

**GST Circulars and Notifications**

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## Clarification relating to export of services

[Circular No. 202/14/2023-GST Central Tax dated 27.10.2023](#)

- Any supply of services needs to fulfill 5 conditions for it to qualify as export of services as specified in Section 2(6) of IGST Act. One of the conditions is that the payment for such service shall be made in convertible foreign exchange or Indian rupees permitted by the RBI.
- To promote growth of global trade with emphasis on exports from India and to support the increasing interest of global trading community in INR, the RBI had clarified vide the RBI's AP (DIR series) Circular No. 10 dated 11 July 2022, and as also specified in the Foreign Trade Policy 2023, **(FTP)** that the Indian importers can make payments in INR for goods or services supplied from overseas sellers, while Indian exporters can receive export proceeds in INR through special INR Vostro accounts of the correspondent bank of the partner trading country.
- Consequent to above, CBIC has clarified that when the Indian exporters, undertaking export of services, receive export proceeds in INR from the special rupee Vostro account of the correspondent banks of the partner trading country, opened by AD(Authorised Dealer) banks, the same shall be considered to be fulfilling the conditions of Section 2(6)(iv) of IGST Act subject to conditions/restrictions mentioned in the FTP or the RBI circulars and in accordance with the requisite permissions/ approvals as may be required under any other law.

## Clarification regarding determination of place of supply in various cases

[Circular No. 203/15/2023-GST Central Tax dated 27.10.2023](#)

No.	Case	Clarification
1	Place of supply <b>(POS)</b> in case of supply of service of transportation of goods, including through mail and courier	Due to omission of Section 13(9) of the IGST Act w.e.f. 01.10.2023, CBIC has clarified that the POS would be governed by Section 13(2) of the IGST Act, i.e., the default provision. Thus, the POS would be as under: a) The location of the recipient if the same is available. b) If the said location is not available, then the location of supplier of service.
2	For Advertising Sector i. POS in case of supply of space or supply of right to use the space on hoarding ii. POS in case of service by way of display of advertisement at a specified location	<ul style="list-style-type: none"> <li>▪ The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth.</li> <li>▪ Therefore, where the arrangement is for supply of space or granting the right to use the space, the POS would be the location of hoarding/structure. (Section 12(3)(a) of the IGST Act)</li> <li>▪ In this case, as the service is being provided by the vendor(supplier of service) to the advertising company (recipient of service) and there is no supply (sale) of space/ supply (sale) of rights to use the space on hoarding/structure (immovable property) by the vendor to the advertising company for display of their advertisement on the said display board/structure, the said service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property.</li> <li>▪ Vendor is in fact providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on his structure possessed/taken on rent by him at the specified location.</li> <li>▪ Therefore, such services provided by the vendor to advertising company are purely in the nature of advertisement services in respect of which POS shall be determined in terms of Section 12(2) of IGST Act.</li> <li>▪ Thus, POS would be as under a) Where the recipient is a registered person - location of recipient</li> </ul>

No.	Case	Clarification
		<p>b) Where the recipient is not a registered person then</p> <ul style="list-style-type: none"> <li>- the location of the recipient where the address on record exists or</li> <li>- location of the supplier in other cases.</li> </ul>
3	POS in case of supply of the co-location services	<p>Co-location is a data centre facility in which company can rent space for its own servers and other computing hardware along with various other bundled services related to Hosting and Information Technology Infrastructure (SAC-998315)</p> <p>a) Where the arrangement of the supply of co-location services not only involves providing of a physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply but it also involves supplying of various services by the supplier related to hosting and information technology infrastructure services, the POS would be determined by the default POS provision u/s 12(2) of the IGST Act i.e., location of recipient of co-location service.</p> <p>b) However, where the agreement is restricted to providing physical space without hosting and IT infrastructure, the POS would be the location of the immovable property as per section 12(3)(a) of the IGST Act.</p>

## Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST

[Circular No. 204/16/2023-GST Central Tax dated 27.10.2023](#)

