

Note on Circulars 192 to 199 issued by CBIC on 17th July, 2023

Circular : 192 Clarification on charging of interest under section 50(3) in cases of wrong availment of IGST credit and reversal thereof.

NO Interest Application where the available balance of IGST credit in the ECrL is lower the amount of IGST credit balance , **if** the total balance of input tax credit in the electronic credit ledger of the registered person under the heads of IGST + CGST + SGST **>** than such wrongly availed IGST credit, at all times, till the time of reversal of the said wrongly availed IGST credit.

Since the amount of input tax credit available in electronic credit ledger, under any of the heads of IGST, CGST or SGST, can be utilized for payment of liability of IGST, it is the total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, that has to be considered for calculation of interest under rule 88B of CGST Rules

Circular : 193 3B vs GSTR-2A for 19-20 n 20-21

1. Provisions of Circular No. 183/15/2022 would be extended.
2. Limits to be seen as
 - a. W.e.f. 09.10.2019 2B + 20%
 - b. w.e.f 01.01.2020 2B + 10%
 - c. w.e.f. 01.01.2021 2B + 5%
 - d. w.e.f. 01.01.2022 ONLY 2B
3. Example
 - a. amount of ITC available as per GSTR-2A of the registered person was Rs. 3,00,000,
 - b. the amount of ITC availed in FORM GSTR-3B for this tax period was Rs. 5,00,000.
 - c. As per rule 36(4) of CGST Rules as applicable during the said period, the said registered person was not allowed to avail ITC up to $3,00,000 \times 1.2 = \text{Rs.}3,60,000$.
4. Treatment
 - a. In the above case, the ITC of Rs 1,40,000 which has been availed in excess.
 - b. shall not be admissible as per rule 36(4) of CGST Rules as applicable then.
 - c. **even if** the requisite certificate as prescribed in Circular No. 183/15/2022-GST dated 27.12.2022 is submitted by the registered person.
 - d. Therefore, ITC availed in FORM GSTR-3B in excess of that available in FORM GSTR-2A **up to an amount of Rs 60,000** only (i.e., $3,60,000 - 3,00,000$) **can be allowed subject to production of the requisite certificates** as per Circular No. 183/15/2022-GST dated 27.12.2022.

Circular : 194 TCS liability under Sec 52 in case of multiple E-commerce Operators in one transaction

- 1) 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.
- 2) When supplier-side ECO of himself is not the supplier in the said supply
 - a. **Buyer > Buyer-side ECO > Supplier-side ECO > Supplier**
 - b. 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.
- 3) the Supplier-side ECO is himself the supplier of the said supply.
 - a. **Buyer > Buyer-side ECO > Supplier (also an ECO)**
 - b. TCS is to be collected by the Buyer-side ECO while making payment to the supplier for the particular supply being made through it.

Circular : 195 Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period

The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and / or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods. Where manufacturer provides replacement of parts and/ or repair services during the warranty period,

1) LEVY

- **without** separately charging any **consideration** at the time of such replacement/ repair services, **no further GST is chargeable.**
- if any **additional consideration is charged** by the manufacturer from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.

2) ITC Reversal

- a. these supplies are not exempt supply and accordingly, the manufacturer, who provides replacement of parts and/ or repair services to the customer during the warranty period, is **not required to reverse the ITC.**

3) If parts replaced by dealer and reimbursed by Distributor / manufacturer

- a. **Under a Bill or Tax Invoice** : GST would be payable by the dealer on the said supply by him to the distributor / manufacturer and the distributor /manufacturer would be entitled to avail the input tax credit of the same.
- b. **Only exchange of parts** i.e., Collect from Manufacturer and give to Customer, then no GST is payable on such replacement of parts by the manufacturer.
- c. **Through Credit Note** : Manufacturer issues credit note for the stock used by dealer, then ITC Reversal by dealer , liability reduction by Manufactures subject to sec 34(2)

4) Extended Warranty

- a. Product rate would vary from the goods, but if extended warranty is purchased at the time of product supply, then extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly.
- b. Extended warranty obtained subsequent to original purchase under a different contract GST would be payable depending on the nature of the contract.

Circular : 197 Clarification on taxability services provided by holding companies, i.e., holding securities

- 1) Securities under GST Law is considered neither goods nor services as 2(52) / 2(102) provided they are securities / 'shares' as per definition of securities under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956.
- 2) This implies that the
 - a. **Holding** securities held by the holding company in the subsidiary company are neither goods nor services.
 - b. **Purchase or sale** of securities in itself is neither a supply of goods nor a supply of services.

It cannot be said that a service is being provided by the holding company to the subsidiary company, just because there is a SAC entry '997171'.

Circular : 197 Clarification on refund related issues.

1. Refund of **accumulated ITC** under Section 54(3) should be on the basis of that values available as per FORM GSTR 2B, this is to avoid the confusion between the values as per 2A mentioned in the earlier circular and availment of ITC as per 2B.
2. Changes in Requirement of the undertaking in FORM RFD 01
 - a. "Declaration/Statement/Undertaking/Certificates to be filled online" may be read as "Undertaking in relation to sections 16(2)(c)".
 - b. "Copy of GSTR-2A of the relevant period" stands removed/deleted.
 - c. "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. Manner of calculation of Adjusted Total Turnover for rule 89 (4)
 - a. 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 provisions of sub-rule (1) of rule 96A:
 - a. Is substantial provision full filled i.e.
 - i. Goods ".....as long as goods have actually been exported even after a period of three months,
 1. payment of Integrated tax first and
 2. claiming refund at a subsequent date should not be insisted upon.
 3. In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case.
 - ii. The same principle should be followed in case of export of services".
5. Clarifications imply.
 - a. that as long as goods are actually exported or as the case may be,
 - b. payment is realized in case of export of services, even if it is beyond the time frames.
 - c. the benefit of zero-rated supplies cannot be denied to the concerned exporters.

Circular : 198 Clarification on issue pertaining to e-invoice.

Registered person, where einvoice is applicable, making a supply to Government Departments or establishments/ Government agencies/ local authorities/ PSUs who is having TDS Registration only also have to do eInvoice.

Circular : 199 Taxability of services between HO in one State to a branch in another State

Input services procured by the HO from a third party but attributable to

- both HO and BOs or
- exclusively to one or more BOs

HO has an option to

1. Distribute ITC in respect of such common input services by following ISD mechanism
2. HO can also issue tax invoices under section 31 of CGST Act to the concerned BOs in respect of common input services procured from a third party by HO but attributable to the said BOs and the BOs can then avail ITC

In respect of internally generated services : Cross Charge of Employee Salaries not done / partially done, **where full input tax credit is available to the recipient**

1. The second proviso to rule 28 provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.
2. When Billing Done : Accordingly, in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is eligible for full input tax credit.
3. When Billing NOT Done if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.

Where full input tax credit is NOT available to the recipient

In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases where full input tax credit is not available to the concerned BO.