



**ANALYSIS OF GST
CIRCULARS AND NOTIFICATION
ISSUED BY CBIC ON 17th JULY 2023**

Summary of Notification No. 18/2023-26/2023-CT and Circular No. 192 to 199 issued on 17th July 2023, in pursuance of the 50th GST Council Meeting held on 11th July 2023.

In pursuance of the recommendations made in the 50th GST Council Meeting, the Board has issued Notifications and circulars clarifying various issues.

Provided below is a brief summary of the Notifications and circulars issued:

Notifications issued on 17th July 2023

Notification No.	Particulars	State	Period	Description
NN 18/2023 –CT to NN 21/2023 – CT	GSTR-1, GSTR-3B and GSTR-7 returns	Manipur	April 2023 to June 2023 (Monthly/ Quarterly)	Last date to file return extended till 31st July 2023
NN 22/2023 –CT	GSTR-4 return	-	01 July 2017 to 31 March 2022 (Quarterly/ yearly)	Late fee shall be INR 500/- or Nil, if return filed up to 31 August 2023 (Extended from 30 June 2023)
NN 23/2023 –CT	Revocation of registration if cancelled due to non-filing of return	-	Registration cancelled till December 2022	Revocation can be filed till 31 August 2023 (extended from 30 June 2023)
NN 24/2023 –CT	Assessment order issued for Non-filing of return	-	Order issued till 28 February 2023	Order shall be set aside if all returns filed till 31 August 2023 along with payment of tax, interest and late fee
NN 25/2023 –CT	GSTR-9 (Annual return)	-	FY 2017-18 to FY 2021-22	Late fee shall be INR20,000/- if return filed up to 31 August 2023 (extended from 30 June 2023)
NN 26/2023 –CT	GSTR-10 (Final return)	-	Any period	Late fee shall be INR1,000/- if return filed up to 31 August 2023 (extended from 30 June 2023)

Circulars issued on 17th July 2023

A. 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 (Circular No. 192/04/2023-GST):

It has been clarified that as ITC available under any of the heads of IGST, CGST and SGST can be utilised for payment for IGST, therefore, when IGST credit has been wrongly availed and subsequently reversed on a certain date, in that case for the purpose of calculation of interest on wrong availment of ITC as per Section 50 read with Rule 88B, the ITC balance available in electronic credit ledger under IGST, CGST and SGST heads shall be considered in total. Thus, there shall be no interest till the date, the balance is available in IGST, CGST and SGST taken as a whole does not fall below the amount of such wrongly availed ITC.

Further, clarification has also been issued in respect of credit of compensation cess that as credit of compensation cess cannot be utilized for payment of any tax under CGST or SGST or IGST heads, credit of compensation cess available in electronic credit ledger cannot be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest in respect of wrongly availed and utilized IGST, CGST or SGST credit.

 *In our view, based on the above clarification relating to applicability of interest on wrongly availed ITC under IGST, similar approach can also be adopted for wrongly availed CGST and SGST as well.*

Thus, where ITC under CGST has been wrongly availed, for the purpose of calculating interest, balance in IGST and CGST has to be taken into consideration. Where the balance of CGST & IGST taken cumulatively false short of the amount of ITC wrongly availed under CGST, only then will the interest under Section 50 of CGST Act read with rule 88B shall be applicable.

Similarly for wrongly availed ITC under SGST, cumulative balance under IGST & SGST has to be taken under consideration for calculation of Interest.

B. Clarification to deal with difference in Input Tax Credit (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 (Circular No. 193/05/2023-GST):

This circular provides 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.

Reference has been made to GST Circular 183/15/2022 issued on December 27, 2022 guidance on dealing with ITC discrepancies for the financial years 2017-18 and 2018-19. It outlined conditions for availing ITC in FORM GSTR-3B compared to FORM GSTR-2A.

As per Circular 183/15/2022 – GST a registered person is required to produce certificate from CA/CMA where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the Claimant in respect of a supplier for the said financial year exceeds Rs 5 lakh certifying that supplier has made such supplies to registered person and tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B.


In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is up to Rs 5 lakh, claimant to produce a certificate from the concerned supplier to the effect that said supplies have been made to claimant and GST has been paid by supplier on such supplies.


