

In continuation of recommendations made by GST Council in its 50th meeting, Central Board of Indirect Taxes and Customs ('CBIC') issued various Circulars implementing / clarifying the decisions made therein. We are providing the synopsis of such clarifications as follows:

A. Clarification on GST applicability on transactions between HO and Branches

In a laudable clarification, CBIC has clarified on various aspects of issue of invoices by HO to branches. We provide the snapshot as follows:

Whether Input Service Distributor (ISD) router is mandatory to follow?

It is clarified that ISD is not a mandatory route for distribution of ITC relating to common services used for both HO and BO or for services exclusively used by BO. It is clarified that HO has following options:

1. To distribute the common input services by following ISD route; or
2. To avail ITC and issue tax invoices on the concerned BOs for the common input services or exclusive used by one or more BOs.

This would provide a much needed relief for reducing the return compliances.

What should be taxable value for services provided by HO to BO?

It was a dispute to calculate the value of services provided by HO to BO. The field formation insisted upon inclusion of salary cost in the taxable value. CBIC has now clarified as follows:

Scenario	Taxable Value
Where the BO is entitled for full ITC	The value declared in tax invoice by HO would be considered open market value subjected to GST irrespective of fact whether few of the costs are not included. Thus, it is not mandatory to include the salary costs. Also, in cases where no such invoices has been issued by HO to BO, the value would be treated as NIL.
Where the BO is not entitled for full ITC	It has been clarified that in such cases employee costs at the end of HO is not required to be included even though the BO is not entitled to entire ITC.

(Reference: Circular No. 199/11/2023-GST Dated 17.07.2023)

B. Availability of refund of IGST paid on non-receipt of consideration in time for exports

Rule 96A of CGST Rules, 2017 provides for payment of IGST on export as follows:

- IGST to be paid within 15 days of end of 3 months (or extended period) from date of invoices, if goods are not exported out of India; and
- IGST to be paid within 15 days of end of 1 year (or extended period) from date of invoices, if payment is not received in Forex or INR, wherever permitted by RBI.

CBIC has clarified that substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made. In other words, as long as goods are actually exported or as the case may be, payment is realized in case of export of services, even if it is beyond the time frames as prescribed in sub-rule (1) of rule 96A, the benefit of zero-rated supplies cannot be denied to the concerned exporters.

It was further clarified that:

▪ **Availability of refund of unutilized ITC:**

It has been clarified that even though the goods are exported late or the payment of services has been realized late, refund of unutilized ITC would be available provided other conditions stands satisfied. This is an important clarification providing for availability of refund even though consideration is received late for export of services and refund is filed within limitation period;

▪ **Availability of refund of IGST paid pursuant to non-receipt of consideration or non-export of goods within time allowed:**

It is clarified that if a person pays IGST for non-export of goods within 3 months of date of invoice or non-receipt of consideration within 1 year of date of invoice of service, such person would be entitled for refund of IGST so paid on export of underlying goods or receipt of consideration for export of services. It has been further clarified that no interest is payable on such refund. This is an important clarification.

(Reference: Circular No. 197/10/2023-GST Dated 17.07.2023)

C. Clarification on dealing with differences in ITC as mentioned in GSTR-3B and that in GSTR-2A

With the intention of plugging the loopholes of availment and utilization of fake ITC, the Government had gradually brought down the extent of ITC availability in excess of that not reflecting in GSTR-2A / GSTR-2B from 20% to Nil as follows:

Period	Relevant Statutory provision	Cap on extra ITC availability in excess of that appearing in GSTR-2A/GSTR-2B
09.10.2019 to 31.12.2019	Rule 36(4) of CGST Rules, 2017 and Section 16(2)(c) of CGST Act, 2017	20% of eligible ITC available in relevant GSTR-2A
01.01.2020 to	Rule 36(4) of CGST Rules, 2017 and	10% of eligible ITC available in relevant

31.12.2020	Section 16(2)(c) of CGST Act, 2017	GSTR-2A
01.01.2021 to 31.12.2021	Rule 36(4) of CGST Rules, 2017 and Section 16(2)(c) of CGST Act, 2017	5% of eligible ITC available in relevant GSTR-2A
01.01.2022 onwards	Rule 36(4) of CGST Rules, 2017 and Section 16(2)(aa) of CGST Act, 2017	NIL. ITC is allowed to the extent as provided under GSTR-2B

