



THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA
GST & INDIRECT TAXES COMMITTEE

Webinar
on
Analysis of Recent CBIC Circulars



Monetary Limit for filing of an appeal

Circular No. 207/1/2024-GST, Dated. 26-06-2024

2

- **National Litigation Policy** - Optimizing the utilization of judicial resources and expediting the resolution of pending cases, Govt. fixing monetary limits for NOT filing appeals or applications or SLP by GST Department before GSTAT, High Courts and Supreme Court, if the amounts involved fall below these limits. (Drawing Reference from Section 120 r/w 168 of the CGST Act)

Courts/ Authorities	Monetary Limit (Rs.)
GSTAT	20,00,000/-
High Court	1,00,00,000/-
Apex Court	2,00,00,000/-

- **Monetary limit** applies to the disputed amount of Tax, Interest, Penalty, or Late fee in respect of which, an appeal or application is contemplated by GST Dept.
- **Composite orders** disposing of more than one appeal or demand notice, **the monetary limits apply to the total amount of** tax, interest, penalty, or late fee involved, not the amounts in individual appeals or demand notices



Monetary Limit for filing of an appeal

Circular No. 207/1/2024-GST, Dated. 26-06-2024

3

Monetary Limits for Filing Appeal by GST Dept.

Types of Dispute	Amount to be considered
Demand of Tax (With or Without Interest and/or Penalty)	Aggregate amount of Tax in dispute (including CGST, SGST/UTGST, IGST, and Compensation Cess)
Demand of Interest only	Amount of Interest
Demand of Penalty only	Amount of Penalty
Demand of Late fees only	Amount of Late fees
Demand of Interest, Penalty, and/or Late fees (without disputed Tax amount)	Aggregate amount of Interest, Penalty, and Late fees
Demand pertains to Erroneous Refund	Amount of refund in dispute (including CGST, SGST/UTGST, IGST, and Compensation Cess)



Monetary Limit for filing of an appeal

Circular No. 207/1/2024-GST, Dated. 26-06-2024

4

Monetary Limits – Not Applicable for Filing Appeal by GST Dept.

- i. Where **any provision** of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act has been **held to be ultra vires to the Constitution of India**; or
- ii. Where **any Rules or regulations** made under CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act have been **held to be ultra vires the parent Act**; or
- iii. Where **any order, notification, instruction, or circular** issued by the Government or the Board has been held to be **ultra vires of the CGST Act** or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act or the Rules made there under; or
- iv. Where **the matter is related** to (which is recurring in nature and/or involves interpretation of the provisions of the Act /the Rules/ notification/ circular/ order/ instruction, etc;) -
 - a. **Valuation** of goods or services; or
 - b. **Classification** of goods or services; or
 - c. **Refunds**; or
 - d. **Place of Supply**; or
 - e. **Any other issue,**



Monetary Limit for filing of an appeal

Circular No. 207/1/2024-GST, Dated. 26-06-2024

5

Monetary Limits – Not Applicable for Filing Appeal by GST Dept.

- v. Where strictures/ adverse comments have been passed and/ or cost has been imposed against the Government/Department or their officers; or
- vi. Any other case or class of cases, where in the opinion of the Board, it is necessary to contest in the interest of justice or revenue.

▪ **NOTE:**

- If an appeal isn't pursued due to monetary limits, it doesn't mean the Department agrees with the decision.
- *“Para 5. It is pertinent to mention that an appeal should not be filed merely because the disputed tax amount involved in a case exceeds the monetary limits fixed above. Filing of appeal in such cases is to be decided on merits of the case. The officers concerned shall keep in mind the overall objective of reducing unnecessary litigation and providing certainty to taxpayers on their tax assessment while taking a decision regarding filing an appeal.”*
- S.112(2) – GSTAT at its discretion, refuse to admit any appeal of Tax | ITC | Fine | Fee | Penalty < Rs. 50K
- 53rd GST CM Recommendation: Reduction in Pre-Deposits | Appeal to be filed in GSTAT



SPECIAL PROCEDURE FOR MANUFACTURERS OF TOBACCO
PRODUCTS AS PER N. NO. 04/2024, Dated. 05-01-2024
-CIRCULAR NO. 208/2/2024-GST, Dated. 26-06-2024

6

■ **Issue:**

- Registered persons engaged in manufacturing of goods –(Tobacco, Pan Masala & related products) mentioned in the schedule to the said notification.
- S.122A – Penalty for Non-Registration of Machines – In addition to Penalty U/C XV, liable to pay Rs. 1 Lakh Per Machine not registered – Liable for Confiscation – Not Confiscated if Penalty paid & Registered within 3 days of Order of Penalty
- Non availability of Make, Model number and Machine number of packing machine.