Section 16 of the CGST Act imposes restrictions and conditions on ITC availability. However, the specific restrictions on availing ITC beyond the amount available in FORM GSTR-2A were introduced through rule 36(4) of the CGST Rules. These restrictions came into effect on October 9, 2019. Popularly known as Provisional ITC.

Period	ITC Availability
01-07-2017 to 08-10-2019	Self-Declaration Basis
09-10-2019 to 31-12-2019	20% over and above eligible credit reflecting in GSTR-2A
01-01-2020 to 31-12-2020	10% over and above eligible credit reflecting in GSTR-2A
01-01-2021 to 31-12-2021	5% over and above eligible credit reflecting in GSTR-2A
01-01-2022 Onwards	Only those supplies which are reported by suppliers and GSTR-1 and communicated to registered person in 2B eligible.

Now let us come back to CBIC Circular No. – 193/05/2023-GST:

Period	Remarks
01-07-2017 to 08-10-2019	For this period, the guidelines of GST Circular 183/15/2022 will be applicable in their entirety.
09-10-2019 to 31-12-2019	Registered persons allowed to claim ITC up to 20% of the eligible credit, The guidelines provided in GST Circular 183/15/2022 should be followed for verification purposes for ITC mismatch between GSTR 2A & GSTR 3B.
01-01-2020 to 31-12-2020	Registered persons allowed to claim ITC up to 10% of the eligible credit, Circular 183/15/2022 should be followed for verification purposes for ITC mismatch between GSTR 2A & GSTR 3B.
01-01-2021 to 31-12-2021	Registered persons allowed to claim ITC up to 5% of the eligible credit, Circular 183/15/2022 should be followed for verification purposes for ITC mismatch between GSTR 2A & GSTR 3B. The condition remains the same, i.e., the claimed ITC should not exceed 10% of the eligible credit for reported invoices or debit notes.

 *It is important to note that ITC availed in excess of what the recipient is eligible in accordance as per rule 36(4) shall be inadmissible even if certificate is provided by the registered person as per of Circular No. 183/15/2022-GST.*

 *In our opinion, basis the above circular, it can be inferred that the cushion of availing an additional 20%/10%/5% ITC, as the case may be, shall only be eligible if the same is appearing in GSTR-2A of the supplier.*

Also starting from January 1, 2022, no ITC will be allowed for supplies unless they are reported by suppliers in FORM GSTR-1 or IFF and communicated to the registered person in FORM GSTR-2B. This

amendment was made by inserting clause (aa) into sub-section (2) of section 16 of the CGST Act and amending rule 36(4) of the CGST Rules.

For ongoing proceedings such as scrutiny, audit or investigation from April 1, 2019 to December 31, 2021 the circular's instructions will be applicable. However, completed proceedings will not be affected.

C. Clarification on TCS liability under Sec 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction (Circular No. 194/06/2023-GST):

Reference has been received seeking clarification regarding TCS liability under section 52 of the CGST Act 2017, in case of multiple E-commerce Operators (ECOs) in one transaction, in the context of Open Network for Digital Commerce (ONDC).

In the case of the ONDC Network or similar other arrangements, there can be multiple ECOs in a single transaction - one providing an interface to the buyer and the other providing an interface to the seller.

In order to clarify the issue relating to the liability to deduct TCS, the Board hereby clarifies the issues taking into consideration the various scenarios, as under:

Scenario	Person Liable to deduct TCS
Where More than one Ecommerce operator is involved in a single Supply and Supplier side E-Comm operator himself is not the Supplier (i.e., supply being made by third party)	Then compliances under section 52 of CGST Act, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply made by the said supplier through him.
In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the Supplier-side ECO is himself the supplier of the said supply (i.e., Supply being made by seller side E-comm Operator himself)	In such a situation, TCS is to be collected by the Buyer-side ECO while making payment to the supplier (the other ecommerce operator).

D. Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period (Circular No. 194/07/2023-GST):

Sr. no	Scenario	Outward Supply for OEM/Company	ITC Availability to OEM/Company	Outward Supply for Distributor	ITC Availability to Distributor
1.	OEM offers warranty for the goods & services to the customer during the warranty period, without any consideration	No, as the value of original supply of goods included the likely cost of replacement.	OEM not required to reverse ITC.	-	-

			If additional consideration charged then GST is payable on Additional Consideration.			
2.	Replacement of parts and/ or repair services provided by a distributor without any consideration as part of warranty on behalf of the manufacturer		<p>No GST Payable because No separate consideration is charged by such distributor.</p> <p>If additional consideration charged then GST is payable on Additional Consideration.</p>	-	-	-
3.	Distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer	a) Distributor replaces the part(s) and charges consideration by issuing a tax invoice to OEM	-	Manufacturer is eligible for ITC	GST would be payable by Distributor & No reversal of ITC by distributor	-
		b) Distributor raises requisition slip on OEM & manufacturer provides parts without charging any consideration to distributor	No GST is payable on such replacement of parts by the manufacturer.	No reversal of ITC is required to be made by the manufacturer.	-	-
		c) Distributor replaces parts under warranty from supplies received from OEM and Manufacture issues credit note	Manufacturer may adjust his output tax liability for supplies made to Distributor if such distributor reverses ITC taken.	-	-	Upon issuance of such credit note if distributor reverses ITC, OEM can reduce his Output liability.
4.	Distributor provides repair service in addition to replacement of parts or otherwise, to the customer without consideration but charges the manufacturer.		-	ITC is available to Manufacturer	Supply of service by the distributor	-

	There is a supply of service by the distributor and the manufacturer is the recipient of such supply.				and GST is payable on such supply.	
5.	Companies provide offers of Extended warranty to the customer	Customer enters in to an agreement of extended warranty with the manufacturer at the time of original supply Consideration for such extended warranty becomes part of the value of the composite supply. The principal supply being the supply of goods.	GST would be payable based on tax rate of principal supply.	-	-	-
		Consumer enters into an agreement of extended warranty at any time after the original supply. Such contract is a separate contract	GST would be payable by the service provider, whether manufacturer or the distributor or any third party, depending on the nature of the contract.	-	-	-

E. Clarification on taxability of shares held in a subsidiary company by the holding company (Circular no. 196/08/2023-GST):

The Circular has been issued to clarify that, the activities of holding shares by holding company of the subsidiary company shall not attract GST. It was further stated that as to invoke the levy of GST there must be Supply of service as defined under section 7 of CGST Act, however, as securities are neither goods nor services therefore, purchase or sale of shares or securities, shall not constitute a supply and hence shall not attract GST.

F. Clarification on refund related issues (Circular no. 197/09/2023-GST):

The circular has been issued in regards to provide the clarification on following refund related issues:

1- Refund of accumulated input tax credit under section 54(3) on the basis of that available as per Form GSTR-2B.

As per guidelines given under circular no. 125/44/2019 amended by circular no. 135/05/2020, refund of accumulated input tax credit (ITC) under section 54(3) of CGST Act. shall be restricted

to ITC as per those invoices, details of which are uploaded by the supplier in Form GSTR-1 and same are reflected in Form GSTR-2A of the applicant.

However, on 1st January 2022, a new clause (aa) in sub section (2) of section 16 of CGST Act has been inserted vide Notification no. 39/2021-Central Tax and Rule 36(4) of CGST Rules, has been amended vide Notification no. 40/2021- Central Tax. In consequences of these amendments, ITC shall be available in respect to those invoices for which details are uploaded by supplier in Form GSTR-1 and same are reflected in **Form GSTR-2B**.

In view of the above, doubts are being raised as to whether refund of accumulated ITC shall be admissible on the basis of GSTR-2A or GSTR-2B.

In order to provide the clarification on the above issue, Circular no. 197/09/2023-GST dated 17th July, 2023 has been issued in which it is clarified that refund of accumulated ITC shall be restricted to the invoices which are available in **GSTR-2B**. It has been further clarified that refund which has been disposed of on the basis of earlier guidelines, i.e., restriction of refund to the extent of ITC available in GSTR-2A, shall not be reopened because of the clarification issued by this circular.

2- Amendment in Annexure-A to the circular No.125/44/2019-GST dated 18.11.2019.

Para 7 of Circular no. 125/44/2019-GST dated 18th Nov 2019 provides an undertaking to be provided by applicant while filing Form GST RFD-01 that amount of refund should be paid back to the Government with interest in case it is found subsequently that the requirement of section 16(2)(c) read with section 42(2) of CGST Act have not been complied.