In continuation of the Circular 183/15/2022 -GST Dated 27.12.2022, CBIC re-iterates the established legal principle that the Rules are subservient to a substantive law. CBIC also clarified the methodology for verification of ITC available in GSTR-3B and that in GSTR-2A and GSTR-2B as follows:

Period	Cap on extra ITC availability in excess of that appearing in GSTR-2A/2B	Methodology of verification of difference in ITC between GSTR-3B and GSTR-2A
09.10.2019 to 31.12.2019	20% of eligible ITC available in relevant GSTR-2A	GST certificate from vendor / CA of vendor to the extent of excess 20% limit
01.01.2020 to 31.12.2020	10% of eligible ITC available in relevant GSTR-2A	GST certificate from vendor / CA of vendor to the extent of excess 10% limit
01.01.2021 to 31.12.2021	5% of eligible ITC available in relevant GSTR-2A	GST certificate from vendor / CA of vendor to the extent of excess 5% limit
01.01.2022 onwards	NIL. ITC is allowed to the extent as provided under GSTR-2B	ITC only to the extent as appearing in GSTR-2B would be allowed

As an illustration:

Particulars	Amount
Eligible ITC appearing in GSTR-2A during 01.01.2020 to 31.12.2020	1,00,000/-
Credit taken in GSTR-3B	2,00,000/-
Maximum ITC allowed during 01.01.2020 to 31.12.2020 as per Rule 36(4)	1,00,000/- * 1.1 = 1,10,000/-
Extent of GST certificate to be obtained from vendors	10,000/-
ITC disallowed	2,00,000/- (-) 1,10,000/- = 90,000/-

The Circular has further clarified that the field formation would take care of the relaxations given during the time of COVID-19 pandemic.

(Reference: Circular No. 193/05/2023-GST Dated 17.07.2023)

D. Clarification on GST applicability and ITC reversal on replacement of parts under warranty

CBIC clarified as follows:

Original goods seller	Mode of providing warranty	GST applicability	ITC Reversal
Manufacturer sells the goods with warranty for particular period	<u>Actual provider of warranty</u> - Manufacturer directly ; <u>Any consideration charged for warranty</u> : No	No GST, if no consideration is charged. If any consideration is charged GST is payable	No, since cost of warranty included in original supply
Manufacturer sells the goods with warranty for particular period	<u>Actual provider of warranty</u> : Distributor ; <u>Any consideration charged for warranty</u> : No ; <u>Goods replacement / Credit note to /by distributor</u> : No .	No GST, if no consideration is charged. If any consideration is charged GST is payable	No, since cost of warranty included in original supply
Manufacturer sells the goods with warranty for particular period	<u>Actual provider of warranty</u> : Distributor ; <u>Any consideration charged for warranty</u> : Yes, from manufacturer ; <u>Goods replacement / Credit note to /by distributor</u> : No .	Yes, on the consideration charged from manufacturer	No, since cost of warranty included in original supply
Manufacturer sells the goods with warranty for particular period	<u>Actual provider of warranty</u> : Distributor ; <u>Any consideration charged for warranty</u> : No, from manufacturer ; <u>Goods replacement/ Credit note to/by distributor</u> : Yes ,	No GST is payable on such goods received by distributor from manufacturer	No, since cost of warranty included in original supply

	distributor raised requisition on manufacturer and manufacturer supplies goods to distributor for use in warranty		
Manufacturer sells the goods with warranty for particular period	<u>Actual provider of warranty:</u> Distributor; <u>Any consideration charged for warranty:</u> No, from manufacturer; <u>Goods replacement / Credit note to /by distributor:</u> Yes, distributor uses its own goods for use in warranty and manufacturer issues credit note to distributor	Manufacturer may adjust the outward GST liability to the extent of credit note issued to distributor	Yes, distributor to reverse the corresponding ITC
Manufacturer sells the goods with warranty for particular period	<u>Actual provider of warranty:</u> Distributor; <u>Any consideration charged for warranty:</u> Yes, from customer; <u>Goods replacement / Credit note to /by distributor:</u> No.	Yes, on the consideration charged from customer	No, since cost of warranty included in original supply

Additionally, the Circular clarified for extended warranty as follows:

Particulars	Remarks
If extended warranty is sold along with the original goods?	GST is payable on the entire value of goods including the extended warranty value.
If extended warranty is sold subsequent to supply of the original goods?	GST is payable at the time of supplying extended warranty.

