

July 04, 2024

Circulars Released by CBIC in follow up of 53rd GST Council Meeting

Background

Following the 53rd Meeting of the GST Council convened on June 22, 2024, a plethora of recommendations were introduced for easing the tax and compliances burden for the taxpayers. As invigorated by our SHM Insight released recently, we are pleased to present the most recent update in the tax world pertaining to the circulars issued by the Central Board of Indirect Taxes in lieu of the recommendations proposed by the council. A glimpse of the trailing insights is as follows:

S.No.	Particulars	Details
1.	Taxability of ESOP/ ESPP/ RSU	In case of Employee Stock Option Plan (ESOPs), since the reimbursement by the domestic subsidiary company to the foreign holding company is for transfer of securities/shares, there is no supply of service and hence, not leviable to GST.
2.	Reversal of ITC in the case of Credit notes.	In case of GST credit notes for post supply discount, the supplier needs to obtain self- certificate/ Chartered Accountant certificate certifying that the recipient has reversed the proportionate input tax credit (ITC) in respect of such credit notes.
3.	Place of Supply in the case of unregistered person where billing and delivery address is different.	Where the invoice mentions billing address as well as delivery address, the place of supply in case of supply of goods to an unregistered person shall be the delivery address.
4.	Valuation of import of services from related person.	In cases where full ITC is available to the recipient, if the invoice is not issued by the domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil and may be deemed as open market value.
5.	Monetary Limit on Appeals	The monetary limits have been prescribed for filing appeal before Tribunal (INR 20 lakhs), High Court (INR 1 crore) and Supreme Court (INR 2 crores). Principles have been laid down for determining such monetary limits in various scenarios. Further, certain exceptions are provided where the said monetary limits will not apply.

In this Tax alert, we have summarized the key circulars issued and the clarifications in GST law and GST rates related changes.

Section I: Place of Supply:

Case 1: Where invoice and billing address is different in the case of unregistered person (Circular No. 209/3/2024-GST dated 26 June 2024)

- Section 10(1)(ca) of IGST Act provides that place of supply in case of supply of goods to an unregistered person shall be the location as per the address recorded in the invoice issued in respect of such supply.
- There are certain cases where billing address and delivery address are different
- The circular clarifies that where the address of delivery of goods recorded on the invoice is different from the billing address of the unregistered person on the invoice, the place of supply of goods will be the address of delivery of goods recorded on the invoice.
- It is stated that the supplier may record the delivery address as the address of the recipient on the invoice for the purpose of determining the place of supply of the said supply of goods.

Case 2: Custodial services provided by banks to Foreign Portfolio Investors (FPIs) (Circular No. 220/1/2024-GST dated 26 June 2024)

- In terms of the IGST Act, place of supply of custodial services is determined by the location of the service provider. Hence, the services are required to be taxed.
- Banks offer custodial services to FPIs, encompassing activities like maintaining securities accounts and safekeeping, as defined by the SEBI regulations.
- The circular states that these services should not be considered as services provided to 'account holders' under section 13(8)(a) of the IGST Act. The place of supply for such services should be determined under the default provision, which is sub-section (2) of section 13 of the IGST Act.
- The circular provides details on the definition of custodial services, the types of securities FPIs can invest in, and the main activity of banks in providing custodial services. The circular also specifies that similar provisions were there under the service tax regime.

Section II: Issues pertaining to Availability and Reversal of Input Tax Credit

Case 1: Availability of ITC on ducts and manholes used in network of Optical Fiber Cables (OFCs) (Circular No. 219/13/2024-GST dated 26 June 2024)

- Ducts and manholes are covered under the definition of “plant and machinery” as they are used as part of the optical fiber cable network for making outward supply of transmission of telecommunication signals from one point to another. Further, they have not been explicitly excluded from the definition of plant and machinery.
- It is now clarified that ducts and manholes are basic component for the OFC network, crucial for signal transmission. Therefore, ITC on these components is not restricted under clauses (c) and (d) of Section 17(5).
- Accordingly, telecom businesses can claim ITC on these components of expenditure.

