



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

GST & INDIRECT TAXES COMMITTEE Webinar

on Recent Amendments and Clarifications in GST

Date: 13.08.2024 ,ICAI-IDTC

By CA. Shravan Gehlot

Recent Circular Developments

1

Agenda

Section 1

Clarification on Corporate Guarantee !

Section 2

Refund related Clarifications!

Section 3

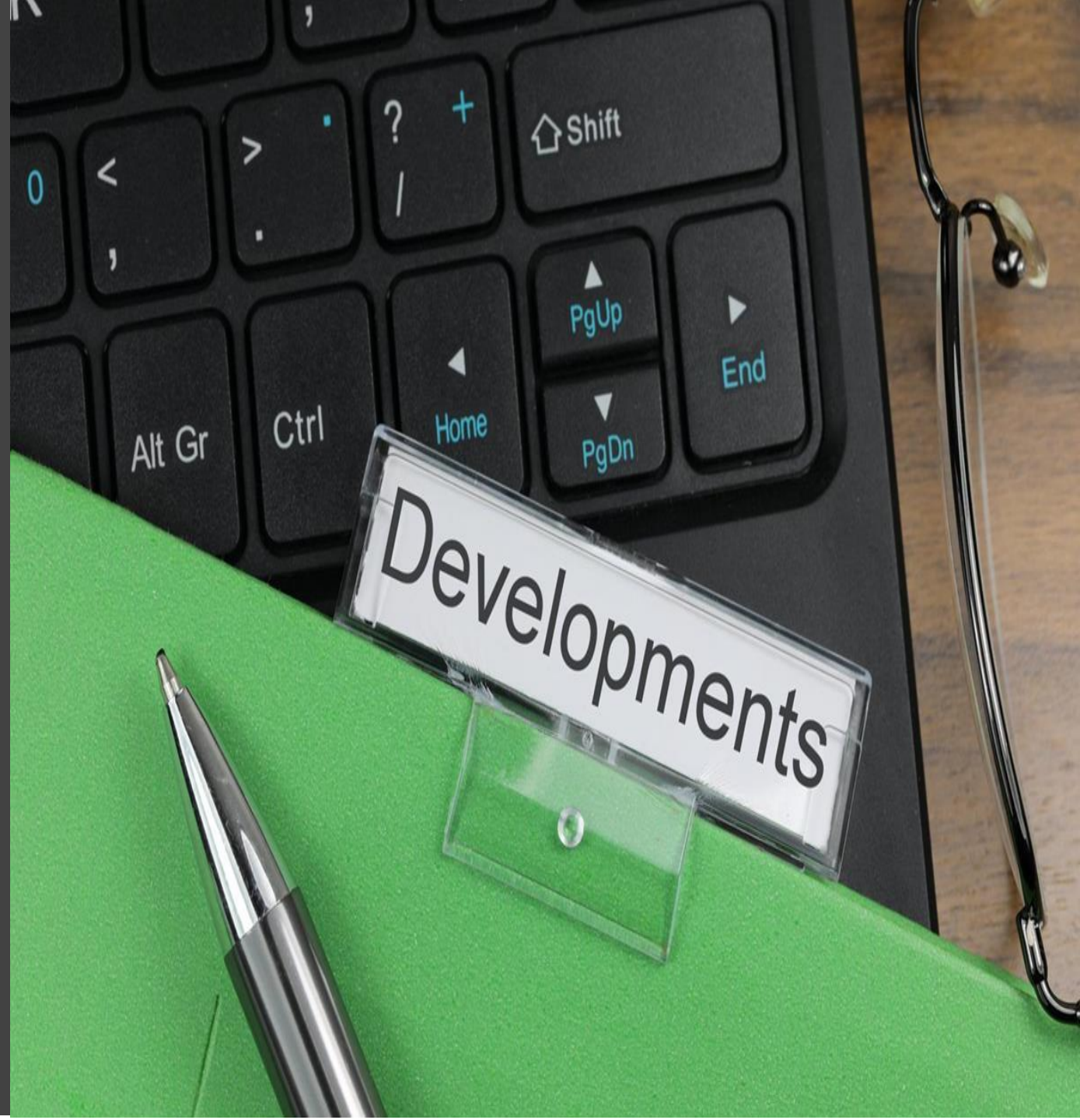
Appeals & Pre-Deposit!