(Reference: Circular No. 195/07/2023-GST Dated 17.07.2023)

E. Calculation of interest on wrong availment and reversal of IGST

Previously the CGST Act, 2017 was amended to provide that there are no interest implications if there unutilized ITC is more than the availed and reversed incorrect ITC. Now CBIC has further facilitated the trade and clarified the methodology for determination of unutilized ITC vis-à-vis the wrongfully availed IGST.

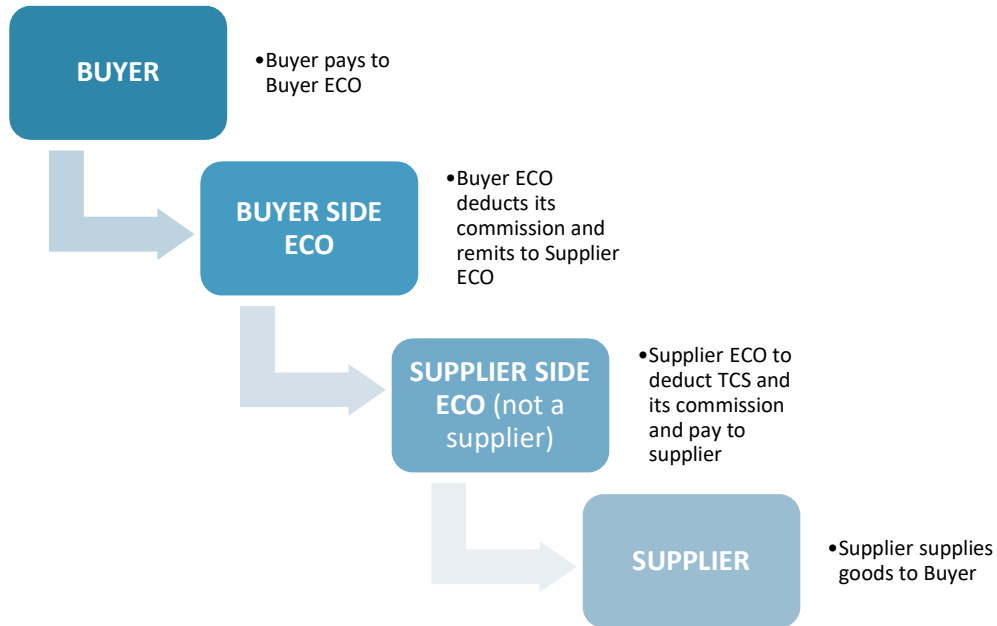
Particulars	Remarks
Which is the scenario when no interest is payable on incorrect availment and reversal of IGST ITC?	When unutilized balance of IGST, CGST and SGST, put together, is more than the incorrectly availed and reversed IGST.
Which period has to be seen for total of CGST, SGST and IGST?	The balance of total of IGST, SGST and CGST should be more than incorrectly availed and reversed IGST during the intervening period of availment and reversal thereof. This is on the basis that IGST can be paid by utilizing the ITC of CGST and SGST.
If the cumulative balance of unutilized ITC falls before incorrectly availed and reversed IGST ITC, how the interest would be calculated?	In such case, the extent of utilization would be the amount by which the cumulative balance of IGST, CGST and SGST falls below the incorrectly availed and reversed IGST.
What would be the case if the cumulative balance falls below the incorrect availed IGST in one month and exceeds in another before reversal of such incorrectly availed IGST?	Circular has not clarified for it. But logically the interest should be calculated for the period during which the cumulative balance falls below the incorrect availed IGST.
Whether similar logic can be extended to CGST and SGST?	The logic taken in considering such a cumulative balance is inter-head usage of IGST, CGST and SGST ITC in payment of IGST liability. Accordingly, the same should be allowed between IGST and CGST and IGST and SGST. However, Circular is silent about that. Also, as per the tax payment methodology, IGST ITC has to be exhausted first before utilizing CGST and SGST ITC. Thus, the question might mere academic.
Whether utilized Cess ITC can be considered for determining the extent of incorrectly availed IGST, CGST and SGST?	No. Since, ITC of Cess cannot be used for discharging the IGST or CGST or SGST liability.