Since section 42 of CGST Act has been omitted by notification no. 18/2022-Central Tax dated 28.09.2022 therefore it is clarified *vide* circular no. 197/09/2023-GST date, 17th July 2023, that para 7 of circular no. 125/44/2019-GST dated 18th Nov 2019 shall be read as follow-

The applicants applying for refund must give an undertaking to the effect that the amount of refund should be paid back to the Government with interest in case it is found subsequently that the requirement of section 16(2)(c) of CGST Act have not been complied.

Further to align the Annexure- A of circular no. 125/44/2019 with the said circular, Annexure-A shall be amended to the following extent.

- i. "Undertaking in relation to sections 16(2)(c) and section 42(2)" wherever mentioned in the column "Declaration/Statement/Undertaking/Certificates to be filled online" may be read as "Undertaking in relation to sections 16(2)(c)"

- ii. "Copy of GSTR-2A of the relevant period" wherever required as supporting documents to be additionally uploaded stands removed/deleted.
- iii. "Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period" wherever required as supporting documents to be additionally uploaded stands removed/deleted.

3- Value goods exported out of India to be included in "Adjusted Total Turnover"

It has been clarified in circular no. 197/09/2023-GST dated 17th July, 2023 that the value of goods exported out of India to be included in "Adjusted Total Turnover", should be in accordance with the explanation inserted in sub-rule (4) of rule 89 of CGST Rules vide Notification No. 14/2022- CT dated 05.07.2022.

As per the explanation inserted in sub-rule (4) of rule 89, "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both.

Basis the above, it is clarified that consequent to Explanation having been inserted in sub-rule (4) of rule 89 of CGST Rules vide Notification No. 14/2022- CT dated 05.07.2022, the value of goods exported out of India to be included while calculating "adjusted total turnover" will be same as being determined as per the Explanation inserted in the said sub-rule.

4- Admissibility of refund Where an exporter applies for refund subsequent to compliance of the provision of Rule 96A (1).

Where exporter have voluntarily made payment of IGST and applicable interest thereon in case of non-export of goods or non-receipt of consideration, for the services exported, within the prescribed time frame as prescribed in clause (a) or (b) of Rule 96A (1) of CGST Rules, a clarification was issued vide circular no. 125/44/2019-GST dated 18th Nov 2019 in regards to subsequent refund on account of export of goods or receipt of consideration in case of export of service.

As per Circular No. 125/44/2019-GST dated 18th Nov 2019, 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 has now been clarified vide circular no. 197/09/2023-GST dated 17th July, 2023 that, exporter would be entitled to claim refund of the integrated tax so paid earlier on account of non-export of goods or non-receipt of consideration, for the services exported, with in prescribed time frame as prescribed in clause (a) or (b) of Rule 96A (1) of CGST Rules by filing a refund application in the said scenario under the category **“Excess payment of tax”**.

It is further being clarified that no refund of the interest paid in compliance of sub-rule (1) of rule 96A shall be admissible.

It may further be noted that, applicant may file refund application under the category “Any Other” till the availability of facility to file refund application under the category “Excess payment of tax”.

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

It has been clarified that Government Departments or establishments/ Government agencies/local authorities/PSUs, registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the CGST Act, are to be treated as registered persons under the GST law. Therefore, any registered person whose turnover exceeds the prescribed threshold limit for generation of e-invoicing, is required to issue e-invoice for supplies made to such that Government Departments or establishments/Government agencies/local authorities/PSUs.

H. Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons (Circular No. 199/11/2023-GST):

- In respect of common input services procured by HO from a 3rd party but attributable to both Head office (H.O.) and Branch Office (B.O.). HO can distribute such ITC to B.O. by taking ISD route or by issuing tax invoices.

Provided such ITC can be distributed only when such services are provided to concerned B.O.

- **In respect of internally generated services,**
where full ITC is available to B.O., Invoice raised by H.O to B.O shall be deemed to be at open market value irrespective of the fact that whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice.

If HO has not issued any invoice on particular service rendered to BO, the value of service may be deemed to be declared as nil and will be considered as open market value.

Where full ITC is not available to B.O., Invoice raised by HO to BO may not mandatorily include cost of salary of employees of the HO involved for provided such service.

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