Section 4

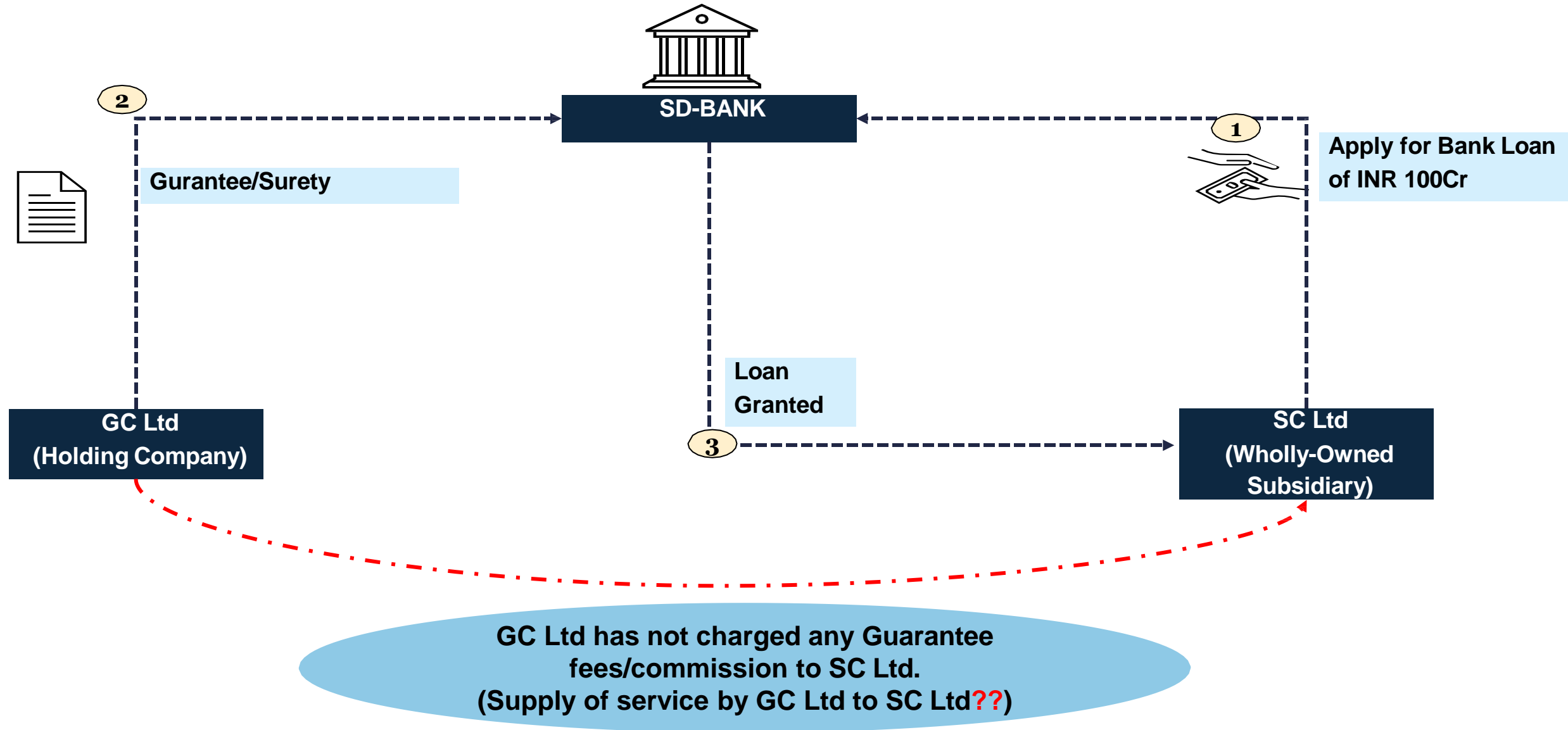
Misc. → Applicability & Rates of G/S

Section 5

Questions!



Understanding Corporate Guarantee!



Basics of CG!

Understanding Guarantee

- Guarantee in general terms is understood to mean a kind of **contract** wherein a **third-party promises** or undertakes to **pay the debt** of another person in case they default in making the debt re-payment. A guarantee may be either oral or written.
- A **“Contract of guarantee”** is a **contract** to perform the promise, or discharge the liability, of a third person in case of his default. (**Sec 126 of Contract Act, 1872**)

Consideration for “Contract of Guarantee”

- Anything done, or any promise made, for the **benefit of the principal debtor**, may be a **sufficient consideration** to the surety for giving the guarantee. (127 of ICA, 1872).
- it is evident that any act done or promise made for the benefit of the principal debtor (SC-Ltd) (for instance, to provide a loan by SD-Bank) performed by the creditor (SD-Bank), acts as sufficient consideration to the surety (GC-Ltd)

Parties involved in the Contract

- **Surety:** Person who gives the guarantee → **(GC-Ltd)**
- **Principal Debtor:** The person in respect of whose default the guarantee is given → **(SC-Ltd)**
- **Creditor:** The person to whom the guarantee is given is called the **“Creditor”**. → **(SD Bank Ltd)**

Companies Act & Income Tax Act

- Compliance (L/**Guarantee**/S/I given to person whom director is interested- Allowed by SR and used for business purpose (Exception is wholly owned subsidiary)
- “International transaction” means a transaction between two or more AEs, either or both of whom are non-residents, in the nature of, or **provision of services**, or lending or borrowing money, or any other transaction **having a bearing on the profits.....**
- Explanation "international transaction" shall include – (c) capital financing, including any type of long-term or short-term borrowing, lending or **guarantee**,.....;

