is provided by the supplier of the goods itself, it shall be a composite supply. But if the supplier of goods (Dealer / Distributor) and the supplier of extended warranty (manufacturer) are different, the supply of extended warranty would be a distinct supply of service and not a composite supply.

Objective:

Broadens clarity for manufacturers / dealers / distributors on warranty replacement of goods.

(11). 217/1/2024-GST dated 26-06-2024

ITC by Insurance Companies on Repair Expenses in Reimbursement Mode

Ref: Sec 17(5) - ITC on repairs & maintenance of motor vehicles are blocked (except insurance companies and manufacturers of motor vehicles).

- Distinguishing between cashless and reimbursement modes.
- Cashless insurance: Supplier of service (garage) would issue the invoice directly in the name of the insurance company, who would also make payment against such invoice and there would be no difficulty in availing ITC.
- Reimbursement model: ITC eligible
 - (i) entire bill value is reimbursed - full ITC available
 - (ii) If only partial settlement is made, proportionate ITC available
 - (iii) Vehicle owner cannot avail any ITC for his portion of expenses, since it is blocked.

Objective:

Provides guidelines for ITC eligibility based on the mode of repair expense reimbursement and invoice documentation, ensuring uniform tax treatment

(12). 218/1/2024-GST dated 26-06-2024

Taxability of Loan Transactions Between Related Persons

- Loans provided by an overseas affiliate to its Indian affiliate are **not considered a supply** of service if the consideration is only interest or discount
- Charges such as processing fee, administrative fee, etc. liable to GST
- No consideration - no requirement to determine such fee on the basis of open market value - Second proviso to Rule 28

Objective:

A major clarity on related party loan corporate loans; but opens up more questions around Corporate Guarantee

(13). 219/1/2024-GST dated 26-06-2024

ITC eligible on Ducts and Manholes Used in OFCs Network

- **ITC is available** for ducts and manholes used in optical fibre cable networks, classifying them as “Plant and Machinery”.

Objective:

Clarity and assurance on ITC availment. Aids to settle any past period disputes in this regard.

(14). 220/1/2024-GST dated 26-06-2024

Place of supply applicable for custodial services provided by banks to Foreign Portfolio Investors

Ref: Education Guide issued under Service Tax

- Such custodial services are not considering to have been provided to “account holders”
- Hence Section 13(8)(a) of the IGST Act is not applicable (place of supply as the location of the supplier)
- Section 13(2) is applicable - place of supply is the recipient’s location.
- Thus, such services provided to foreign portfolio investors would qualify as EXPORT OF SERVICE.

Objective:

Provides a greater sense of relief for claiming zero rated supply & refund benefit

(15). 221/1/2024-GST dated 26-06-2024

Time of Supply for Road Construction Services under HAM Model

- Road contracts under DBOT model (Design, Build, Operate and Transfer model) - contractor has to lay the road and then operate & maintain it for a fixed period.
- Consideration for such works are fixed under Hybrid Annuity Model (HAM) - part of the consideration during construction stage and remaining during O & M period in instalments (interest component for delay as well)

Clarified: This contract is a continuous supply of service and GST is payable only when the amounts are due.

Objective:

Settles disputes with huge tax demands on entire contract value once construction is completed, though annuity is not due. A great relief for road contractors!

(16). 222/1/2024-GST dated 26-06-2024

Time of Supply for Spectrum Allocation Services

- Time of supply for spectrum allocation services where payments are made in installments (Deferred Payments)
- Clarified that where the telecom operator chooses to make payments in instalments, during the contract period, the liability to pay GST under RCM would arise only as and when the instalments are due and paid.

Objective:

Ensures uniform tax compliance by settling ambiguity for the industry

Stay tuned for more...!

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This report is prepared with the intention to give clarity on the recent updates in the Indirect taxes. This documentation shall not be construed as a substitute for the legal regulations/ notifications/ Act / Circular. Any decision to be taken shall be made on obtaining professional advice.

For any clarification, kindly reach us to:

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