Case 2: ITC available only on approved Reimbursements in case of Insurance Companies (Circular No. 217/11/2024-GST)

- ITC is available to insurance companies for the motor vehicle repair expenses incurred by them in the case of the reimbursement mode of claim settlement. This is because the insurance company qualifies as a recipient and the consideration includes payment made by third person.

- The garages issue the invoices on the insurance company and therefore, such insurance company will be treated as recipient of the service.
- Where two separate invoices are issued, one to the insurance company for approved claim amount and other to the policyholder, the insurance company is entitled to claim ITC on the invoice issued to it subject to reimbursement of claim amount to policyholder.
- Accordingly, it is clarified that ITC is available to insurance companies in respect of motor vehicle repair expenses incurred by them in case of reimbursement mode of claim settlement.
- Further, where invoice for full amount is issued to the insurance company, ITC is available only to the extent of reimbursement of the approved claim cost to the insured.

Case 3: Whether premium portion not included in taxable value pertain to Non-Taxable or exempt supply for Reversal of ITC

- It is clarified that the portion of premium which is not includible in taxable value as per Rule 32(4) does not pertain to non-taxable or exempt supply. Therefore, no reversal of ITC in respect of the said amount is required.

Section-III Issues Involving Taxability under GST

Case-1: Taxability of Salvage or wreckage value earmarked in case damage caused to motor vehicle (Circular No. 215/9/2024-GST dated 26 June 2024)

- The insurance companies engaged in providing insurance on motor vehicles insure the cost of damages/ repairs of motor vehicles incurred by policyholders.
- Doubts were raised as to whether GST is payable by the insurance companies on the salvage value earmarked in the claim assessment of the damage caused to the motor vehicle.
- Deductions made by the insurance company from the final claim amount paid to the insured is in the form of deductibles which is pre-decided and mutually agreed by the insured and the insurer, which would also determine whether the salvaged goods are transferred to the insurance company.
- Clarification is provided given two situations as expounded:

Case	Condition	Clarification
1	Where salvage value is deducted from the settlement amount in case of total loss as per terms of the policy.	<ul style="list-style-type: none">• Salvage Wreck remains the property of the insured.• Deduction of the value of salvage from the insurance settlement amount cannot be said to be consideration for any supply being made by insurance company.• No liability under GST on insurance company in respect of salvage.
2	Where policy provides for settlement of claim on full IDV (without deduction of salvage value)	<ul style="list-style-type: none">• Salvage becomes the property of insurance company.• Outward GST liability on disposal/sale of the salvage is to be discharged by the insurance company.

Case 2- Taxability of ESOP, ESPP or RSU provided to employees through overseas holding company (Circular No. 213/7/2024-GST dated 26 June 2024)

- Indian companies provide for allotment of securities of their foreign holding company to their employees as part of the compensation package. In such cases, the securities of foreign holding company are allotted directly to the concerned employee, and the cost of such securities is reimbursed by the Indian company to the foreign holding company.
- Securities like shares are not classified as goods or services under GST law, so transactions involving their sale/ purchase/ transfer are not subject to GST.

Case 3 – Taxability on providing of loan by an overseas affiliate to Indian Affiliate (Circular No. 218/12/2024-GST)

- Interest or discount charged on loan amounts is exempt from GST under S. No. 27(a) of Notification dated 28 June, 2017.
- When no consideration is charged for processing, administering or facilitating a loan, processing fees, which are generally non-refundable, no service or supply exists between related persons for processing, administering or facilitating loans, and no GST is applicable as per section 7(1)(c) read with Schedule I of the CGST Act.
- It is thus clarified that reimbursements by Indian company to their overseas holding company for securities are based on market value without extra fees. Since securities are not goods or services, it is clarified that these reimbursements are not towards a supply transaction under GST.
- However, if the foreign company charges an additional amount for facilitating the securities transaction, GST shall get applicable on such amount (additional) paid by the Indian company.
- Thereby, no service or supply exists between related persons for processing, administering or facilitating loans, and no GST is applicable as per section 7(1)(c) read with Schedule I of the CGST Act.