Taxability under Erstwhile regime –1/2

Positive List

- ❖ There has been many divergent rulings on taxability of Corporate taxes as follows:
- ❖ Rulings **against /Favourable** the taxpayers:
 - **Olam Agro India Ltd Vs Commissioner of Service Tax, Delhi-I -- {2018 (8) TMI 102 - CESTAT NEW DELHI}** – *It was held that ST applies on BAS and not under BOFS. (BG & CG are same)*
 - **M/s. Sterlite Industries India Ltd. Versus commissioner of GST & central excise- {2019 (2) TMI 1249 - CESTAT CHENNAI}** – *The activity of providing corporate guarantee shall not fall under BOFS interpreting the entry and explaining the modus operandi of BG vs CG.*
 - **Hindustan Construction Company Ltd Versus Commissioner of Service Tax, Mumbai –VII {2023 (8) TMI 1144 - CESTAT MUMBAI}**– Bank Guarantee & Corporate Guarantee is Akin and the same is leviable to ST under 65(12). Consideration of 1% was paid in this case so the principals of SC Judgement of Edelweiss is not considered.

Taxability under Erstwhile regime-2-2

Negative List

- ❖ Under Negative list, it is important to understand the definition of “Service” under 65B(44) "service" means any **activity** carried out by a **person** for **another** for **CONSIDERATION**, and include a declared service, but shall not include.....(a)...(b).(c) fees taken in any Court or tribunal established under any law for the time being in force...”
- ❖ Landmark judgement of SC in case of **Edelweiss Financial Services Ltd {2023 (4) TMI 170 - SC ORDER}** in which has been summarized as follows:

Edelweiss provided corporate guarantees to financial institutions on behalf of its overseas subsidiaries and Indian subsidiaries. The overseas subsidiaries paid commission, but the Indian subsidiaries did not. It was held by AA which was upheld by Tribunal as follows:

 - ✓ **Positive List** – only ‘bank guarantee’ covered not ‘corporate guarantee’. Also, commission from overseas subsidiaries is exports.
 - ✓ **Negative List** – No consideration monetary or non-monetary is received by assessee. Hence service tax not applicable as it doesn’t qualify as Service u/s 65(44) of the Finance Act.
- ❖ Appeal was filed by GST-Department to SC, which was dismissed in favor of the assessee by holding that “**No effort was made** on behalf of the Revenue to assail the (above) finding or to demonstrate that issuance of corporate guarantee to companies without consideration would be a **taxable service**”. **(SC → Existence of Service ?)**
- ❖ **Relevance Under GST:** *Consideration between related persons is **NOT** a pre-condition for taxability under GST laws.*

Taxing CG's-Outcome of 52nd council meeting- Circular No. 204/16/2023-GST

Taxability of Corporate guarantee	<ul style="list-style-type: none">It is clarified that the <i>activity of providing corporate guarantee</i> to the bank/financial institutions for providing credit facility to the other company, where both the companies are related, is to be treated as supply of service.In case where no consideration is involved then also it is to be treated as a taxable supply of service as per provisions of Schedule I of CGST Act.
Taxability of Personal guarantee by Directors	<ul style="list-style-type: none">The CBIC has taken reference from RBI Circular which clearly states that no consideration by way of commission, brokerage fees or any other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits.Therefore, it is clarified that the open market value of the said transaction may be taken as zero and thus, the taxable value would be zero.
New Valuation rule	<p>New rule 28(2) is inserted to determine value of CG which shall be HIGHER of following:</p> <ul style="list-style-type: none">1% of the amount of such guarantee offered, or Actual considerationThe above rule is NOT applicable for personal guarantee offered by Directors.The new provision has “Overriding effect ” on existing valuation rules u/r 28 (The above provision to be applied irrespective of OMV, ABSENCE OF PROVISO TO RULE 28(2)) –Any Value if FULL ITC is eligible to recipient

HC Stays CBIC Circular on Corporate Guarantee

STERLITE POWER TRANSMISSION LIMITED & ORS. VERSUS UNION OF INDIA & ORS.-D-HC

ACME CLEANTECH SOLUTIONS P(LTD) vs UOI-P&H HC

Facts	Summons u/s 70 is issued to provide details of CGs after issuance of the Circular to levy GST on CG executed by the Company
ISSUE	A declaration is requested by PETITIONERS that the activity of the holding company providing a Corporate Guarantee to a subsidiary is <i>not in the nature of supply of services</i> taxable under Section 9 of the Central Goods & Service Tax Act, 2017
Petitioner Submission	<ul style="list-style-type: none">CGs are in the nature of CONTINGENT CONTRACT which is not enforceable till the guarantee is enforced by the entity to whom the guarantee is providedThe value of enforcement is not dependent on the value of the guarantee, and it is only where the guarantee is enforced that the issue of service may arise,Fixing a value at 1% of the Corporate Guarantee provided would put onerous burden on the entity providing the Corporate Guarantee.
Interim Order	<ul style="list-style-type: none">Notice is issued to UOI, and it is directed that NO COERCIVE ACTION shall be taken against the petitioner in case a final assessment order is passed, or a demand is created.Meanwhile, effect and operation of the impugned Circular dated 27.10.2023 (Annexure P-2) relating to Item No. 2 shall REMAIN STAYED and the Appellate Authority shall BE FREE to decide the case of the petitioner without being INFLUENCED by the CLARIFICATION

