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Certain Circulars have been issued by CBIC on 17.07.2023 clarifying various matters. A brief summary of all the said Circulars are as follows:

Circular No.	Changes
192/04/2023-GST dated. 17.07.2023	⇨ This circular clarifies the charging of interest under section 50(3) of the CGST Act, 2017, in cases of wrongly availed IGST credit and its reversal. The CBIC emphasized the role of rule 88B of the CGST Rules in the calculation of interest, including all heads of IGST, CGST, and SGST. Basically, if any ITC is available in balance evenif not IGST ITC balance, still interest will not be attracted. However, the credit of compensation cess balance cannot be used to mitigate the calculation of interest. ⇨ For Example, if person availed wrongly ITC amount of Rs. 10,00,000/- and which is pertains to IGST, and after three months person reversal of such ITC, Now question is person is liable to pay interest on reversal of amount which was availed wrongly. - Assess have Rs. 5,00,000/- in CGST, Rs. 4,00,000/- in SGST and Rs. 7,00,000/- in IGST. Person not liable to pay any interest on reversal of amount, since they have enough balance in their electronic credit ledgers(C+S+I). - Assess have Rs. 3,00,000/- in CGST, Rs. 3,00,000/- in SGST and Rs. 1,00,000/- in IGST. Person liable to pay any interest on reversal of amount because they not have enough balance in their electronic credit ledgers(C+S+I).
193/05/2023-GST dated. 17.07.2023	⇨ The CBIC addressed the issue of difference in Input Tax Credit (ITC) availed in FORM GSTR-3B and detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021. Due consideration was given to the fact that upto 8.10.19, there was no form GSTR2A at all and hence, it was clarified that the earlier Circular No. 183/15/2022-GST dated. 27.12.2022 will govern the field, i.e. taking declaration from supplier/CA will suffice for ITC entitlement. However, w.e.f. 9.10.19, while Rule 36(4) of CGST Rules allowed additional credit during

	specific periods under certain conditions, it has been clarified that to the extent of such additional limit, the ITC will be allowed based on same methodology, i.e. earlier Circular No. 183/15/2022-GST dated. 27.12.2022 will govern the field, i.e. taking declaration from supplier/CA will suffice for ITC entitlement. ⇨ In respect of period 09.10.2019 to 31.12.2019:- - Not exceeding 20% of eligible credit available in respect of Invoices/ debit notes, which was furnished by the supplier under Section 37(1) in FORM GSTR-1 or IFF, subject to the methodology under earlier Circular No. 183/15/2022-GST dated. 27.12.2022. - E.g. Total ITC available as per GSTR-2A of registered person was Rs. 3,00,000/- and ITC availed as per GSTR-3B of Rs. 5,00,000/-. As per Rule 36(4) ITC eligible to person 3,600,000/- (3,00,000 + 60,000{3,00,000*20%}). - Similarly in the period 01.01.2020 to 31.12.2020, person eligible additional credit of 10% and 5% for the period 01.01.2021 to 31.12.2021. - That the guidelines provided by Circular No. 183/15/2022-GST dated. 27.12.2022 shall be applicable for such 20%/10%/5% additional ITC, from time to time. - Further, provisos of Rule 36(4) inserted vide Notification No. 30/2020-CT and Notification No. 27/2021-CT dated. 01.06.2021, condition of Rule 36(4) is applicable cumulatively for the period February to August'2020 and April to June'2021 respectively and ITC for the said period shall be adjusted accordingly. ⇨ The changes in rule 36(4) and section 16 of the CGST Act from 01.01.2022 ensure that ITC can only be availed if reported by suppliers in FORM GSTR-1 or using IFF and communicated through FORM GSTR-2B. ⇨ <u>That the said instruction will apply only to ongoing proceedings in scrutiny/ audit/ investigation and adjudication and appeal proceeding pending.</u>
194/06/2023-	⇨ In this circular, the CBIC clarified the Tax Collected at Source (TCS)