- However, when a fee is charged for processing, administering or facilitating a loan, it qualifies as consideration for the supply of services and is subject to GST.

Case-4: Valuation of Supply of import of services where recipient is eligible for Full ITC (Circular No. 210/4/2024-GST dated 26 June 2024)

- The circular seeks to clarify that earlier circular dated 17 July 2023² regarding the supplies of services between distinct persons in cases where full ITC is available to the recipient, is equally applicable for the import of services between related persons.

Section-IV Compliance Related Issues

Case-1: Time limit under section 16(4) of the CGST Act for RCM supplies received from unregistered persons (Circular No. 211/5/2024-GST dated 26 June 2024)

- Section 16(4) of the CGST Act links the time limit for ITC availability with the financial year (FY) to which the invoice or debit note pertains.
- In instances involving inward supplies received from unregistered suppliers where tax is required to be paid under reverse charge mechanism (RCM), the recipient of the supply needs to issue a self-invoice in accordance with Section 31(3)(f) of the CGST Act.
- It is hereby clarified that the time limit for availment of ITC under the provisions of Section 16(4) of the CGST Act shall be the

financial year in which the recipient issues the self- invoice.

- Accordingly, the value of the said supply of services declared in the invoice will be deemed to be the open market value of such services, **For such imported services, the recipient in India must pay tax under the reverse charge mechanism and issue a self- invoice as required under law.**
- The eligibility of said ITC will remain subject to the payment of the tax and fulfilment of other prescribed conditions and restrictions.
- In cases, where the said invoice is issued after the time of supply, the recipient shall also be required to pay interest on such delayed payment of tax. Delayed issuance of invoice by the recipient may also be liable to penal action under the provisions of Section 122 of the CGST Act.

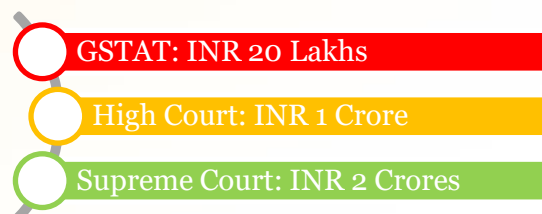
Case-2: Mechanism for verification of proportionate reversal of ITC for post-sale discount (Circular No. 212/6/2024-GST dated 26 June 2024)

- Section 15(3) of the CGST Act allows exclusion of post-sales discount (through issuance of a tax credit note) from the value of taxable supply. This exclusion is inter-alia contingent upon a condition requiring the recipient to reverse proportionate ITC. No mechanism is however put to place towards verification of such ITC reversal.

- The circular states that till a functionality or facility is made available on the common portal to verify compliance with section 15(3)(b)(ii) of the CGST Act, the supplier may procure a certificate issued by a Chartered Accountant (CA) containing a UDIN.
- This should certify that the recipient has proportionately reversed ITC at their end for the credit note issued by the supplier. The suppliers can obtain self- undertaking from the recipients (if the reversal amount is less than INR 0.5m in a FY).
- The circular further states that the certificates or undertakings will be treated as a suitable and admissible evidence for the purpose of section 15(3)(b)(ii) of the CGST Act.

Case-3: Fixing of Monetary Limits for filing appeals (Circular No. 207/1/2024-GST dated 26 June 2024)

- The circular has notified, subject to certain principles, exclusions, monetary limits for filing of appeals under GST by the department before GSTAT, High Court, and Supreme Court.



- It has also been clarified that non-filing of appeal based on the above monetary limits, will not preclude the tax officer (TO) from filing appeal or application in

any other case involving the same or similar issues in which the tax in dispute exceeds the monetary limit or case involving the questions of law.

- Further, the monetary limits would not apply to various cases inter alia including a case where the provisions of the GST law (including rules, circular, etc) were held to be ultra vires the Constitution of India, or where the matter relates to specified issues (viz. valuation, classification, refund or place of supply or any other recurring issue involving interpretation).