Existing Intricacies Relating to GST on Corporate Guarantees

Even after issuance of Circular No. 204/16/2023-GST & Divergent/Adverse High Court judgement, following intricacies issues still existed to **clarify**:

- Whether there is any '**SERVICE**' or it is a "**SHAREHOLDER ACTIVITY**" element involved in providing corporate guarantees to a bank on behalf of a related person? **(On account of Stay granted by HC on application of the Circular)**
- If at all there exists a service element, should the bank or the subsidiary company be considered **AS THE ACTUAL RECIPIENT** of such service?
- The new provision was inserted with effect from 26-10-2023, however, it was **UNCLEAR** as to what would be the treatment in cases pertaining to **PRIOR PERIOD** which are still under litigation. **(Retrospective or Prospective)**
- Difficulties in determining "**TIME OF SUPPLY**" and "**VALUE OF SUPPLY**" when the Loan amount sanctioned is different from the guaranteed amount.
- Whether the **NON-OBSTANTE CLAUSE** in the new provision is against the general principle of seamless flow of credit and leads to blockage of working capital amongst group entities. **(Absence of Proviso of Full ITC)**
- 1% of Corporate Guarantee is **Per Annum** or **Recurring**????

Clarifications on CG's- Outcome of 53rd council meeting (Circular 225/19/2024) dated 11.07.2024

Issues Involved

Whether sub-rule (2) of rule 28 of CGST Rules will apply to the **corporate guarantees issued prior to insertion of the said sub-rule on 26th October 2023?** Also, where intra-group corporate guarantees have been **issued before 26th October 2023, which are still in force today**, *would they be liable to pay GST on “1% of the amount of such guarantee offered”* on such guarantees?

Clarification by Circular

It is to be clarified that the supply of service of providing corporate guarantee to any banking company or financial institution by a supplier to a **related** recipient, on behalf of the said recipient, **WAS TAXABLE EVEN BEFORE THE INSERTION OF SUB-RULE (2) IN RULE 28** of CGST Rules with effect from 26th October 2023.

RULE 28(2) OF CGST RULES IS ONLY FOR **DETERMINATION OF THE VALUE** OF THE TAXABLE SUPPLY AND **NOT** REGARDING THE **TAXABILITY** OF THE SAID SUPPLY ITSELF.

Valuation of CG's Before 26.10.2023

01

The New Valuation rule cannot be applied retrospectively

- No effective machinery provisions for value determination, so levy on supply would not be possible - **CIT v. B.C. Srinivasa Setty[1981] 5 Taxman 1(SC)**
- Settled law that any amendment or new law provision would operate prospectively unless retrospective in operation. In the present case the new valuation would apply from 26.10.2023 onwards

02

Benefit of 2nd Proviso to rule erstwhile rule 28(1)
(Any value as Invoice value)

In terms of Rule 28 for periods prior to 26th October 2023, if the recipient is eligible for full ITC. This view is supported by **CBIC Circular No. 199/11/2023-GST** which clarifies regarding the taxability of services provided between Head Office and Branch Offices of the same organization, where the same valuation provisions, as applicable to related persons, apply. **(Full-ITC Condition)**

03

Valuation based on erstwhile valuation rules- OPV/Like Kind/110% Cost/- Residual method

The valuation based on existing rules has its **Own Challenges** in terms of

- Open market value for RP transactions. ()
- There is no similar or like kind of service to compare CG as every CG has its own basis of issuance.
- In case of 110% of Cost, direct calculation attributable to CG are very minimal

Clarifications on CG's- Outcome of 53rd council meeting (Circular 225/19/2024) dated 11.07.2024

S.No #	Question	Possible Views
(b)	<p>In cases where the corporate guarantee is provided for a particular amount, whereas the loan is only partly availed or not availed at all by the recipient, what will be the value of supply of corporate guarantee.</p> <p>Whether the RECIPIENT would be eligible to avail full ITC (Input Tax Credit) even before total loan is disbursed?</p>	<ul style="list-style-type: none">▪ <i>Corporate guarantee is NOT LINKED with the actual disbursal of the loan. (Corporate Guarantee is 100 Cr, loan is 25 Cr, valuation for GST shall be 100 Cr).</i> The service that is provided is that of TAKING ON THE RISK OF DEFAULT.▪ Therefore, it is clarified that the value of supply of the service of providing a corporate guarantee will be calculated based on the amount guaranteed and will not be based on the amount of loan actually disbursed to the recipient of the corporate guarantee.
(c)	<p>Whether the benefit of the 2nd proviso to rule 28(1) is not applicable in cases falling under subrule (2)?</p>	<ul style="list-style-type: none">▪ A proviso has been added to sub-rule (2) of Rule 28 of CGST Rules, effective retrospectively from 26-10-2023, like the second proviso in sub-rule (1).▪ This states that in cases of CG between related persons where the recipient can avail full ITC, - “the value declared in the invoice is deemed to be the open market value of the supply”. <p>Despite the insertion of a proviso like Sub Rule (1) after Sub Rule (2), the meaning of 'FULL ITC' REMAINS UNCLEAR. (Qua- Entity or Qua-Transaction)</p>