(Reference: Circular No. 192/04/2023-GST Dated 17.07.2023)

F. Clarification on TCS in case of more than one Electronic Commerce Operators (ECOs) in a transaction

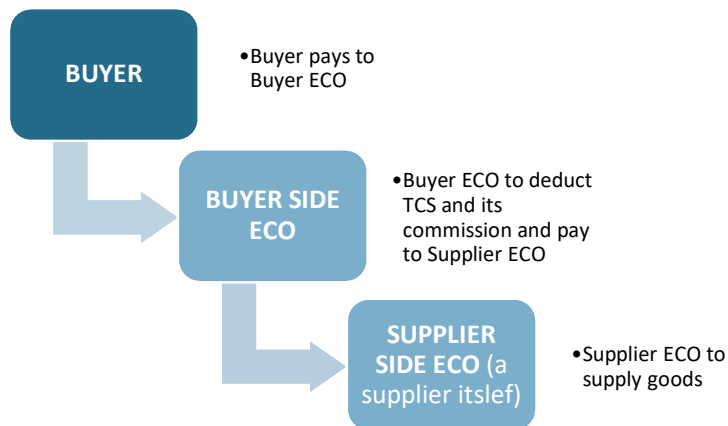
CBIC clarified as follows:

Scenario 1



Thus, Supplier ECO to undertake all the compliances relating to TCS.

Scenario 2



Thus, Buyer ECO to undertake all the compliances relating to TCS.

(Reference: Circular No. 194/06/2023-GST Dated 17.07.2023)

G. Clarification on GST applicability on holding shares of subsidiary Company by a holding Company

CBIC clarified that shares being considered as securities under Section 2(h) of Securities Contracts (Regulation) Act, 1956, shares would neither qualify as goods nor as services. Consequently, supply of shares is neither a supply of goods nor a supply of services.

Thus, CBIC clarified that activity of holding the shares of subsidiary company by a holding company does not constitute a supply. The clarification is aimed at raising of frivolous demand on IPO issue by startups.

(Reference: Circular No. 196/08/2023-GST Dated 17.07.2023)

H. Clarification on E-invoice for invoices to be issued to government department etc. registered due to TDS deduction only

CBIC clarified that registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, is required to issue e-invoices for the supplies made to such Government Departments or establishments/ Government agencies/ local authorities/ PSUs, etc under Rule 48(4) of CGST Rules, 2017.

(Reference: Circular No. 198/10/2023-GST Dated 17.07.2023)

I. Refund related clarifications

- **Removal of reference to GSTR-2A:** It has been clarified that w.e.f. January 2022, the refund of unutilized ITC would be available to the extent of ITC available in GSTR-2B for relevant period or any period prior to that.
- **Amendment of undertaking format:** Format of undertaking in relation to compliance of Section 16(2)(c) and Section 42(2) of CGST Act, 2017 has been amended to remove reference to Section 42(2) of CGST Act, 2017 owing to deletion of this Section from the scheme of the CGST Act, 2017;
- **Non requirement of uploading of GSTR-2A:** Annexure relating to documents to be uploaded along with refund claim has been amended to provided for non-uploading of GSTR-2A.
- **Calculation of adjusted total turnover:** Value of adjusted total turnover for refund purposes in relation to export of goods is defined to mean "turnover in a state or union territory". Subsequently, the turnover of zero rated supply of goods has been defined to mean the lower of value of invoice / bill of supply or value in corresponding shipping bill / bill of export.

It has now been clarified that adjusted total turnover in relation to goods needs to be determined in the same manner as the turnover of zero rated turnover of export of goods (supra).

(Reference: Circular No. 197/9/2023-GST Dated 17.07.2023)