Section-V: Matters pertaining to Time of Supply (TOS)

Case-1: Services of spectrum usage and other similar services procured by telecom operators (Circular No. 222/16/2024 GST dated 26 June 2024)

- Services provided by DoT is a continuous supply of services, in the cases where the telecom operator chooses the option to make payment in instalments and telecom operator is liable to pay GST under RCM as per the ToS determined as under-
 - ✓ If the telecom operator makes full upfront payment for such services – ToS will be the date when the payment is made or due.
 - ✓ If deferred payment in specified installments are made by telecom operators – ToS shall be earliest of the due date of payment or the actual date of payment.
- The circular clarifies that the Frequency Assignment Letter issued by the DoT

which details the auction results and payment options, is not considered as an invoice but a bid acceptance document.

- Hence, the GST liability arises at the time the instalment payments are due or made, whichever is earlier.

Case-2: Annuity received for construction of road and operation & maintenance (O&M) services supplied by concessionaire under the Hybrid Annuity Model (HAM) (Circular No. 221/15/2024-GST dated 26 June 2024)

- Under Hybrid Annuity Model (HAM), the concessionaire has to construct a new road and provide operation and maintenance (O&M) for contracted period. Payment installments are spread over such contracted period.
- Thus, where invoice is issued on or before specified date for payment or completion of an event, TOS would arise at the time of:
 - ✓ Issuance of invoice, or
 - ✓ Receipt of payment, whichever is earlier.

Clarification

- If the invoices are not issued on or before the specified date or date of completion of the event as specified in the contract, the tax liability will arise on the date of provision of the said service or date of receipt of payment whichever is earlier.
- Installments or annuity payable by NHAI to the concessionaire includes the interest component. The interest amount should also be includible in the taxable value for the purpose of payment of tax on the

annuity or instalment in terms of section 15(2)(d) of the CGST Act.

- Annuity payments from NHAI to concessionaires include an interest component. This interest is also includible in the taxable value for GST purposes per sec. 15(2)(d) of CGST Act.

Case-3: Under warranty replacements and extended warranties (Circular No. 216/10/2024-GST dated 26 June 2024)

- Clarification for replacement of parts under warranty was issued vide Circular No 195/07/2023-GST dated July 17, 2023. It has been clarified that the said circular shall also be applicable to 'goods' as such covered under warranty and not only parts, including replacement of goods carried out by a distributor on behalf of the manufacturer.
- If the distributor replaces the parts or goods during warranty, from his own stock on the behalf of the manufacturer and gets replenishment of the same from the manufacturer, the same treatment will apply, i.e. the manufacturer is neither liable to charge any GST nor liable to reverse any ITC.
- If extended warranty against payment is provided by the supplier of the goods itself at the time of original supply, it will be a composite supply, but if the supplier of goods (dealer or distributor) and the supplier of extended warranty (manufacturer) are different, the supply of

extended warranty would be a distinct supply of service and the supplier of extended warranty will be liable to discharge GST.

- The previous circular had already clarified that no GST is applicable when the replacement parts are provided by the manufacturer with no consideration. Now, this circular has been extended to entire goods and not just parts. The delinking of the supply of goods and extended warranty by dealers aligns with the industry practices and distribution model followed.

Key Takeaways

- *The Circulars presented by the Central Board of Indirect Taxes cement the applicability of the recommendations made during the 53rd GST Council Meeting.*
- *The circulars presented provide a clear picture of the various issues alleviated and a systematic approach to such issues such as clarification in case of ITC available to Insurance Companies where ambiguity lies in availing such ITC on whole invoice amount or reimbursement basis.*
- *While these circulars provide clarity under GST, it is essential to adopt a comprehensive approach by considering not only GST implications but also evaluating transactions from an income-tax and transfer pricing standpoint especially in the case of secondments, related party transactions. This holistic analysis ensures compliance and mitigates potential tax risk.*