



UPDATES IN GST

RECENT & IMPORTANT

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WAIVER OF INTEREST AND PENALTIES

- GST Council has recommended insertion of Section 128A in CGST Act, 2017
- Under this provision, waiver of interest and penalties for
 - Demand notices issued under Section 73 of the CGST Act
 - For F.Y. 2017-18, 2018-19 and 2019-20,
- In cases where the taxpayer pays the full amount of tax demanded in the notice upto 31.03.2025.
- The waiver does not cover demand of erroneous refunds.

EXISTING DEMANDS ?

- Demand Notice issued for 17-18, 18-19, Order not passed yet
- Order issued, whether to file appeal?
- Demand Notices already issued for 19-20
 - whether to file reply if demand is acceptable?
 - Whether to pay through DRC 03?
- Order issued, whether to file appeal?
- Demand with interest/ penalties already paid, Refund?
- Central Auth have issued demand under 74, but case does not involve suppressions.?

TIME LIMIT TO AVAIL INPUT TAX CREDIT UNDER SECTION 16(4) OF CGST ACT

- In respect of initial years of implementation of GST, i.e., financial years 2017-18, 2018-19, 2019-20 and 2020-21:
 - Time limit to avail ITC in FORM GSTR 3B filed upto 30.11.2021
 - For F.Y. 2017-18, 2018-19, 2019-20 and 2020-21,
 - May be deemed to be 30.11.2021.
 - Kerala HC judgement in case of M/S. M.TRADE LINKS gave direction to consider time limit as 30th November of each F.Y.
- With respect to cases where returns have been filed after revocation
 - Time limit to avail ITC in FORM GSTR 3B within 30 days of the order of revocation.
- W.r.t. RCM for inward supplies from URD, time limit to apply from date of issuance of self-invoice u/s 31(3)(f) – Circular 211
 - Interest and penalty for delayed payment of RCM and delayed self-invoice.

PENDING CREDITS / PENDING CASES?

- Regular ITC for 17-18 to 20-21 not claimed ?
- Reg Cancelled due to Non-filing of return
 - Revokation application filed between Apr 23 to Jun 23
 - ITC for period upto Dec 21?
 - ITC for period from Jan 22 not appearing in GSTR-2B?
 - ITC already claimed in 3B irrespective of 16(4) and GSTR-2B
- RCM paid under Audit DRC 03
 - ITC not claimed?
 - Paid upto Mar 23 or after Apr 23

INTEREST U/S 50 IN CASE OF DELAYED RETURN, ON THE AMOUNT WHICH IS AVAILABLE IN ELECTRONIC CASH LEDGER (ECL)

Amendment in rule 88B of CGST Rules

- An amount which is available in the Electronic Cash Ledger
- On the due date of filing of return in FORM GSTR-3B
- Debited while filing the said return,

shall not be included while calculating interest under section 50 in respect of delayed filing of the said return

MONETARY LIMITS FOR REVENUE APPEAL – CIR 207

Particulars	Monetary Limit under GST	Monetary Limit pre GST
Tribunal	20 lakhs	50 lahs
High Court	1 Crore	1 crore
Supreme Court	2 Crore	2 crore

Dispute on	Monetary Limit to apply on
Tax (+ Interest + Penalty + Late fee)	Tax
Interest	Interest
Penalty	Penalty
Late Fee	Late Fee
Interest, penalty and/or late fee	Total of Interest, penalty and/or late fee
Erroneous refund	Amount of refund

Monetary limit shall be applied on the disputed amount of tax/interest/penalty/late fee

Composite order: Limits shall be applicable on the total amount of tax/interest/ penalty/ late fee, and not on the amount involved in individual appeal or demand notice

MONETARY LIMITS FOR REVENUE APPEAL

Exceptions:

- Where any provision of the Act/ Rules Regulation, order, notification, instruction or circular has been held to be ultra vires to the Constitution of India;
- Where the matter is related to –
 - a.Valuation of goods or services;
 - b. Classification of goods or services;
 - c. Refunds;
 - d. Place of Supply;
 - e.Any other issue,
Which is recurring in nature and/or involves interpretation of the Act /Rules/Noti. /Circular/ order/ inst. etc;
- Where strictures/adverse comments have been passed and/or cost has been imposed against the Government/Department or their officers; or
- 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

RELAXATION FOR PRE-DEPOSIT

Appellate Forum	% as Pre Deposit		Max Deposit	
	Present	Recommended	Present	Recommended
DC / JC / Comm Appeal	10%	10%	25 crore	20 Crore
GSTAT*	Additional 20%	Additional 10%	50 crore	20 Crore

Circular to prescribe a mechanism for adjustment of an amount paid in respect of a demand through FORM GST DRC-03 against the amount to be paid as pre-deposit for filing appeal.