GST dated. 17.07.2023	liability under Section 52 of the CGST Act for transactions involving multiple E-commerce Operators (ECOs). ⇨ If the Multiple EOC involved in the single transaction and the supplier EOC is not himself supplier, the compliance under Section 52 including collection of TCS, is to be done by the supplier side ECO. ⇨ The buyer side ECO is responsible for collecting TCS and ensuring compliance under Section 52 only when the supplier-side ECO is also the supplier of the goods or services.
195/07/2023-GST dated. 17.07.2023	⇨ The CBIC clarified the availability of Input Tax Credit (ITC) in the context of warranty replacement of parts and repair services. ⇨ A) When the original manufacturer offers warranty to replace and repairs parts without charging any additional charges? - That the value of original goods (provided alongwith warranty) which included cost of replacement etc, and on which the manufacturer already paid Tax at the time of original supply of goods. - However, if any additional consideration is charged, GST becomes applicable. ⇨ B) Whether in such case manufacturer required to reverse ITC for replacement and repairs? - That the value of original supply already included value of replacement as well as repairs, so that such replacement and repairs does not considered as exempt supply and hence, no requirement for reversal of ITC. ⇨ C) GST would be payable on part opf replacement or repairs Service provided by distributors without any consideration from the customers? - No, GST would be payable by the distributors on the said activity of providing replacement of parts and repairs services. However, if any additional consideration is charged, GST becomes applicable. ⇨ D) In the above scenario where the distributors replacement of parts to the customer as part of warranty on behalf of the

	manufacturer, whether any supply is involved between the distributor and the manufacturer and whether the distributor would be required to reverse the input tax credit in respect of such replacement of parts? - Either by using his stock and by purchasing from third party:- In this situation, distributors issuance of Tax invoices for the said supply by him to manufacturer and GST would be paid by distributors and manufacturer availed ITC of the same subject to condition of CGST Act. - Distributors raises a requisitions to the manufacturer and the said parts provided by the manufacturer for the purpose of such replacement to the customers as part of warranty:- No GST is payable by the manufacturer and no reversal of ITC - Distributors replaces the parts to the customers and warranty out of supply already received from the manufacturer and the manufacturer issued credit note under Section 34 (2) of CGST Act:- Tax liability may be adjusted by the manufacturer subject to condition that ITC reversed by the distributors.
196/08/2023-GST dated. 17.07.2023	⇨ In this circular, the CBIC clarified that shares held by a holding company in a subsidiary company are not considered goods or services under the definition of the CGST Act and therefore are not subject to GST.
197/09/2023-GST dated. 17.07.2023	⇨ The CBIC provided detailed clarification on various refund-related issues under the GST regime A) Refund of accumulated input tax credit under Section 54(3) :- - Since availment of ITC has been linked with the GSTR-2B W.e.f 01.01.2022, availability of refund of the accumulated ITC under Section 54(3) of CGST Act for a Tax period shall be restricted to ITC as per those invoices, the details of which reflected in GSTR-2B of the applicant for the said tax period or for any of the previous tax periods and on which the input tax credit is available to the applicant. - In cases where refund claims for a tax period from January 2022

	onwards has already been disposed of by the proper officer before the issuance of this circular, in accordance with the extant guidelines in force, the same shall not be reopened because of the clarification being issued by this circular. B) Requirement of undertaking in FORM RFD-01:- - The following undertaking was inserted in FORM GST RFD-01: *"I hereby undertake to pay back to the Government the amount of refund sanctioned along with interest in case it is found subsequently that the requirements of clause (c) of subsection (2) of section 16 read with sub-section (2) of section 42 of the CGST/SGST Act have not been complied with in respect of the amount refunded"* - Annexure-A to the Circular No. 125/44/2019-GST dated. 18.11.2019 also stands 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. C) The calculation of adjusted total turnover:- - The value of zero-rated/ export supply of goods, as calculated as per amended definition of "Turnover of zero-rated supply of goods", needs to be taken into consideration while calculating "turnover in a state or a union territory", and accordingly, in "adjusted total turnover" for the purpose of sub-rule (4) of Rule 89. - 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. D) The admissibility of refunds for exporters complying with sub-rule (1) of rule 96A:- - That the Para 44 of the CBIC Circular No. 125/44/2019-GST dated. 18.11.2019, emphasized 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. - The above clarifications imply that 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. - Accordingly, it is clarified that in such cases, on actual export of the goods or as the case may be, on realization of payment in case of export of services, the said exporters would be entitled to refund of unutilized input tax credit in terms of sub-section (3) of section 54 of the CGST Act, if otherwise admissible. - It is also clarified that in such cases subsequent to export of the goods or realization of payment in case of export of services, as the case may be, the said exporters would be entitled to claim refund of the integrated tax so paid earlier on account of goods not being exported, or as the case be, the payment not being realized for export of services, within the time frame prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A. 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 the refund application in the said scenario may be made under the category "Excess payment of tax".