Clarifications on CG's- Outcome of 53rd council meeting (Circular 225/19/2024) dated 11.07.2024

S.No #	Question	Possible Views
(d)	Where a corporate guarantee is provided by MORE THAN ONE ENTITY , what amount is GST payable on by each Co-guarantor?	<ul style="list-style-type: none">▪ When CG is provided by multiple entities, GST is payable based on the actual consideration paid or payable to each co-guarantor, provided it exceeds 1% of the guaranteed amount.▪ If the total consideration is less than 1% of the guaranteed amount, each co-guarantor pays GST PROPORTIONATELY ON 1% of the amount they guaranteed.
(e)	Taxability of CG- FCM or RCM??	<ul style="list-style-type: none">▪ For intra-group CG issued by domestic entities, GST is paid under the forward charge mechanism, with the supplier required to issue the invoice.▪ However, if the guarantee is provided by a Foreign Entity for a related entity in India, GST is payable under the reverse charge mechanism by the recipient in India.
(f)	Whether to discharge the tax liability of 1% on CG one time, yearly, or monthly?	<ul style="list-style-type: none">▪ Under Rule 28(2) of CGST Rules, effective from 26-10-2023, the value of a CG service is 1% of the guaranteed amount per annum or the actual consideration, whichever is HIGHER. GST on CGs is calculated annually.<ul style="list-style-type: none">• CG Spread over Multiple Year: (1%) * N-Years• CG Less than 1 Year (Say 6months): (6/12) * (1%)

Refund related clarifications

2

Process of Refund of IGST paid u/r 96 of CGST Rules

Process for claiming rebate of IGST paid on export of goods

- 1

Shipping bill deemed to be application for claiming refund of tax paid on export of goods and such application shall be deemed to be filed only when EGM and GSTR-3B is filed.
- 2

Invoice wise details of such exports (containing Taxable value, IGST amount, etc.) would be required to be furnished in Table 6A of Form GSTR-1 (outward supply return) along with details of Shipping Bill and Port Code.
- 3

Information will get transmitted to Customs from GST portal, post filing of returns. The Customs system shall electronically transmit to the GST portal, a confirmation that the goods covered by the said invoices have been exported out of India.
- 4

The amount equal to the IGST paid in respect of each shipping bill shall be electronically credited to the applicant's bank account.

Matching between the two data sources is done at invoice level and any mis-match of the laid down parameters returns following error/ response codes

SB error/response code	Meaning	SB error/response code	Meaning
SB000	Invoice successfully validated	SB003	GSTIN mismatch
SBV00	SB already validated successfully	SB004	Invoice already received and validated
SB001	Invalid SB details	SB005	Invalid Invoice Number
SB002	EGM not filed	SB006	Gateway EGM not available

Issue faced by Exporters!

Illustrative: Application filed for IGST paid in Sep- 2024

Particulars	No. of Invoice s	Invoice value	(INR)	IGST @18%
Turnover of zero-rated supply of goods on which IGST is paid	10	10,000	100,000	18000
IGST paid in GSTR-3B of Sep-24	SB-000- Refund automatically received by the Exporter		1,00,000	(18000)
Upward Revision of Price of the Goods exported on account of Contractual arrangements	10	5000 (15K - 10K)	50.000	9000
Incremental IGST paid on account of UPWARD revision in GSTR-3B of Dec-24				9000

Issues under consideration:

- Currently there is **NO OPTION** available under GST law to claim refund of incremental IGST of INR 9000/- paid on account of upward revision.
- Who shall be Jurisdictional Officer: **CUSTOMS or GST OFFICER?**
- The refund application filed under **“Other Category”** was rejected as there was no provision under GST law to apply for refund for the same.
- TIME LIMIT** for filing refund application for additional IGST on upward revision of Price of goods.

No. 226/20/2024-GST refund of additional IGST paid on account of upward revision in price of goods subsequent to export.

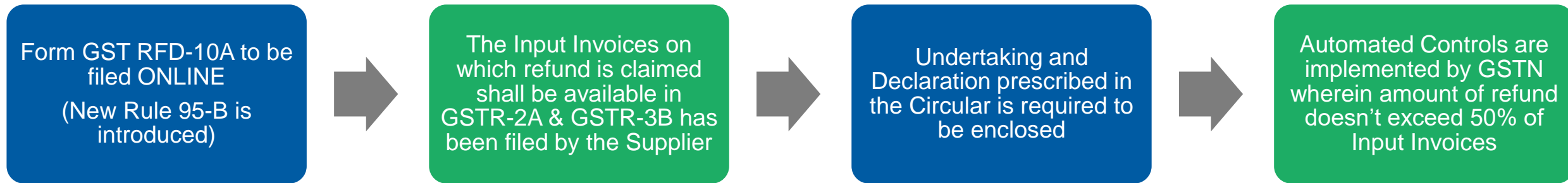
Process for claiming rebate of additional IGST paid on export of goods on Upward Revision

