

SNR & COMPANY
CHARTERED
ACCOUNTANTS



GST UPDATE

20th July 2023

In line with the recommendations of the GST Council in its 50th meeting, the Central Board of Indirect Taxes & Customs (CBIC) issued multiple circulars on 17th July 2023 providing clarifications on various issues ranging from Cross Charge Vs ISD, Interest on wrong availment of IGST credit, GSTR-2A/ GSTR-3B ITC differences for 1st April 2019 to 31st December 2021, Taxability of warranty replacement etc. Aforesaid circulars have been summarized in this Update.

Circular No. and Particulars of Issue covered	Clarification issued by CBIC along with our Comments thereon
<p>192/04/2023-GST Interest U/s 50(3) on wrong availment of IGST Credit</p>	<p>In case of wrong availment and subsequent reversal of IGST credit, for applicability of interest U/s 50(3), it needs to be seen whether the aggregate balance in the electronic credit ledger (ECL) of IGST, CGST & SGST/UTGST has fallen below such wrongly availed ITC or not. In case, the aggregate balance has been more than the wrongly availed ITC, then no interest would be payable. However, if the aggregate balance is lower than the wrongly availed ITC, then interest would be payable on a differential amount.</p> <p>Further, it is clarified that the balance of GST Compensation Cess in ECL would not be included in the above-specified interest calculation.</p> <p>SNR Comments:</p> <p>This is a welcome clarification on the anomaly arising due to the manner of utilization of ITC available under the heads IGST, CGST, and SGST/UTGST. Section 49A of CGST Act read with Rule 88A of CGST Rules, specifically states that credit of CGST and SGST can only be used once credit of IGST is fully exhausted. Thus, the wrong availment of IGST credit would generally result in utilization as well due to a specific order of utilization. Now, it has been clarified that for checking wrong utilization, the aggregate ITC balance of IGST, CGST, and SGST/UTGST needs to be considered.</p>

