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SINCE 1911



3 July 2024

## **53rd GST Council Meeting – Analysis of Recommendations**

## INTRODUCTION

The 53<sup>rd</sup> GST Council meeting, which took place after an unnerving lapse of almost 8 (eight) months was amongst the biggest socio-economic events, both for this calendar year and in the third term of the incumbent. During this wait, the list of issues kept piling up, some of which were even critical from an investor sentiment perspective. Though the council met for a relatively shorter duration, it managed to clear a lot of pendency and delivered on substantive outcome addressing ways to reduce disputes, easing the compliance and rationalising the rates for goods for mass relevance (such as milk cans, paperboard cartons, sprinklers, solar cookers, and services (such as railways and hostel accommodation)).

### I. TAX DISPUTE AND SETTLEMENT:

#### 1. Monetary Limit fixed for filing of departmental appeals [Circular No. 207/1/2024-GST]

- The Central Board Of Indirect Taxes and Customs (CBIC), in pursuance of its efforts to optimise the utilisation of judicial resources and continuing with its efforts to reduce the litigation for the department has fixed the following monetary limits for filing of appeals, applications or Special Leave Petitions by the department before the appellate forums:

Forum	Monetary Limit (INR)
GST Appellate Tribunal	20 Lakhs
High Court	1 Crore
Supreme Court	2 Crores

- The manner of determination of a dispute's qualification with the above monetary limits is prescribed as follows:

Demand Particulars	Computation
GST / GST + Interest + Penalty	Aggregate GST amount
Only Interest	Aggregate Interest
Only Penalty	Aggregate Penalty
Only Late Fee / Fine	Aggregate Late Fee / Fine
Interest + Penalty + Late Fee / Fine	Total of all three amounts
Refund	Aggregate Refund amount
Composite Orders (involving disposal of two or more demand notices or appeals)	Aggregate of GST / Interest / Penalty / Late Fine / Fee involved in all orders / appeals, as per above rules.

- Exceptions to the above prescribed monetary limit qualification for filing departmental appeals include the following:
  - Cases entailing challenge to the constitutional validity or vires of any statutory provisions (including rules, orders, notification, instructions etc., issued by Government).
  - Cases pertaining to valuation, classification, refunds, place of supply, or any issue involving interpretation of any statutory provisions which is of a recurring nature.
  - Cases where any strictures or adverse comments have been passed or cost has been imposed against the department or any of its officers.

- d. Any other case, where Central Board of Indirect Taxes deems fit to file an appeal in the interest of justice or revenue.
- It has been specifically clarified that non-filing of an appeal by the department in pursuance of the monetary limitations will not hold any precedential value or presumption against the department.

**Comment:** The monetary limits set out for departmental appeals is a welcome measure and will especially protect the small taxpayer. However, the wider latitude and discretion granted to the board is likely to dampen the intentions in case of non-judicious exercise thereof.

2. **Time Limit under Section 16(4) for availing ITC on supplies from unregistered persons [Circular No. 211/5/2024-GST]**

The GST paid on transactions with unregistered persons (such as related overseas entity) at a later date on account of adjudication of any tax dispute involving interpretation of statutory provisions (i.e., cases other than fraud, wilful misstatement and/or fraud) or departmental clarification, then time limit for availing input tax credit (ITC) thereon will be computed from date of self - invoice raised by a registered recipient post such final adjudication or clarification, and not the time of actual supply transaction. Illustratively: GST liability for a supply in FY 2017 - 18 is determined in FY 2023 - 24, then the time limit for ITC availment as per Section 16 of the Central Goods and Services Tax Act, 2017 (CGST Act) (i.e., date of filing of annual return) will be computed from self - invoice raised in FY 2023 - 24 and not FY 2017 - 18.

However, such registered recipients would be liable for payment of interest due to delayed GST payment and may be subject to penalty / fine for belated issuance of invoice.