- Applicant shall file refund in New form RFD-01- “**Refund of additional IGST paid on account of increase in price subsequent to export of goods**” along with relevant documents prescribed in the circular (**Until the same is developed, File the application under Other categories**)
- Refund Application shall be processed by **JURISDICTIONAL GST OFFICER** of the **EXPORTER**
- Time limit for filing refund application shall be **2 YEARS FROM THE DATE OF INSERTION** of sub-rule 89(1B) of CGST rules, 2017 or **2 years from the date of Export of Goods** (Clause(a) of explanation 2 of Section 54 of CGST Act, 2017)
- Required documents include **shipping bills, export invoices, contracts for price revisions, Debit notes/Supplementary Invoice, proof of additional IGST payment WITH INTEREST, BRC/FIRC(Rule-96B) , CA/CMA certificate, and Statements 9A & 9B.**
- For **DOWNWARD PRICE REVISIONS** post-export, exporters must deposit proportional IGST refunds with interest, verified during the refund process for additional IGST(Recovery of Refunds with Interest)
- Interest payment for delay in payment of IGST seems to be **MANDATORY** condition as per the Circular issued, However, whether debit notes are liable for interest is a contentious issue in GST. Pending clarity, demanding interest along with additional IGST for upward price revisions or withholding refunds for non-payment of interest seems unjustified.

Electronic Refund filing by Canteen Stores Department (CSD)- Circular No. 227/21/2024

CSD is notified person to claim refund u/s 55 up to 50% TAX PAID by CSD on all Inward Supplies (Authorized operations)

Processing of refund applications filed by Canteen Stores Department (CSD) -



- CSD can claim a refund of 50% of ITC used for subsequent supply to Unit Run Canteens or authorized customers, as prescribed in Rule 95B (Notification 12/2024 dated 10.07.2024).
- Application- CSD can apply for a refund once every quarter/ covering multiple quarters/ fiscal years and time limit shall be **2 years from the last day of the quarter in which such supply was received.**
- The proper officer shall scrutinize the application with respect to completeness and eligibility of the refund claim to his satisfaction and issue the order in **FORM GST RFD-06** accordingly. The proper officer shall also upload a detailed speaking order along with the said order in **FORM GST RFD-06**.

Appeals & Pre-Deposit

3

Recovery of O/S Dues and Pre-Deposit Payment through DRC-03 Challan

Story So Far !



- Pre-Deposit amount (10% or 20%) which was paid by Taxpayer through DRC-03 Challan which was not considered by the Officer as Pre-Deposit u/s 112(9) of CGST Act, 2017 as the tax officers are taking a view that there is **NO STAY AGAINST** recovery as per **sub-section (9) of section 112 of CGST Act**.
- Tax officers are still **RESORTING TO RECOVERY PROCEEDINGS** after completion of period stipulated under section 78 Of CGST Act and there was no option in GSTN to adjust the payment of DRC-03 against the Pre-Deposit amount

Clarification by Circular



- The Circular has prescribed procedure for payment of Pre-Deposit from the GSTN The taxpayer can make the payment of an amount equal to the amount of pre-deposit by navigating to **Services >> Ledgers>> Payment towards demand, from his dashboard**.
- The taxpayer would be navigated to **Electronic Liability Register (ELL) Part-II** in which **he can select the order**, out of the outstanding demand orders, against which payment is intended to be made.
- Mechanism to adjust the inadvertent payment already made through Form **DRC-03** for Pre-Deposit by filing form **DRC-03A**.

- This form **DRC-03A** addresses a significant issue faced by taxpayers who had erroneously paid GST against demand orders using Form GST DRC-03. Form GST DRC-03 is intended solely for voluntary payments of tax liabilities, not for payments against demand orders issued by jurisdictional proper officers
- The new form allows taxpayers to appropriate payments made through Form GST DRC-03 against the demand liability in the Electronic Liability Ledger.
- **FILING PROCESS FOR FORM GST DRC-03A :**
 - Open Form GST DRC-03A: Access the form on the GST portal. Provide ARN of Form GST DRC-03:
 - **Enter the Application Reference Number (ARN)** of the DRC-03 form through which the payment was made. Auto-Population of Details: The details from Form GST DRC-03 will be auto-populated in Form GST DRC-03A.
 - **Reference Number of Demand Order:** Enter the reference number of the demand order (including rectification/appeal order) against which the payment was intended. Auto-Population of Demand Details: The details of the demand will be auto-populated in the form.
- **Verify Undertaking and Verification:** Check the undertaking and verification sections of the form. File with DSC or EVC: Submit the form using DSC or EVC

Recovery of O/S Dues and Pre-Deposit Payment through DRC-03 Challan

Impact of Filing Form GST DRC-03A Upon filing Form GST DRC-03A

The demand liability will be considered paid to the extent of the amount paid in Form GST DRC-03. This provides a significant relief to taxpayers who had previously made payments in error due to a lack of knowledge. Importance of Form GST DRC-03A Form GST DRC-03A serves as a bridge between the Electronic Liability Ledger and voluntary payments made through Form GST DRC-03. It clarifies the appropriate use of each form and prevents future misapplications of payments.