No.	Issue	Clarification
1	Whether the activity of providing personal guarantee ( <b>PG</b> ) by the Director of a company to the bank/ financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service or not and whether the same will attract GST or not.	<ul style="list-style-type: none"> <li>▪ The director and the company are to be treated as related persons.</li> <li>▪ PGs provided by directors constitute as supply of service under GST even if made without consideration.</li> <li>▪ As per Rule 28 of CGST Rules, the taxable value of such supply of service shall be the open market value (<b>OMV</b>).</li> <li>▪ However, as per RBI guidelines companies are prohibited from offering any form of compensation, whether as commission, brokerage fee, or otherwise, to directors in lieu of providing personal guarantee to the bank for borrowing credit limits.</li> <li>▪ Accordingly, such supply would not have any OMV. Therefore, the taxable value may be treated as zero and as such no GST is payable on such supply of service by the director to the company.</li> <li>▪ Exception - However, if the director, who had provided the guarantee, is no longer part of management but the guarantee continues to operate in such case the taxable value would be the remuneration/consideration provided by the company, directly or indirectly for continuing as guarantor.</li> </ul>
2	Whether the activity of providing corporate guarantee (CG) by a person on behalf of another related person, or by the holding	<ul style="list-style-type: none"> <li>▪ Such activity constitutes taxable supply of service between related parties as per provisions of Schedule I of CGST Act, even when made without any consideration.</li> </ul>

No.	Issue	Clarification
	company for sanction of credit facilities to its subsidiary company, to the bank/ financial institutions, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuation of such supply of services.	<ul style="list-style-type: none"> <li>▪ The value of such services shall be determined as per new sub rule 28(2) of the CGST Rules, irrespective of whether full input tax credit (ITC) is available to the recipient of services or not, which prescribes taxable value as higher of <ul style="list-style-type: none"> <li>- 1% of the guarantee amount or</li> <li>- actual consideration</li> </ul> </li> <li>▪ Exception - This new sub rule 28(2) shall not apply in respect of the activity of providing personal guarantee by the director to the banks/ financial institutions for securing credit facilities for their companies</li> </ul>

## Clarifications regarding applicability of GST on certain services

[Circular No. 206/18/2023-GST Central Tax dated 27.10.2023](#)

No.	Issue	Clarification
1	Whether leasing of motor vehicles without operators fall within the ambit of the definition of 'same line of business'?	<ul style="list-style-type: none"> <li>▪ Services of transport of passengers by any motor vehicle (SAC 9964) and renting of motor vehicle designed to carry passengers with operator (SAC 9966), where the cost of fuel is included in the consideration charged from the service recipient attract GST @ 5% with ITC of services in the same line of business.</li> <li>▪ Same line of business means service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle.</li> <li>▪ CBIC has clarified that input services in the same line of business include transport of passengers (SAC 9964) or renting of motor vehicle with operator (SAC 9966) and not leasing of motor vehicles without operator (SAC 9973) which attracts GST and/or compensation cess at the same rate as supply of motor vehicles by way of sale.</li> </ul>
2	Whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants?	<p><b>Supply of Electricity as composite supply-</b></p> <ul style="list-style-type: none"> <li>▪ Whenever electricity is being supplied bundled with renting of immovable property and/or maintenance of premises, it will be considered as composite supply.</li> <li>▪ The principal supply is renting of immovable property and/or maintenance of premise and the supply of electricity is an ancillary supply.</li> <li>▪ Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise would be applicable.</li> </ul> <p><b>Supply of Electricity on actual basis as Pure Agent-</b></p> <ul style="list-style-type: none"> <li>▪ Where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations, Real Estate Developers etc., as a pure agent, it will not form part of value of their supply.</li> <li>▪ Further, where they charge for electricity on actual basis i.e., they charge the same amount for electricity from their lessees or occupants as</li> </ul>

No.	Issue	Clarification
		charged by the State Electricity Boards or DISCOMs (Distribution Companies) from them, they will be deemed to be acting as pure agent for this supply.
3	GST rate for services by way of job work for conversion of barley into malt?	<ul style="list-style-type: none"> <li>▪ Malt is a food product which can be used as an ingredient in food products or for manufacture of beer/alcoholic liquor for human consumption.</li> <li>▪ Irrespective of end-use, conversion of barley into malt amounts to job work in relation to food products.</li> <li>▪ Hence, GST rate will be 5%</li> </ul>
4	Whether District Mineral Foundation Trusts ( <b>DMFTs</b> ) are eligible for GST exemption as applicable to Governmental Authority?	DMFT are bodies set up by the State Governments and can be considered as Governmental Authorities. Therefore, they are eligible for the same exemption available to other Governmental Authorities.
5	Whether supply of pure services and composite supplies by way of horticulture/horticulture works made to Central Public Works Department ( <b>CPWD</b> ) are eligible for exemption from GST?	<ul style="list-style-type: none"> <li>▪ Public parks in government residential colonies, government offices and other public areas are developed and maintained by CPWD.</li> <li>▪ In order to extend support to the Horticulture industry CBIC has clarified that pure services and composite supplies by way of horticulture/horticulture works (where the value of goods is not more than 25% of the total value of supply) to the CPWD are eligible for exemption from GST.</li> </ul>