**Comment:** The above clarification is a

welcome move and underscores the underlying philosophy of the seamless credit, under the GST framework. It entitles the taxpayer to avail the input tax credit of the tax paid under reverse charge, even though at a belated date, subject to issuance of invoice. This clarification will provide relief to the taxpayers facing disputes especially in context of secondment arrangements, IGST exemption vis-à-vis pre-import condition under advance authorisation scheme etc. where the GST liability has arisen post dispute adjudication by the Supreme Court. In such cases, the time limit for availing ITC will be computed of date of self - invoicing / GST payment by registered recipient instead of actual event of supply computed as per time of supply of provisions.

II. **TRADE AND COMPLIANCE FACILITATION:**

3. **Clarifications on the special procedure for the manufacturers of the specified commodities for which the GST Council recommended capacity-based taxation and special composition scheme vide its 50th meeting dated 11 July 2023. [Circular No. 208/2/2024-GST]**

- The council in pursuance of its 50<sup>th</sup> meeting, had recommended to notify special procedure under Section 148 of the CGST Act, 2017 by manufacturers of specified commodities for registration of the machines, maintenance of records or inputs and production and submission of a special monthly statement. Thereafter, the government issued Notification No 30/2023 - Central Tax dated 31 July 2023 which was later replaced by Notification No. 4/2024 - Central Tax dated 5 January 2024 (brought into effect from 15 May 2024). In terms thereof, manufacturers of variety of tobacco products specified thereunder, were, *inter alia*, required to register their packing machines. In relation thereof, the CBIC has provided clarifications regarding following reporting requirements in respect of the machinery, power consumption, MRP etc.:

- a. Information to be provided in case

of non-availability of following details of machinery or goods produced therefrom:

- **Make Number (Optional filed in relevant form)** - Year of Purchase.
- **Machine Number (mandatory field in relevant form)** - Any numeric number to clearly identify the machine.
- **Electricity Consumption Rating:** Hourly electricity consumption calculated and certified by a Chartered Engineer (having COP from Institute of Engineers India) and uploading such report with the relevant form.
- **MRP on goods (for example in exports):** Sale price of such goods.

b. In case of use of more than one machines for packing, the details of machine used for final packing of the package of product.

- The special procedure applies to all persons in the manufacturing process including a job worker / contract manufacturer. In case job worker / contract manufacturer are unregistered, then Principal Manufacturer needs to comply with reporting requirements.
- The special reporting requirements are not applicable to, (a) manufacturing units in SEZ and (b) manual packing based units.

**Comment:** The above clarification will address the practical challenges being faced by the relevant manufacturers on account of missing information relevant for the registration of machines.

#### 4. [Place of Supply when goods supplied to unregistered person \[Circular No. 209/3/2024-GST\]](#)

- The place of supply in case of supply made to an unregistered person, under Section 10(1)(ca) of the Integrated Goods and Service Tax Act, 2017 was stated to be the state of the recipient or in case of absence of such information,

location of supplier itself.

- To address the bill to one location ship to another location situation for unregistered recipients, it has been clarified that the delivery address would be deemed to be place of supply and should be specified as such in the invoice.

**Comment:** The above clarification addresses the challenge being faced by the e-commerce entities. This clarification would require them to update their invoicing infrastructure to comply with above requirements.

#### 5. [Mechanism for providing evidence for excluding post sale discounts from taxable value. \[Circular No. 212/6/2024-GST\]](#)

- Exclusion of post supply discount offered through credit notes, from the value of taxable supply is subject to reversal of ITC attributable to such discount amount. However, there is no process or facilitation measure prescribed for such determination of ITC reversal, which led to friction between the revenue and the eligible tax-payers. To address this situation, the CBIC has provided the following mechanism to evidence the reversal of ITC by the recipient:

a. Supplier may source a certificate from the recipient, issued by a Chartered Accountant (CA) or a Cost Accountant (CMA), certifying proportionate reversal of ITC to the extent of the credit note.

b. In case the annual (FY) aggregate discount given by the supplier to the relevant recipient is less than INR 5 Lakhs, the supplier can procure undertaking from recipient for reversal of ITC instead of the CA / CMA certificate as highlighted in point (a) above.

c. Suppliers to verify the reversal of ITC by the recipient, the supplier are not required to undertake the following:

- The CA / CMA certificate must include following details:
  - a. Details of invoice (invoice number, date etc);
  - b. Details of credit notes (credit note number, date etc);
  - c. Amount of ITC reversal;
  - d. Details of Form DRC - 03 / return / other relevant document;
  - e. Unique Document Identification number which can be verified from ICAI website <<https://udin.icai.org/search-udin>> or ICMAI website <<https://eicmai.in/udin/VerifyUDIN.aspx>>.
- Such certificates / undertakings shall also be applicable, both for past and forthcoming transactions, and in any inquiries, investigations etc., wherever such evidence is required in respect to the credit notes issued for the post supply discounts.