Additional Use Case

- Payment of Pre-Deposit for Appeals Form GST DRC-03A also addresses another critical issue regarding the payment of pre-deposit prior to filing an appeal before the GST Tribunal.
- Given that the GST Tribunal has not yet been constituted, taxpayers are currently unable to file appeals, resulting in pressure from field authorities for demand recovery. Government Guidelines for Pre-Deposit The government has provided guidelines to address this issue: For unpaid amounts:
- **FOR UNPAID AMOUNTS:** Taxpayers should pay 20% of the disputed tax against the demand created in the Electronic Liability Ledger. For amounts paid through Form GST DRC-03:
- **AMOUNT PAID THROUGH DRC-03:** Taxpayers should file Form GST DRC-03A to appropriate the amount paid against the demand created in the Electronic Liability Ledger. After making the payment, taxpayers must submit an undertaking to the jurisdictional proper officer, stating that they will file an appeal before the Appellate Tribunal once it becomes operational.
- This **STAY** of demand will **REMAIN UNTIL** the stipulated timelines for filing an appeal expire, effective from the Tribunal’s formation date.

CONCLUSION

The introduction of Form GST DRC-03A is a **SIGNIFICANT STEP** towards simplifying the GST payment process and addressing taxpayer concerns. It ensures that voluntary payments and payments against demand orders are appropriately handled, reducing administrative burdens and preventing future issues. This proactive approach by the GST Council and the government reflects their commitment to addressing taxpayer issues and streamlining the GST process

Misc.- Rates & Exemption

4

*Circular No. 221/15/2024-GST Clarification on **TOS** in respect of supply of services of construction of road and maintenance thereof of **National Highway Projects of National Highways Authority of India (NHAI)** in **Hybrid Annuity Mode (HAM)** model*

Background

Representations have been received from the trade and the field formations seeking clarification regarding **the time of supply** in respect of **supply of services of construction** of road and maintenance thereof of National Highway Projects in **Hybrid Annuity Mode (HAM) model**, where certain portion of Bid Project Cost is **received** during **construction period** and remaining payment is **received** through **deferred payment (annuity) spread over years**.

BREIF ANALYSIS

- Clarity is brought in for Time of Supply in case of Hybrid Annuity Model [HAM] of National Highway Authority of India [NHAI] which involves construction, operation & maintenance of new road and the payment of the same being spread over 15-17 years.
- It has been clarified that HAM contracts are in the nature of ‘**Continuous supply of services**. Accordingly, Time of Supply in terms of Section 13(2) read with Section 31(5) will be

If invoice is issued on or before specified date or date of completion of event specified in the contract.	Date of issue of invoice or date of receipt of payment, whichever is earlier.
If invoice is not issued on or before specified date or date of completion of event specified in the contract.	The due date of payment as per the contract or date of receipt of payment, whichever is earlier.

*Circular No. 222/16/2024-GST Clarification on TOS of **SPECTRUM USAGE AND OTHER SIMILAR SERVICES** under GST*

Background

Representations have been received from the trade and the field formations seeking clarification regarding the **time of supply** for payment of GST in respect of **supply of spectrum allocation services** in cases where **the successful bidder for spectrum allocation** (i.e. the telecom operator) opts for making payments in instalments under deferred payment option as per Frequency Assignment Letter (FAL) issued by Department of Telecommunication (DoT), Government of India.

BREIF ANALYSIS

Clarifies the time of supply for GST payment on spectrum allocation services when telecom operators opt for installment payments.

It establishes that these services constitute a **CONTINUOUS SUPPLY**, with the time of supply determined by the earlier of the payment date or 60 days post invoice issuance.

The Frequency Assignment Letter by DoT is deemed a bid acceptance rather than an invoice. For upfront payments, GST is due when the payment is made or due, and for deferred payments, GST is due as each installment is made or due.

WAY FORWARD: This clarification ensures uniform application of the law and extends to other cases of natural resource allocation by the government

Circular No. 228/22/2024 – GST, dated 15 July 2024 Clarifications regarding applicability of GST on certain services

S.NO	Issues	Clarifications
1	GST Exemption on outward supplies made by the Ministry of Railways	Earlier, Notification No. 13/2023-CT(R) dated 19-10-2023, effective from 20-10-2023, brought all outward supplies of the Ministry of Railways under the Forward Charge Mechanism to enable ITC availing by Indian Railways, reducing costs.
		However, due to implementation difficulties, Notification No. 04/2024- CT(R) dated 12-07-2024 EXEMPTS OUTWARD SUPPLY SERVICES provided by Indian Railways to the general public (platform tickets, retiring rooms, waiting rooms, cloakrooms, and battery-operated car services) and exempts inter-zone/division supply of services, Further, the period between 20-10-2023 to 14-07-2024 has been regularized on 'As-is Where-is' basis meaning that whatever treatment or no treatment has been given by the taxpayer, it will be considered acceptable.
2	GST Exemption on transactions between SPVs and Indian Railways	Based on the 48th GST Council Meeting, it was clarified that services provided by Special Purpose Vehicles (SPVs) to the Ministry of Railways of allowing infrastructure usage against consideration and maintenance services by Ministry, are taxable.
		However, due to implementation difficulties, NN 04/2024-CT(R) dated 12-07-2024 exempts these services and it is being clarified that services provided from 01-07-2017 to 14-07-2024 are regularized on an 'as is where is' basis