<p>193/05/2023-GST Difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period from 1st April 2019 till 31st December 2021</p>	<p>Through this circular, CBIC has extended the applicability of the procedure for dealing with differences between ITC claimed in GSTR-3B and as available in GSTR-2A specified through Circular No.183/15/2022-GST dated 27th December 2022 to the period 1st April 2019 to 31st December 2021. However, it has been stated that since rule 36(4) was made operational from 9th October 2019 inter alia permitting only specified additional credit (20%/10%/5% of eligible credit) over and above the ITC available in GSTR-2A, thus even after complying with the procedure as per Circular 183/15/2022, only following additional ITC can be claimed over and above the credit reflected in GSTR-2A:</p> <ul style="list-style-type: none"> • 1st April 2017 to 8th October 2019 – Without any limit • 9th October 2019 to 31st December 2019 – 20% of eligible credit as per GSTR-2A • 1st January 2020 to 31st December 2020 – 10% of eligible credit as per GSTR-2A • 1st January 2021 to 31st December 2021 – 5% of eligible credit as per GSTR-2A <p>Since w.e.f. 1st January 2022, clause (aa) was inserted in subsection (2) of Section 16 of the CGST Act along with an amendment of rule 36(4), no ITC is being allowed unless reported by the supplier in GSTR-1 and communicated to the recipient in GSTR-2B, thus such cases of additional claim would not arise in future periods.</p> <p><u>The procedure specified through Circular No.183/15/2022-GST dated 27th December 2022 (to be followed for the period from 1st April 2019 to 31st December 2021).</u></p> <p>Cases covered:</p> <ol style="list-style-type: none"> a) GSTR-1 not filed but GSTR-3B filed by the supplier b) GSTR-1 and GSTR-3B filed but particular invoices not reported in GSTR-1 c) B2B supply reported as B2C supply in GSTR-1 d) GSTR-1 and GSTR-3B filed but the wrong GSTIN entered in GSTR-1 <p>Procedure prescribed:</p> <p>The department shall verify such invoices and verify satisfaction of conditions specified U/s 16 for eligibility and reversal required U/s 17 & 18 of the CGST Act. Further, if the supplier-wise difference is more than INR 5 Lakhs, then a CA/CMA certificate would be required otherwise supplier's self-certification would suffice.</p> <p>For cases with wrong GSTIN, in addition to the above, the proper officer of the actual recipient shall intimate to the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly for disallowance/ reversal of such ITC if claimed. However, the allowance of ITC to the actual recipient shall not wait for the completion of that action.</p> <p>SNR Comments:</p> <p>Though this is a welcome move as it would bring clarity to the taxpayer as well as adjudicating authority determining GST liability in such issues for the period 1st April 2019 to 31st December 2021. However, we have observed that getting a certificate from the supplier after the lapse of 3-4 years is a herculean task especially due to the closure/ relocation of many small businesses due to Covid-19, etc. Further, limiting the credit from 9th October 2019 due to the application of rule 36(4) would cause challenges if there are genuine errors by the supplier while filing its GSTR-1 and due GST liability has been discharged. This discretion should have been provided to Proper Officer to be considerate in genuine issues.</p>
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<p>194/06/2022-GST TCS liability U/s 52 in case of multiple E-Commerce operators in one transaction</p>	<p>In the event of multiple E-Commerce operators (ECO) in a single transaction, following clarification has been issued to determine the ECO responsible for collection of TCS:</p> <ul style="list-style-type: none"> • Where the supplier side ECO himself is not the supplier and finally releases the payment to supplier, then this supplier side ECO shall be required to comply with compliances under section 52 including collection of TCS. In this case buyer side ECO would not be required to do any compliance U/s 52 or to collect TCS • Where the supplier side ECO himself is the supplier then buyer side ECO shall be required to comply with compliances under section 52 including collection of TCS while releasing payment to such supplier side ECO.
<p>195/07/2023-GST Availability of ITC in respect of warranty replacement of parts and repair services during warranty period</p>	<p>During the warranty period, replacement of parts and repair services is generally provided free of cost either by the Manufacturer himself or by the distributor. Issues regarding taxability and credit reversal have been ongoing since the Pre-GST era. Now, the Board has issued the following clarifications:</p> <p><u>1. Manufacturer himself provides free replacement of parts and/ or repair services to customers under warranty</u></p> <p>No GST is chargeable on such replacement of parts and/ or repair services during the warranty period provided free of cost since their consideration is already included and taxed at the time of supply of goods.</p> <p><u>2. Whether a manufacturer is required to reverse ITC on such replacement of parts or repair services as part of warranty without consideration</u></p> <p>These supplies have already been taxed at the time of supply of goods and thus are not an exempt supply and thus manufacturer is not required to reverse ITC in respect of said replacement of parts or on the repair services provided.</p> <p><u>3. Distributor provides replacement of parts and / or repair services without any consideration from the customer, as part of warranty on behalf of the manufacturer</u></p> <p>No GST would be payable by the distributor on the said activity of providing replacement of parts and /or repair services without any consideration being charged from the customer.</p> <p><u>4. In the above scenario whether there would be any supply between the distributor and manufacturer, or the distributor would be required to reverse ITC</u></p> <ul style="list-style-type: none"> • In case the distributor raises a tax invoice to the manufacturer towards parts replaced and/or repair services, then GST would be payable as per invoice and no ITC is required to be reversed. • In case, the manufacturer provides the parts to the distributor for a 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 ITC is required to be reversed by the Manufacturer. • In case, the distributor replaces the parts to the customer using the supply already received from the manufacturer and the manufacturer issues a credit note as per section 34(2) of the CGST Act. Then the manufacturer can adjust his tax liability provided the distributor has reversed his ITC.

<p>195/07/2023-GST Availability of ITC in respect of warranty replacement of parts and repair services during warranty period</p>	<p><u>5. Distributor provides repair services to the customer without any consideration but charges the manufacturer for such repair services</u></p> <p>There is a supply of service by the distributor and manufacturer being the recipient and thus GST would be payable on such provision of service.</p> <p><u>6. Taxability of extended warranty at the time of original supply or just before the expiry period</u></p> <ul style="list-style-type: none"> • If an extended warranty is opted at the time of original supply, then it shall become a composite supply with goods being the principal supply and GST at the rate applicable on goods would be payable on the extended warranty as well. • If an extended warranty contract is entered at any time after the original supply, then it shall be treated as a separate contract and GST would be payable according to the nature of the contract (supply of goods, services or composite supply)
<p>196/08/2023-GST Taxability of shares held in a subsidiary company by a holding company</p>	<p>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. Therefore, the activity of holding of shares of subsidiary 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.</p>
<p>197/09/2023-GST Clarification on refund related issues</p>	<p><u>1. Refund of accumulated ITC U/s 54(3) as available in GSTR-2B</u></p> <p>In accordance with section 16(2)(aa) read with rule 36(4), w.e.f. 1st January 2022, ITC is permissible only if it is appearing in GSTR-2B, thus para 36 of Circular No.125/44/2019-GST dated 18th November 2019 as amended by Circular No.135/05/2020-GST dated 31st March 2020 shall accordingly stand modified for refunds of ITC pertaining to periods on or after 1st January 2022.</p> <p><u>2. Requirement of undertaking in Form RFD 01</u></p> <p>In view of the omission of Section 42 w.e.f. 1st October 2022 and Form GSTR-2 and GSTR-3 being also omitted from CGST rules, it has been decided to update Para 7 of Circular No.125/44/2019-GST dated 18th November 2019 along with an undertaking in Form RFD 01 as follows:</p> <p><u>Para 7:</u> "The applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with an interest in case it is found subsequently that the requirements of clause (c) of subsection (2) of section 16 of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted electronically along with the refund claim."</p> <p><u>Undertaking in FORM GST RFD 01:</u> "I hereby undertake to pay back to the Government the amount of refund sanctioned along with interest in case it is found subsequently that the requirements of clause (c) of subsection (2) of section 16 of the CGST/ SGST Act have not been complied with in respect of the amount refunded."</p>