	- However, till the time the refund application cannot be filed under the category "Excess payment of tax" due to non-availability of the facility on the portal to file refund of IGST paid in compliance with the provisions of sub-rule (1) of rule 96A of CGST Rules as "Excess payment of tax", the applicant may file the refund application under the category "Any Other" on the portal.
198/10/2023-GST dated. 17.07.2023	⇨ This circular clarified the applicability of e-invoice under Rule 48(4) of the CGST Rules, 2017 for supplies made by registered person, whose turnover exceeds the prescribed threshold to generation of e-invoice, to Government Departments or establishment/ Government agencies/ local authorities/ and PSUs registered for tax deduction at source under Section 51 of CGST Act. Such entities are considered registered persons under the GST law as per provisions of clause 94 of Section 2 of CGST Act and e-invoicing is required for transactions with them.
199/11/2023-GST dated. 17.07.2023	⇨ The CBIC clarified the tax implications of services performed by an office of an organization in one state to the office of the same organization in another state. It highlighted the options for distributing Input Tax Credit (ITC) and the determination of the value of supply based on the open market value(in case of cross charge). It also clarified that it is not mandatory to opt for ISD route at all, but the same is merely optional. ⇨ **Issue No. 1: ITC Distribution for common Input services:-** - The first issue pertains to whether the HO can avail input tax credit (ITC) for common input services procured from a third party that are attributable to both the HO and the BOs. Can the HO issue tax invoices to the BOs for these input services, allowing the BOs to claim ITC? Is it mandatory for the HO to follow the Input Service Distributor (ISD) mechanism for ITC distribution? The CBIC has clarified that the HO has the option to distribute ITC for common input services, whether attributable to both the HO and the BOs or exclusively to one or more BOs. The distribution can be done by following the ISD mechanism laid

down in Section 20 of the CGST Act and Rule 39 of the CGST Rules. However, it is not mandatory for the HO to distribute such input tax credit using the ISD mechanism.

Alternatively, the HO can issue tax invoices to the BOs for common input services procured from a third party. The BOs can then claim ITC for these services, subject to the provisions of section 16 and 17 of the CGST Act.

If the HO chooses to distribute ITC to BOs using the ISD mechanism, it must register as an ISD in accordance with Section 24(viii) of the CGST Act. The distribution of ITC can only be made through the ISD mechanism if the input services are attributable to the BO or have actually been provided to the BO. Similarly, the HO can issue tax invoices to the concerned BOs, under section 31 of the CGST Act, for any input services procured by the HO from a third party on behalf of a BO, only if these services have actually been provided to the BOs.

⇨ **Issue No.2: Valuation of Internally generated services:-**

- The second issue relates to internally generated services provided by the HO to the BOs. In cases where the BOs are eligible for full input tax credit, is the HO required to issue tax invoices for these services? Should the cost of all components, including employee salaries, be included in the computation of the value of services provided by the HO to the BOs?

  The value of services provided by a registered person to a distinct person should be determined as per rule 28 of the CGST Rules and subsection (4) of section 15 of the CGST Act. According to clause (a) of rule 28, the value of goods or services supplied between distinct persons should be the 'open market value' of such supply. The second proviso to rule 28 specifies that when the recipient is eligible for full input tax credit, the value mentioned in the invoice shall be deemed as the open market value of the goods or services. Therefore, in the case of services provided by the HO to the BOs, the value declared in the invoice by the HO will be considered as

	the 'open market value' of such services, if the BO is eligible for full input tax credit. The inclusion or exclusion of specific components, such as employee salaries, in the invoice value does not impact the determination of the 'open market value' when the BO is eligible for full input tax credit. In instances where the HO has not issued a tax invoice to the BO for a particular service provided by the HO to the BO, and the BO is eligible for full input tax credit, the value of such services may be deemed as nil (zero). This treatment aligns with the second proviso to rule 28 of the CGST Rules, considering it as the open market value. In other words, evenif no cross charge invoice is made, it is deemed to be made with zero value and it qualifies as legal compliance. This is a great relief to multi-state located assesses. The same analogy should apply for transactions between related parties as well. ⇨ **Issue No.3: Cost Inclusion for Internally Generated Services:-** - The third issue pertains to the cost of salary for HO employees involved in providing internally generated services to the BOs. In cases where the concerned BOs are not eligible for full input tax credit, is the cost of salary mandatorily required to be included in the taxable value of the services? The CBIC has clarified that in the case of internally generated services provided by the HO to the BOs, the cost of salary for HO employees involved in providing these services is not mandatorily required to be included in the taxable value of such services. This applies even when the concerned BOs are not eligible for full input tax credit.