*Time for filing appeals in GST Appellate Tribunal: 3 months period for filing appeals before the Appellate Tribunal to start from a date to be notified by the Government in respect of appeal/ revision orders passed before the date of said notification

Earlier, time limit was 3 months from date on which GSTAT president or State President enter office.

COMMON TIME LIMIT FOR ISSUANCE OF DEMAND NOTICE

- New Section 74A in CGST Act, to provide for common time limit for issuance of demand notices and orders in respect of demands for FY 2024-25 onwards
- Corresponding amendments in Section 73 and Section 74 of CGST Act, 2017
- Also, the time limit for the taxpayers to avail the benefit of reduced penalty, by paying the tax demanded along with interest, has been recommended to be increased from 30 days to 60 days

IMPORT OF SERVICES FROM RELATED PARTY – CIR 210

- Foreign affiliate providing services to the related domestic entity,
- Full ITC is available to related domestic entity,
- Value of supply of services declared in the invoice by related domestic entity may be deemed as open market value
- Second proviso to rule 28(I) of CGST Rules.
- Further, if full ITC is available to the recipient, if the invoice is not issued by the related domestic entity, value may be deemed to be Nil, and may be deemed as open market value

TAXABILITY OF PROVIDING LOAN BY AN OVERSEAS ENTITY TO ITS INDIAN RELATED ENTITY OR BY A PERSON IN INDIA TO A RELATED PERSON – CIR 218

- Overseas affiliates or domestic related persons are generally charging no consideration in the form of processing fee/ service fee, other than the consideration by way of interest or discount on the loan amount
- Processing/ service fee is generally charged by the bank in order to cover the administrative cost of processing the loan application such as credit assessment of the potential borrower - to identify and evaluate the risks involved and to consider methods of monitoring and managing these risks, understanding the business of the applicant, as well as the purpose of the loan, financial standing and credibility of the applicant..
- When an entity is extending a loan to a related entity, it may not require to follow such processes as are followed by an independent lender. Hence there may not be the activity of 'processing' the loan, and no administrative cost may be involved in granting such a loan.
- Accordingly, in the cases, where no consideration is charged by the person from the related person, or by an overseas affiliate from its Indian party, for extending loan or credit, it cannot be said that any service is being supplied in the form of processing/ facilitating/ administering the loan, by deeming fiction under Sch I
- Accordingly, there is no question of levy of GST on the same by resorting to open market value for valuation of the same as per rule 28

CORPORATE GUARANTEE'S – RETRO EFFECT

26.10.23

- Deemed value @1% of Guarantee under 28(2) to be applicable only for Domestic Transactions and Import Transactions
- 1% **per annum** in case renewals or proportionately for multi year/partial period guarantee
- If recipient eligible for full ITC, then value declared is accepted

CHANGES AND CLARIFICATIONS FOR ECO

- Cir 209- Cases involving supply of goods to an unregistered person, where the billing address and delivery address are different, Delivery address to be the address of the recipient for purpose of determination of PoS of the said supply of goods
- New TCS rate w.e.f. 10th July 2024 – 0.5% instead of 1%

CHANGES IN RETURNS & COMPLIANCES

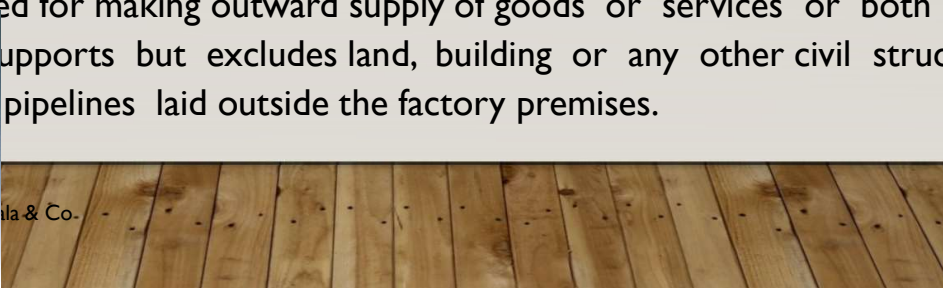
- The threshold for reporting of B2C inter-State supplies invoice-wise in Table 5 of FORM GSTR-I was recommended to be reduced from Rs 2.5 Lakh to Rs 1 Lakh.
- New return Form GSTR-IA introduced
 - Amend/ rectify information reported in GSTR-I prior to filing of GSTR-3B
 - ITC in GSTR-2B will appear in next month, but mismatch between I and 3B can be avoided
 - Communication between Taxpayer vide GST Portal?
- Changes made in Form GSTR-2B
- GSTR-4 from FY 2024-25 onwards to be filed till 30th June of next FY
- Annual return for the FY 2023-24 for taxpayers having aggregate annual turnover above Rs. 2 crore

