

Synopsis of 50th GST Council Meeting

Recently 50th GST council meeting was held on 11th July 2023 in New Delhi under the chairpersonship of the Union Finance & Corporate Affairs Minister Smt. Nirmala Sitharaman. The GST Council inter-alia made the following recommendations relation to changes in GST tax rates, measures for facilitation of trade and measures for streamlining compliances in GST which were later on approved through various circulars and notifications.

We have tried to provide the gist of the circulars as follows:

1. Circular No. 192/04/2023-GST: 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

Gist of the Circular: The balance of ITC under any of the heads of IGST, CGST or SGST can be utilized for payment of liability of IGST, hence total ITC available in electronic credit ledger under the heads of IGST, CGST and SGST taken together has to be considered for calculation of interest and for determining whether the balance in electronic credit ledger has fallen below the amount of wrongly availed ITC of IGST.

As credit of compensation cess can only be utilized against liability of compensation cess, the same cannot be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest.

2. Circular No. 193/05/2023-GST: Clarification to deal with difference in 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

Gist of the Circular: Rule 36(4) of CGST Rules, 2017 was brought into effect from 09th October 2019 allowing additional availment of ITC to certain limit beyond eligible ITC appearing in GSTR 2A. The limits were slowly brought down in a staggered manner. With effect from 01st January 2022, ITC could be availed only on the invoices matching with GSTR 2B.

This said circular has been issued to extend the applicability of Circular No. 183/15/2022-GST dated 27th December 2022 which was applicable to FY 2017-18 and FY 2018-19, specifying the manner to deal with cases of ITC mismatch between GSTR 3B and GSTR 2A during the period of 1st April 2019 to 31st December 2021.

Period	% of ITC allowed in excess of 2A (I)	ITC as per GSTR 2A (INR) (II)	ITC as per GSTR 3B (INR) (III)	Excess ITC allowed if certificate as per Circular 183 is submitted (IV)=(II)*(I)	Total admissible ITC if Certificate as per Circular 183 is submitted (V)=(II)+(IV)	Inadmissible amount (VI)=(III)-(V)
01.04.2019 to 08.10.2019	Rule 36(4) not applicable	1,000	1,500	No bar as Rule 36(4)	1,500	0

				was not introduced		
09.10.2019 to 31.12.2019	20%	1,000	1,500	200	1,200	300
01.01.2020 to 31.12.2020	10%	1,000	1,500	100	1,100	400
01.01.2021 to 31.12.2021	5%	1,000	1,500	50	1,050	450
01.01.2022 onwards	Circular No. 183/15/2022-GST is not applicable					

3. Circular No. 194/06/2023-GST: Clarification on TCS applicability under section 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction

Gist of the Circular: In case of multiple ECOs in a single transaction of supply, the below has been clarified:

- i) The Supplier side ECO is not the supplier in the said supply- Collection of TCS liability and necessary compliances under section 52 shall be done by the supplier side ECO
- ii) The supplier side ECO is himself the supplier of the said supply- Collection of TCS liability and necessary compliances under section 52 shall be done by the buyer side ECO

4. Circular No. 195/07/2023-GST: Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period

Gist of the Circular: This circular provides clarity on several ambiguities around taxability and ITC on warranty replacement of parts and repair services during warranty period

Issues	Clarification
A. GST implications on replacement of parts or supply of repair services during the warranty period without any charge of consideration provided by the original manufacturer	<p><u>Taxability under GST</u></p> <ul style="list-style-type: none"> • No GST would be payable on replacement or repair as a part of warranty • If any additional consideration is charged, then GST would be payable with respect to additional consideration <p><u>Reversal of ITC</u></p> <ul style="list-style-type: none"> • As supply of replacement goods/ services without any consideration during warranty period do not qualify

	to be exempt supply, no requirement of ITC reversal.
B. GST implications on replacement of parts or supply of repair services during the warranty period without any separate consideration by distributor on behalf of the original manufacturer	<p><u>Taxability under GST</u></p> <ul style="list-style-type: none"> • No GST would be payable by the distributor if no consideration is charged from the customer • If additional consideration is charged from the customer, GST would be payable on such additional consideration. <p><u>Reversal of ITC</u></p> <ul style="list-style-type: none"> • If the distributor charges consideration for replaced part from manufacturer, GST would be payable by the distributor and the manufacturer may avail ITC subject to conditions under the CGST Act 2017 • No reversal of ITC by distributor is required.