■ **Clarification:**

- Make and model number are optional. If make is not available, year of purchase may be declared as make number.
- If machine number is not available, manufacturer may assign a number to such machine and declare the same in Form GST SRM-I



Place of Supply of Goods to Unregistered Persons (W.e.f 01-10-2023 - Section 10(1)(ca) of the IGST Act)

7

Circular No.209/3/2024-GST, Dated. 26-06-2024

“S.10(1)(ca) where the supply of goods is made to a person other than a registered person, the place of supply shall, notwithstanding anything contrary contained in clause (a) or clause (c), be the location as per the address of the said person recorded in the invoice issued in respect of the said supply and the location of the supplier where the address of the said person is not recorded in the invoice.

Explanation.—For the purposes of this clause, recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person;”

Issue	Clarification
Place of supply under section 10(1)(ca) of the Integrated Goods and Services Tax Act, 2017 (“IGST”) for goods supplied to unregistered persons with differing billing and delivery addresses, particularly in e-commerce transactions.	where the address of delivery of goods recorded on the invoice is different from the billing address of the said unregistered person on the invoice, the POS shall be address of delivery of goods recorded on the invoice. Also, the supplier may record the delivery address as the address of the recipient on the invoice for the purpose of determination of POS of the said supply of goods
	Recording the state name is sufficient for capturing the recipient’s address.



Valuation of supply of import of services by a related person where recipient is eligible to full input tax Credit

8

Circular No. 210/4/2024-GST, Dated. 26-6-2024

- S.No. 4 of Schedule I → **Deemed Supply**: “Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business, is to be treated as supply even if made without consideration.
- **Same treatment as per R. 28(1) (2nd Proviso) of the CGST Rules**, which is being given to domestic related parties/ distinct persons as per clarification provided by **Circular No. 199/11/2023-GST dated 17.07.2023**, may also be provided in cases where a foreign entity is providing service to its related party located in India, in cases where full ITC is available to the said recipient located in India.

“Provided further 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.”

- Accordingly, **clarification provided vide Circular No. 199/11/2023-GST** dated 17.07.2023 in respect of supplies of services between distinct persons in cases where full ITC is available to the recipient, is **equally applicable in respect of import of services between related persons.**



Valuation of supply of import of services by a related person where recipient is eligible to full input tax Credit

9

Circular No. 210/4/2024-GST, Dated. 26-6-2024

- In case of Import of services by a registered person in India from a related person located outside India, the tax is required to be paid by the registered person in India under reverse charge mechanism. In such cases, the registered person in India is required to issue self-invoice under Section 31(3)(f) of CGST Act and pay tax on reverse charge basis.
- Clarified that in cases where the foreign affiliate is providing certain services to the related domestic entity, and where full input tax credit is available to the said related domestic entity, the value of such supply of services declared in the invoice by the said related domestic entity may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.
- Further, in cases where full input tax credit is available to the recipient, if the invoice is not issued by the related domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil, and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.



Time limit U/S 16(4) w.r.t RCM supplies received from Unregistered Persons

10

Circular No. 211/5/2024-GST, Dated. 26-06-2024

- **Issue:** Field formations are taking view that the relevant year for the purpose of **section 16(4) of CGST Act** is the year in which the said supply was received and accordingly, the time limit for availment of ITC under section 16(4) of CGST Act is only upto **the September/ November of the following financial year**, i.e. the financial year, following the financial year in which the said services was received.

Clarifications provided in the Circular:

- **Self-invoicing requirement:** Section 31(3)(f) of the CGST Act mandates that a registered person liable to pay tax under Section 9(3) or 9(4) must issue an self-invoice for notified goods or services received from an unregistered supplier on the date of receipt. – Relevant Document for availing Credit U/S 16(2)(a) of the CGST Act subject to **payment of taxes under RCM U/R 36(1)(b) of the CGST Rules**
- **GST Credit linked to self-invoicing:** Section 16(4) of the CGST Act ties the ITC time limit to the financial year of the invoice or debit note raised.
- **RCM Liability:** For supplies under reverse charge by a registered person from unregistered supplier, ITC can be claimed based on the invoice date subject to tax payment.
- **Consequences of delayed self-invoicing:** Delayed payment of RCM liability liable for Interest U/S 50 and Penalty for late issuance of self invoice U/S 122 of the CGST Act.