**Comment:** The above facilitation measure addresses the challenge faced by the industry and the jurisdictional commissionerates, which in absence of a defined mechanism were finding it difficult to exclude the post-facto discounts from assessable value. The measure is thoughtfully conceived keeping in mind the interest of small and micro tax-payers who have been saved from the compliance cost in case of small transactions below the aggregate value of INR 5,00,000 between relevant parties.

6. [Clarification on applicability of extended warranty circular \[195/07/2023-GST dated 17 July 2023\] on goods and parts thereof; valuation of extended warranty supplies. \[Circular No. 216/10/2024-GST\]](#)
- In terms Circular 195/07/2023-GST dated 17 July 2023, the CBIC had clarified that cases involving replacement of 'parts' under warranty would not trigger additional GST implications or proportionate ITC reversal as the cost thereof is typically built in the supply pricing. The above language was interpreted by several

field formation to contend that replacement of the good(s) supplied under a warranty arrangement will not entitle the exemption from payment of GST as the same is neither contemplated nor clarified as such by the CBIC.

To address the above anomaly, the CBIC has clarified that the reference to expressions 'any part', 'parts' and part(s) as mentioned in Para 2 of the above Circular 195/07/2023-GST dated 17 July 2023 may be read as 'goods or its parts, as the case may be'. Consequentially, replacement of goods or parts thereof under warranty arrangement will not trigger additional GST implication or ITC reversal provided the value thereof is in-built in the supply price and not recovered separately from the recipient.

- Further, in cases where a distributor replaces goods or parts under warranty using their own stock and later receives a replacement from the manufacturer on delivery challan (no consideration), no GST is payable on such replenishment. Further, the manufacturer is not required to reverse ITC on the replenished goods or parts.
- The inclusion / exclusion of value of extended warranty has been clarified as follows:
  - a. Extended warranty sold at the time of sale of good(s): Supply of extended warranty along with the original good is construed as a composite supply, with supply of good being the principal supply. The cost of the warranty is considered part of the overall taxable value of the good.
  - b. Separate extended warranty: If a customer buys an extended warranty from a supplier different than that of the original goods, it's treated as a separate service and is taxable on its own.
  - c. Extended warranty sold after the supply of good: An extended warranty sold any time after the

supply of the original good will is to be considered a separate supply of taxable service.

**Comment:** This clarification addresses the practical issues faced by the industry vis-à-vis the extended warranty offered by the suppliers and/or original equipment manufacturers under different models. This will certainly help in reducing the disputes, which otherwise are being / could have been faced by the industry for lack of clarity.

7. [ITC available on ducts and manholes used in the network of optical fiber cables \(OFCs\). \[Circular No. 219/13/2024 - GST\]](#)

To address the industry wide dispute of ITC denial to ducts and manholes used in the network of optical fibre cables (OFC), the CBIC has clarified that the same are covered within the meaning of “*plant and machinery*” in terms of the Explanation to Section 17 of the CGST Act. As such, the restriction under Section 17(5) of the CGST Act applicable on immovable property has been put to rest by including these ducts and manholes used in OFC as plant and machinery and hence eligible to ITC.

**Comment:** This clarification provides a much-needed relief to the telecom and networking companies for which expenses on ducts and manholes used in setting up the required infrastructure is huge.

8. [Place of Supply for custodial services provided by Banks to Foreign Portfolio Investors \(FPI\) to be determined under Section 13\(2\) of the IGST Act. \[Circular No. 220/14/2024 - GST\]](#)

Maintaining consistency with the erstwhile regime in relation to custodial services, the CBIC has clarified that place of supply of such service provided by the banks or financial institutions to FPIs, cannot be treated as a service to account holders. As such, the place of supply for such activities undertaken by a bank or a financial institution would not be the location of the supplier but

the location of the FPI in terms of the default rule under Section 13 of the IGST Act.