5. Circular No. 196/08/2023-GST: Clarification on taxability of shares held in subsidiary company by the holding company

Gist of the Circular: This circular clarifies that the activity of holding of shares by the parent company in its subsidiary would not be considered as a supply of services and hence shall not be subjected to GST.

6. Circular No. 197/09/2023-GST: Clarification on refund related issues

Gist of the Circular: This circular clarifies the following-

- i)** Refund of the accumulated ITC for a tax period (from January 2022 onwards) shall be available in relation to 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. However, the same shall apply to open cases only and the refunds already disposed of shall not be reopened consequent to issuance of this circular.
- ii)** Amendments in undertaking in Form GST RFD 01 and Annexure A of the Circular No. 125/44/2019 dated 18-11-2019.
- iii)** The value of goods exported out of India to be included while calculating 'adjusted total turnover' would be determined as per the explanation inserted in Rule 89(4) of CGST Rules, 2017.
- iv)** Refund would be admissible in case where an exporter files a refund claim after compliance with Rule 96A (1) of the CGST Rules, 2017 for the below categories:
 - Refund of unutilized ITC in relation to export of goods or services

- Refund of IGST paid on account of goods not been exported or non-realisation of foreign receipts within prescribed timelines

7. Circular No. 198/10/2023-GST: Clarification on issue pertaining to e-invoice

Gist of the Circular: This circular the following

- i) The said circular seeks to clarify that e-invoicing would be mandatorily required by registered persons who fall within the purview of e invoicing due to crossing of prescribed turnover threshold in case of issuance of tax invoices to government departments or establishments, government agencies, local authorities, PSUs who are registered under GST solely for the purposes of deduction of TDS.
- ii) It is clarified that since registration as a tax deductor at source (Section 51 of the CGST Act, 2017) is mandatory under the GST regulations, outward supplies to such entities registered for purpose of compliances with the provisions of TDS would be treated as B2B supplies, thereby attracting e-invoicing applicability.

8. Circular No. 199/11/2023-GST: Clarification regarding taxability of services provided by an office of an organization in one state to the office of that organization in another state, both being distinct persons

Gist of the Circular: The below has been clarified through the said circular with respect to taxability of activities

Issue	Clarification
<p>A. Whether it is necessary for a Head Office to follow the ISD mechanism for distribution of the ITC in respect of common input services procurement from a third party amongst several Branch Offices</p>	<ul style="list-style-type: none"> • It is clarified that the Head office shall have an option to distribute ITC in respect of such common input services by following ISD mechanism and that the present GST provisions do not mandate compliance with the ISD mechanism. • Head Office can issue tax invoices upon the Branch Office to whom the services are attributable and the recipient Branch Offices may avail ITC on the same subject to conditions and restrictions under the law.
<p>B. Whether mandatory invoicing by Head Office to Branch Offices is required in respect of internally generated services and whether all the cost components such as salary cost of employees are to be</p>	<ul style="list-style-type: none"> • Reference is made to second proviso of Rule 28 of CGST Rules 2017 which provides that the value declared on the invoice shall be deemed to be the open market

<p>included for valuation purpose if the Branch Offices are entitled to full input tax credit</p>	<p>value where the recipient is eligible for full input tax credit.</p> <ul style="list-style-type: none"> • Thus, value declared by the Head Office shall be deemed to be the open market value of such services, irrespective of any particular component such as salary cost being included or not. • Further, even if no invoice is issued by the Head Office upon the Branch Office/s, the value of services may be deemed to be declared as NIL and be considered as open market value in accordance with second proviso of Rule 28 of CGST Rules 2017.
<p>C. Whether salary costs of the employees of the Head Office involved in providing services to branches is required to be mandatorily included while computing taxable value for billing by Head Office to Branch Office if the Branch Office is not entitled to full input tax credit</p>	<ul style="list-style-type: none"> • It has been clarified that the salary costs of the employees of the Head Office involved in providing services to branches is not required to be mandatorily included while computing taxable value for billing by Head Office to Branch Office even if the Branch Office is not entitled to full input tax credit.