Circular No. 228/22/2024 – GST, dated 15 July 2024 **Clarifications regarding applicability of GST on certain services**

S.NO	Issues	Clarifications
3	Applicability of GST Exemption on statutory fees collected by RERA	Real Estate Regulatory Authority [RERA] is constituted under the Real Estate [Regulation and Development] Act to perform functions entrusted under the law.
		It has been clarified that RERA being a ‘Governmental authority’ is covered by SI no 4 of NN 12/2017-CT(R) and hence the statutory collection made by RERA are EXEMPT.
4	Applicability of GST on the incentive amount shared by acquiring banks with other stakeholders under notified incentives scheme for promotion of Ru-Pay Debit Card and low value BHIM-UPI transactions	MeitY [Ministry of Electronics and Information Technology] pays acquiring banks an incentive for promoting RuPay Debit Cards and low-value BHIM-UPI transactions. Earlier, Circular 190/02/2023-GST clarified that these incentives are subsidies and not taxable.
		As per MeitY’s notifications, incentives paid to acquiring banks are further shared with issuer banks, PSPs, and UPI apps as decided by NPCI. Clarity on the taxability of this sharing was needed.
		It has been clarified that the further sharing of incentives by acquiring banks with other stakeholders, up to the point where NPCI determines distribution, is treated as a subsidy and not taxable.

*Circular No. 228/22/2024 – GST, dated 15 July 2024 Clarifications regarding applicability of **GST on certain services***

S.NO	Issues	Clarifications
7	GST on Retrocession Services	Retrocession, a reinsurance transaction where a part of assumed risk is further ceded to another Indian insurer or Cross Border Insurer (CBR), raised questions about its inclusion under entry 36A of NN 12/2017 – CT (R).
		The Board has clarified that reinsurance includes retrocession for the purposes of the aforementioned entry. Thus, aforesaid clarification in relation to reinsurance business shall also apply in case of retrocession
8	GST Liability on Certain Accommodation Services	NN – 04/2024 – CT (R) effective from 15-07-2024 exempts accommodation services valued at Rs 20,000 or less per person per month , provided for a continuous minimum period of 90 days .
		In order to extend the above benefit to prior period, Board has clarified that accommodation services falling under this category provided before 15-07-2024 are regularized on an 'As Is Where Is' basis

Circular No. 228/22/2024 – GST, dated 15 July 2024 **Clarifications regarding applicability of GST on certain services**

S.NO	Issues	Clarifications
5	GST Liability on reinsurance of specified general and life insurance schemes	Sl. Nos. 35 and 36 of NN 12/2017 – CT (R) exempt certain general and life insurance schemes. Effective 25-01-2018, reinsurance of these schemes was exempted through Sl. No. 36A. Clarity on the taxability of reinsurance prior to this date was needed
		It has now been clarified that reinsurance of exempt insurance schemes prior to 25-01-2018 is regularized on an 'as is where is' basis
6	GST Liability on reinsurance of insurance schemes whose premium is paid by Govt	Entry no. 40 of NN 12/2017 – CT (R) exempts insurance services provided to Central Government, State Government, Union Territory where total premium is paid by CG, SG, or UT. Effective 27-07-2018, reinsurance of these services was also exempted. Clarity on the taxability of reinsurance before this date was needed.
		It has now been clarified that reinsurance of insurance services covered under entry 40 is regularized for the period before 27-07-2018 on an 'as is where is' basis

Circular No. 229/23/2024 – GST, dated 15 July 2024 - ***Clarification on GST rates and classification of goods***

SOLAR COOKERS that operate on dual energy (solar and grid electricity) are classified under heading 8516, attracting a GST rate of 12% under Sl. No. 201A of Schedule II of NN 01-CT(R).

All types of sprinklers, **INCLUDING FIRE WATER SPRINKLERS**, are subject to GST at 12% under entry 195B of Schedule II of NN 01-CT(R). Past issues are regularized on an 'as is where is' basis.

NN 02/2024-CT(R) dated 12-07-2024 amended entry 199 of Schedule II to explicitly include **'PARTS' OF POULTRY KEEPING MACHINERY**. Past issues are regularized on an 'as is where is' basis.

In line with amendments to the Legal Metrology (Packages Commodities) Rules, 2011, NN 01/2017-CT(R) and NN 02/2017-CT(R) have been amended to exclude agricultural farm produce in packages exceeding 25kgs or 25 litres from the scope of 'pre-packaged and labelled'. Consequently, such agricultural produce will not attract 5% GST and it will be fully exempt. Past issues are regularized on an 'as is where is' basis.

Supplies of pulses and cereals from 01-07-2017 to 17-07-2022 are accepted on an 'as is where is' basis for agencies appointed by the Union or State Governments under approved schemes to distribute these goods free or at subsidized rates to eligible beneficiaries, subject to specified conditions

Thank You

Name: Shravan Gehlot

Email: Shravan@saaasllp.com

Mobile: 9500144702