9. [Time of supply in Hybrid Annuity Model \(HAM\) contracts used by NHAI \[Circular No. 221/15/2024 - GST\]](#)

- Clarifying the supply under HAM Contracts, which entails a single contract for construction as well as operation and maintenance of new highway roads, to be in nature of continuous supply, the CBIC has set out the time of supply as under:
  - a. If the invoice is issued on time i.e., on completion of event / milestone under the contract, then the date of issuance of such invoice.
  - b. If the invoice not issued on or before the specified date or completion date of the relevant event, the time of supply shall be the date of provision of service or receipt of payment, whichever is earlier.
  - c. Actual date of receipt of payment.
- Further, interest, if any, included in the instalment / annuity payable to concessionaire is includible in value of supply as per Section 15(2)(d) of the CGST Act.

10. [Time of supply in cases of allotment of spectrum or natural resources. \[Circular No. 222/16/2024 - GST\]](#)

- The CBIC has clarified that Frequency Assignment Letter issued by the Department of telecom to be in nature of bid acceptance document and cannot be considered as “*any other document in lieu of invoice*” for determining time of supply.
- Treating the supply of spectrum against instalment payments as a continuous supply, the CBIC has clarified the time of supply to be the date of actual payment of due date of instalment, whichever is earlier.
- The time of supply where complete upfront payment is made would be earlier of due date of such payment or

actual payment date.

- The above understanding is also clarified to be applicable to the supply of other natural resources by the government, where tax is payable on reverse charge basis.

**Comment:** The above circulars seek to address teething interpretational issues with an intent to avoid prolonged GST disputes.

### III. CLARIFICATIONS ON CROSS BORDER RELATED PARTY TRANSACTIONS:

#### 11. Valuation of services imported by registered person from related person located outside India when full ITC is available [Circular No. 210/4/2024-GST]

In cases where the full ITC is available to a related importer, the value of services declared in the invoice by overseas related entity to be treated as the open market value under Rule 28(1) of the CGST Rules. It has been clarified that if the invoice is not issued in such cases, the value of such services may be deemed to be declared as Nil and be deemed as the open market value in terms of second proviso to Section 28(1) of the CGST Act.

**Comment:** This is a benevolent clarification as it not only ensures parity of treatment for offshore related party transaction with that of a domestic transaction for consistency but also puts the valuation disputes to rest by treating non-invoice cases as transaction undertaken at NIL value. This clarification is intended to reduce valuation disputes for transactions such as corporate guarantees issued by foreign entity, etc. However, the interplay of these provisions with other laws, especially Income-tax transfer pricing provisions, would need to be carefully examined for avoiding any disputes.

#### 12. Taxability of ESOP / ESPP / RSU provided by a company to its

employees through its overseas holding company [Circular No. 213/07/2024-GST]

- The transfer of shares / securities (ESOP / SPP / RSU) to the employees of the domestic subsidiary company by foreign holding company on the request of the said domestic subsidiary company:
  - a. shall not be subjected to GST, where reimbursement of such securities / shares is done on a cost-to-cost basis by the domestic subsidiary company.
  - b. any additional fee / markup / commission charged by foreign holding company from domestic subsidiary company for such issuance of such additional fee / mark-up/ commission shall be subjected to GST in the hands of Indian subsidiary company as import of service.
- The above clarification is based on following rationale:
  - a. The (ESOP / SPP / RSU) issued to employees is part of their compensation package and hence, not taxable in terms of Entry 1 to Schedule III of the CGST Act.
  - b. The transfer of shares / securities is out of the scope of supply of goods and/or services.
  - c. However, any processing charges remitted to foreign holding company in relation to above transaction qualifies as supply (import) of service by the Indian subsidiary.

**Comment:** The above clarification is a much-awaited relief to the multinational entities, where it is a common practice to issue ESOP / SPP / RSU to employees and is likely to put these GST disputes in this regard at rest. Further, the any GST paid additional charges by Indian subsidiary would be creditable and hence, cost neutral for majority of the entities.