CHANGES IN ANNUAL RETURN

- New rows to report ECO supplies
- Option to report Exempt and Nil rated supplies in exempt row continues for F.Y. 23-24
- Option to report Value of supplies (on which tax is not payable) net of DN/CN/ amendments continues
- Option to report ITC on input and input services under Input row continues
- Option to report reversal of ITC on consolidated basis in 7H continues
- Table 8A to be Auto-populated from GSTR-2B
 - ITC of 22-23 reversed in 22-23 and reclaimed in 23-24 will not match with GSTR-2B data
- Option to report ITC claimed / reversed in table 12, 13 in next F.Y. continues
- Relaxation in Table 15 to 18 continues as is.
- Relaxations for GSTR-9C as already available, continues.

ITC ON DUCTS AND MANHOLES USED FOR O.F.C.

- Ducts and manholes used in network of optical fiber cables (OFCs) for providing telecommunication services
- Is it a Blocked ITC under 17(5)(c) / 17(5)(d) as WCT used for construction of Imm. Prop?
- Circular 219 clarifies as follows;
 - Ducts and manholes are basic components for the optical fiber cable (OFC) network used in providing telecommunication services. The OFC network is generally laid with the use of PVC ducts/sheaths in which OFCs are housed and service/connectivity manholes, which serve as nodes of the network, and are necessary for not only laying of optical fiber cable but also their upkeep and maintenance
 - ducts and manholes are covered under the definition of “plant and machinery” as they are used as part of the OFC network for making outward supply of transmission of telecommunication signals from one point to another.
 - "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes four supports but excludes land, building or any other civil structures; pipelines laid outside the factory premises.



WARRANTY / EXTENDED WARRANTY CIR- 216



SUPPLY OF SERVICE
EXTENDED WARRANTY



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POST SALE DISCOUNTS – CREDIT NOTES (CIR 212)

- When any discount is offered by the supplier to the recipient,
 - issuance of a tax credit note as per section 34 of the CGST Act,
 - after the supply has been effected,
- Discount can be excluded from value only if conditions of section 15(3)(B) are fulfilled;
 - Discount is established in terms of an agreement entered into at or before the ToS;
 - Discount must be specifically linked to the relevant invoices
 - **Input Tax Credit attributable to such discount on the basis of document issued by the supplier has been duly reversed by the recipient**
- **No functionality on portal to verify if recipient has reversed ITC. In meanwhile suppliers to obtain;**
 - **Undertaking / certificate from the recipient if Tax is not exceeding 5 lakh in a F.Y.**
 - **Certificate issued by CA or CMA with UDIN if Tax exceeds 5 lakhs in a F.Y.**
 - **Details of the credit notes,**
 - **Details of invoice number against which the said credit note has been issued,**
 - **Amount of ITC reversal**
 - **Details of the FORM GST DRC-03/return / any other relevant document through which such reversal of ITC has been made by the recipient.**

OTHER UPDATES

- Cir 224 - Pre deposit payment for GSTAT and Stay of recovery
- Cir 226 – Refund of Additional IGST paid on exports on account of upward price revision
- Cir 222 – Spectrum payment in Instalments – ToS for RCM
- Cir 221- Construction & Maintenance of Highways on Annuity payment - ToS
- Cir 220 – Custodial services by Banks to Foreign Portfolio Investors –PoS
- Cir 217 – ITC on repair of Vehicle to Insurance Co. under Reimbursement Mode available
- Cir 215 – GST by insurance co. on sale of wreck/salvage, if claim settled on full IDV. If deduction made for salvage, then wreck remains property of insured and no GST by Insurance Co
- Cir 213- ESOP etc given to employees. Payment by Co. (Employer) to Foreign Holding(issuing Shares) – No GST



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