<p>197/09/2023-GST Clarification on refund related issues</p>	<p>3. Manner of calculation of Adjusted Total Turnover</p> <p>It is clarified that consequent to explanation having been inserted in sub-rule (4) of rule 89 of CGST rules, the value of goods exported out of India to be included while calculating “adjusted total turnover”.</p> <p>4. Refund to exporter on subsequent compliance with sub-rule (1) of Rule 96A</p> <p>In cases where exporters have voluntarily made payment of due integrated tax alongwith interest due to goods not being exported or consideration for export of services not realised within prescribed time frame, whether subsequent to export of goods or realisation of consideration towards export of services, can those exporters claim refund of integrated tax and interest paid earlier.</p> <p>It is being clarified that the said exporters would be entitled to claim refund of integrated tax paid earlier though no refund of interest shall be admissible. Further, the refund application may be made under the category “Any Other” till the time the correct category “Excess payment of tax” is available on the portal.</p>
<p>198/10/2023-GST Clarification on requirement of E-invoice to Government departments or establishments/ Government agencies/ local authorities/ PSUs which are solely registered for doing compliance with TDS provisions under Section 51 of CGST Act</p>	<p>These persons though registered for compliance of TDS provisions U/s 51 of CGST Act would be treated as registered person under GST Law and thus E-invoices need to be issued for supplies made to them by a supplier who is liable to issue E-invoice under rule 48(4) of CGST Rules.</p>
<p>199/11/2023-GST Clarification regarding ISD or Cross Charge mechanism to be followed in relation to third party services obtained or internally generated services</p>	<p>1. Whether Head office (HO) can avail ITC in respect of common services procured from third parties and whether HO need to distribute the ITC by following Input Service Distributor (ISD) route or it can raise tax invoice as well (Cross Charge).</p> <ul style="list-style-type: none"> • HO would have an option to distribute such ITC either through cross charge or ISD mechanism. • ISD route is not mandatory under present GST law, however in case, ISD is opted, then ISD registration is mandatorily required. • In both ISD and Cross Charge, the ITC could be distributed or transferred only if such services pertain to the concerned offices and not otherwise. • In case Cross charge is being done through raising appropriate invoice, then ITC shall be available to HO. However, in the case of availing ITC on services pertaining to distinct person without cross charge, then that ITC shall not be permissible.

<p>199/11/2023-GST Clarification regarding ISD or Cross Charge mechanism to be followed in relation to third party services obtained or internally generated services</p>	<p><u>2. In the case of internally generated services, whether the invoice is required to be raised by HO and whether all cost components including salary cost to be added if Full ITC is available to BO</u></p> <ul style="list-style-type: none"> In the case where Full ITC is eligible to recipient BO, the value declared on the invoice by HO to the said BO shall be deemed to be the open market value of such services in accordance with the second proviso to Rule 28, whether all the costs including salary cost has been considered or not. Even in cases, where no invoice is issued by the HO, it is clarified that the value of such services shall be deemed as Nil by HO to BO and would be deemed as open market value in accordance with Rule 28. <p><u>3. In the case of internally generated services, whether the invoice is required to be raised by HO and whether all cost components including salary cost to be added if Full ITC is not available to BO</u></p> <ul style="list-style-type: none"> In cases where Full ITC is not available to BO, it is clarified that the cost of salary of HO employees involved in providing service to BO is not mandatorily required to be included in the taxable value.
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