13. No GST on loan or advances by overseas related party to Indian affiliate or amongst related persons [Circular No. 218/12/2024 - GST]

- The CBIC has clarified that loans or credit facilities extended by related parties of between an overseas affiliate and its Indian counterpart cannot be equated with same facilities extended by unrelated entities such as banks, non-banking financial companies, etc. The two categories of loan or credit facilities are inherently different on account of relationship and hence, the assumption of processing / facilitating / administrative fee, by whatever name called cannot be made in related party transactions.
- In view of the above, it is further clarified that GST not leviable on extension of loan or credit between related parties or between an overseas affiliate and its Indian counterpart, provided no consideration is paid in form of processing fee / service fee / administrative charge besides the interest or discount on the loan itself. The said transaction does not qualify as supply of service in terms of Section 7(1)(c) of the CGST Act, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act.
- However, if a processing fee or any other charge beyond interest or discount is applied, it would be considered a separate taxable service attracting GST.

**Comment:** The above clarification puts the interpretational dispute subjecting all related party transactions to GST by reading Section 7(1)(c) of the CGST Act, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act and assigning value therefor under Rule 28 of the CGST Rules, 2017. This clarification will significantly help the industry in dealing with similar demands on basis of relationship between the transacting parties.

IV. RESPITE TO INSURANCE INDUSTRY:

14. No requirement to reverse ITC in

respect of the portion of the premium for life insurance policies allocated for investment / savings. [Circular No. 214/8/2024-GST dated 26.06.2024]

The CBIC has clarified that the investment portion in a life insurance policy is not includible in the value of premium subjected to tax, in terms of the valuation mechanism provided under Rule 32(4) of the CGST Rules. However, the said amount is towards the overall life insurance policy and hence, such portion towards investment can neither be construed as exempt nor a non-taxable supply. As such, the proportionate ITC pertaining to the investment portion in the premium is not required to be reversed by the insurance company.

**Comment:** The above clarification is both an industry and consumer friendly move. It will settle the disputes arising from a differing interpretation taken by various field officials to recover ITC claimed by insurance companies towards hybrid life insurance policy(ies) the burden of which would have been otherwise passed on the policyholders.

15. GST treatment of wreck / salvage value in motor vehicle insurance claims [Circular No.-215/9/2024-GST]

The CBIC has sought to clarify the value taxability of the wreck / salvage value on motor vehicle insurance claims as under:

- Deductible Salvage / Wreck Value:** In cases involving an insurance contract providing for deduction of the salvage / wreck value from the final claim amount, the ownership of the wreck / salvage remains with the insured. Therefore, the insurance company is not liable to pay GST on the sale of such wreck / salvage to the onward buyer.
- Insured Declared Value Settlement:** In cases where the insurance contract provides for settlement of claim amount at the full Insured Declared Value (IDV), without deducting the salvage value of the



motor vehicle wreck, the wreck / salvage becomes the property of the insurance company. In such case, the insurance company would be liable to pay GST on disposal or sale of such wreck / salvage.

**Comment:** The Circular settles the position regarding taxability of wreck / salvage value for insurance companies which the department sought to tax in the hands of the insurance companies in all cases.

16. Entitlement of ITC by the insurance companies on repair expenses incurred under motor vehicle insurance policies with a reimbursement mode of settlement. [Circular No. 217/11/2024-GST]

- ITC shall be available to the insurance providers in cases where settlement of claims with respect to the repair charges of the motor vehicles are done under reimbursement mode, wherein, the repair charges are initially paid by the insured to the non-network garages and later the insurance company reimburses the approved claim cost to the insured.
- In such cases, the insurance company shall be the recipient of service and the credit shall not be blocked under

Section 17(5).

- ITC shall be available on the invoice issued in the name of the insurance company and only to the extent of reimbursement of the approved claim cost to the insured.

**Comment:** Insurance companies are eligible claim ITC on repair bills issued by repair garages, even if they reimburse the policyholder directly. This seeks to address the objections raised by field officials on such ITC claims, stating that the service recipient (insured) was different from the one paying the bill (insurance company).

The above clarifications settle the long-standing demand of the insurance industry, which was facing resistance from some field officials based on a different interpretation. These measures will help contain the insurance cost for the consumers.

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