Mechanism for providing evidence of compliance of conditions of Section 15(3)(b)(ii) of the CGST Act, 2017 by the suppliers

11

Circular No. 212/06/2024-GST, Dated. 26-06-2024

- **Post Supply discounts/ Incentives** are offered by the suppliers through **tax credit notes**, after the supply has been effected, whereby the said discount is not to be included in the taxable value only, if the **condition of S. 15(3)(b)(ii)** of the CGST Act are satisfied viz. **Agreement before/ at the time of Supply, CN lined with Invoices and reversal of the input tax credit attributable to the said discount by the recipient.**
- Presently, there is **no functionality on the common portal** for the supplier or tax officer to verify if the recipient has complied with this condition of proportionate ITC reversal.
- **To address this gap in functionality, the following measures have been clarified in a Circular:**
 - Until a functionality is available, suppliers can obtain a certificate from recipients, issued by a Chartered Accountant (CA) or Cost and Management Accountant (CMA), confirming the reversal of said ITC. This certificate should contain detail credit notes, invoice numbers, the amount of ITC reversal, and supporting documents like FORM GST DRC-03/ GSTR -3B/ any other document with UDIN - If the tax amount related to discounts (CN) exceeds Rs. 5,00,000/- in a financial year,
 - Otherwise, suppliers may obtain an undertaking or certificate from recipients instead of a CA/CMA certificate.

Note: These mechanism suggested can be adopted for Past periods as well.



Clarification on the Taxability of ESOP/ ESPP/ RSU provided by a Company to its employees through its overseas holding company

12

Circular No. 213/07/2024-GST, Dated. 26-06-2024

- **Issue:** Some of the Indian companies provide the option to their employees for allotment of securities/shares of their foreign holding company as part of the compensation package as per terms of contract of employment. The Indian company reimburses the cost of these securities/shares to the foreign holding Company.
- Is such a transfer of shares/securities and payment by the Indian company considered as the import of taxable financial services under Reverse Charge Mechanism (RCM)?

- **Clarifications:-**

- Under the GST law of India, securities/shares are neither considered as goods or services U/S 2(52) and 2(102) of the CGST Act.
- Services provided by employees to employers as per their employment terms are explicitly excluded from GST under Schedule III of the CGST Act.

Therefore, both transactions – supply of shares and employment contract – are not subject to GST.

- Hence, when the Indian subsidiary reimburses the foreign holding company on a cost-to-cost basis for shares/securities issued, it does not qualify as a taxable supply of goods or services. However, GST will apply to any additional fees, markups, or commissions charged by the foreign holding company to the domestic subsidiary for issuing its securities/shares to the employees of the domestic subsidiary.



Clarification on Reversal of ITC in premium for life insurance policies, which is not included in taxable value

13

Circular 214/8/2024-GST, dated. 26-06-2024

Issue:

- Whether the amount of insurance premium, which is not included in the taxable value as per Rule 32(4) of CGST Rules, applicable for life insurance business, will be treated as pertaining to an exempt supply/ non-taxable supply; and
- Whether the input tax credit availed in respect of such amount shall be required to be reversed or not.

Clarification:

- According to Section 2(11) of the Insurance Act, 1938, the life insurance business includes any unit-linked insurance policy or similar instruments that provide both investment and insurance components issued by an insurer.
- Rule 32(4) of the CGST Rules, 2017, specifies that the value of life insurance services is determined by deducting the premium amount allocated for investment/ savings from the total premium charged to the policyholder.
- As per Section 2(47) of the CGST Act, an exempt supply includes goods or services with a nil tax rate, wholly exempt, or non-taxable under the CGST Act - Exclusion of some consideration from taxable supply value does not make it non-taxable or exempt.
- Section 17 r/w Rule 42 → restrict credit when goods or services are partly used for business and other purposes or taxable and exempt supplies – “Life insurance services are not nil-rated or non-taxable; non-inclusion of part of the value is not considered exempt.”
- Such exclusion of amounts from taxable values under Rule 32(4) should not be considered non-taxable or exempt, and there is no need to reverse ITC.



Thank You

Name: CA Bimal Jain

E-mail: bimaljain@hotmail.com

Mobile: +91 9810604563