## Updates on GST Notifications

### Amendments (4<sup>th</sup> Amendment, 2023) to the CGST Rules, 2017

[Notification No. 52/2023- Central Tax dated 26.10.2023.](#)

- Amendments to Rule 28 to prescribe the value of service by way of corporate guarantee provided to any banking company or financial institution on behalf of the related persons shall be higher of
  - 1% of the amount of such corporate guarantee or
  - Actual consideration
- Amendments to Rule 142(3) to prescribe that the proper officer shall issue an intimation instead of order in FORM GST DRC 05, communicating the conclusion of proceedings where taxpayer voluntarily makes the requisite payment of tax dues.
- Amendments to Rule 159(2) to prescribe time limit for order in Form DRC -22 related to the attachment of property. Thus, order for provisional attachment shall not be valid after expiry of 1 year from the date of the said order. This will facilitate release of provisionally attached properties after expiry of period of 1 year, without need for separate specific written order from the Commissioner.
- Amendment to Form GST REG- 01 (Application for registration) whereby One Person Company has been added as a constitution of business as a registration type in Part B of FORM GST REG 01.
- Substitution of new Form GST REG- 08 for Cancellation of Registration of TDS deductor or TCS collector.
- Revision of interest and late fee part of Form GSTR 8 relating to statement for tax collection at source.
- Revision of eligibility criteria for applying for enrolment as GST practitioner in FORM GST PCT-01.

## Amnesty scheme for filing an Appeal

[Notification No. 53/2023- Central Tax dated 02.11.2023](#)

CBIC has notified special procedures for taxable persons who could not file an appeal against the order passed by the proper officer on or before the 31.3.2023 under Section 73 or 74 of the CGST Act or whose appeal was rejected on the ground of being time barred. Summary of the procedures are as follows:

- The said person shall file an appeal in FORM GST APL-01 on or before 31.01.2024.
- Filing of said appeal shall be subject to payment of the following by the appellant:
  - The amount of tax, interest, fine, fee and penalty admitted by the taxpayer has to be paid in full.
  - Appellant will pay 12.5% of the tax under dispute, or Rs.25 crore whichever is lower as pre deposit, out of which at least 20% is to be paid by debiting from the Electronic Cash Ledger.
- No refund shall be allowed in relation to any amount paid by the appellant prior to the date of this notification either on their own or on the directions of any authority (or) court that is in excess of the amount specified above.
- No appeal under this notification shall be admissible in respect of a demand not involving tax.
- The provisions of Chapter XIII relating to Appeals and Revision of CGST Rules, shall *mutatis mutandis*, apply to an appeal filed under this notification.
- If an appeal fulfills the requirements listed above and is already pending before the Appellate Authority, it shall be deemed to have been filed in accordance with this notification.

## Extension of time limit to issue an order for Demand and Recovery under Section 73

[Notification No. 56/2023- Central Tax dated 28.12.2023](#)

CBIC has extended the time limit for issuance of an order under Section 73(10) for financial year (FY) 2018-19 and FY 2019-20 which will also affect timeline for issuing Show Cause Notice. The revised timelines are set out below:

F Y	Time limit for issuance of SCN u/s 73(2)	Time limit for issuance of order u/s73(10)
2018-19	31 <sup>st</sup> January 2024	30 <sup>th</sup> April 2024
2019-20	31 <sup>st</sup> May 2024	31 <sup>st</sup> August 2024

## CBIC has notified supplies and a class of registered person eligible for refund under IGST Route

[Notification No. 5/2023- Integrated Tax dated 26.10.2023.](#)

CBIC has amended Notification No. 1/2023-Integrated Tax dated 31.07.2023 w.e.f. 01.10.2023 so as to allow the suppliers of Special Economic Zone (SEZ) developer or unit, for authorised operations to make supply of goods or services (except the commodities like pan masala, tobacco, gutkha) to the SEZ Developer or Unit for authorised operations on payment of IGST and claim the refund of tax so paid.

## CBIC has issued the below-mentioned Notifications for making amendments to earlier notifications w.e.f. 20.10.2023

[Notification No. 12/2023- Central Tax \(Rate\) dated 19.10.2023.](#)

- CBIC has notified amendments to Notification no. 11/2017-Central Tax (Rate), dated 28.06.2017 related to rates for supply of services.
- Where the supplier of passenger transport service providing such services, by any motor vehicle or rental services of motor vehicles with operator, opts to discharge GST @ 5% then he shall be entitled to take ITC on the input service in the same line of business only to the extent of 5%.

#### [Notification No. 13/2023- Central Tax \(Rate\) dated 19.10.2023](#)

- CBIC has notified amendments to Notification no. 12/2017-Central Tax (Rate), dated 28.06.2017 related to exemptions on supply of services.
- As per the said amendment services of water supply, public health, sanitation conservancy, solid waste management and slum improvement and upgradation supplied to Governmental Authorities are exempted.

#### [Notification No. 14/2023- Central Tax \(Rate\) dated 19.10.2023](#)

- CBIC has notified amendments to Notification no. 13/2017-Central Tax (Rate), dated 28.06.2017.
- As per the said amendment Supply of all goods and services by Indian Railways shall be taxed under Forward Charge Mechanism (**FCM**) to enable them to avail ITC. This will reduce the cost for Indian Railways.

#### [Notification No. 15/2023- Central Tax \(Rate\) dated 19.10.2023](#)

- CBIC has notified amendments to Notification no. 15/2017-Central Tax (Rate), dated 28.06.2017.
- As per the said amendment, refund of unutilized ITC is now restricted to only those construction services of complex, building or a part thereof, where the amount charged includes the value of land or an undivided share of land, except where the entire consideration is received after the issuance of a completion certificate or after the first occupation, whichever is earlier.

#### [Notification No. 16/2023- Central Tax \(Rate\) dated 19.10.2023](#)

- CBIC has notified amendments to Notification no. 17/2017-Central Tax (Rate), dated 28.06.2017.
- As per the said amendment bus operators organised as companies and supplying services through ecommerce operators (**ECO**) are made liable to pay GST. Earlier, the liability to pay GST was on ECO.

#### [Notification No. 17/2023- Central Tax \(Rate\) dated 19.10.2023](#)

CBIC has notified amendments to Notification no. 1/2017-Central Tax (Rate), dated 28.06.2017 as follows.

- GST on molasses is to be reduced from 28% to 5%.
- Spirit for industrial use will be taxed at 18%
- Food preparation of millet flour in powder form containing at least 70% millets by weight, when sold in loose form are exempted. If the same is sold in pre-packaged and labelled form, the rate is reduced to 5%

#### [Notification No. 18/2023- Central Tax \(Rate\) dated 19.10.2023](#)

- CBIC has notified amendments to Notification no. 2/2017-Central Tax (Rate), dated 28.06.2017.
- Food preparation of millet flour, in powder form, containing at least 70% millets by weight, other than pre-packaged and labelled, have been exempted from GST.

#### [Notification No. 19/2023- Central Tax \(Rate\) dated 19.10.2023](#)

- CBIC has notified amendments to Notification no. 4/2017-Central Tax (Rate), dated 28.06.2017.
- As per the said amendment used vehicles, seized and confiscated goods, old and used goods, waste and scrap supplied by Indian Railways are removed from Reverse Charge Mechanism (**RCM**) applicability.
- Thus, such supplies will now be taxed under FCM.

## KEY TAKE AWAY

- One of the important announcements was of Amnesty Scheme for filing time barred appeals against demand orders issued up to 31.03.2023. This will facilitate a large number of taxpayers, who could not file appeal in the past within the specified time period.
- Circular clarifying valuation in respect of personal and corporate guarantees will resolve a long-standing issue faced by the Corporates. The clarification is in line with the Supreme Court's decision in the case of Edelweiss Financial Services Ltd. in respect of service tax matter, which provides no service tax on corporate guarantees provided by parent companies to its subsidiary since there is no consideration involved.
- Clarification on export of services will resolve all refund-related disputes and facilitate trade in INR through special Rupee Vostro Account.
- Clarifications on POS in case of supply of service of transportation of goods, in case of advertising sector, for colocation service are expected to reduce litigation.



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