



RSM Newsflash: Summary of Recent Circulars issued under GST

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Newsflash

Summary of Recent Circulars issued under GST

For Circulation

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In accordance with the recommendations made by the GST Council in its 50th meeting, Central Board of Indirect Taxes and Customs has issued several clarificatory circulars on prevalent issues under GST.

The gist of the said circulars is captured as under:

I. Circular No. 192/04/2023-GST

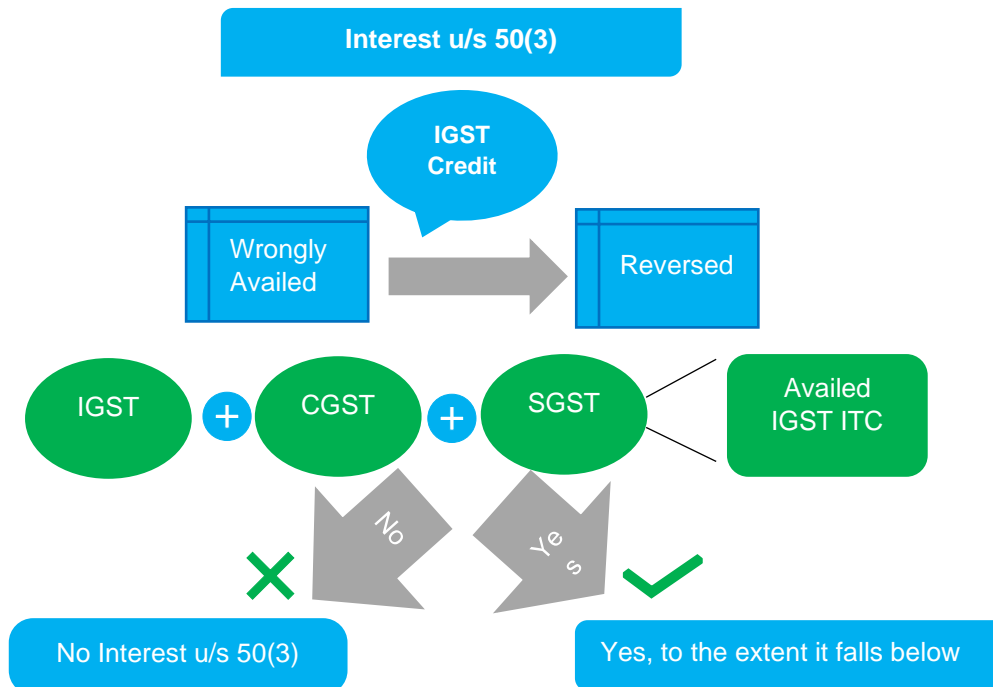
- **Clarification on charging of interest under Section 50(3) of the CGST Act, 2017, in cases of wrong availment of IGST credit and reversal thereof**

Brief background:	The said circular is issued to provide clarity on whether the total balances under the heads IGST, CGST and SGST in electronic credit ledger taken together would be considered for calculation of interest in cases of wrong availment of IGST credit.
Clarification through the Circular:	It has been clarified through the said circular that interest on erroneously availed IGST would be computed by considering balances available under all the heads cumulatively.
Relevant majorly to:	All registered persons while computing interest on reversal of erroneously availed IGST

- The balance of ITC under IGST head is permitted to be utilised for offset of liabilities under any of the heads IGST, CGST and SGST and hence, interest on erroneously availed ITC would be computed by considering balances available under all the heads cumulatively.
- The extent of utilisation of wrongly availed ITC under IGST head for purpose of interest computation would be the difference between the amount of wrongly availed ITC under IGST head and the summation of ITC balances under all the heads (i.e. IGST, CGST and SGST) on the date of reversal. The same is explained with the help of below illustration:

Particulars	IGST (Rs.)	CGST (Rs.)	SGST (Rs.)
IGST wrongly availed	15,000		
Balances in electronic credit ledger on the date of reversal of wrongly availed IGST	8,000	500	500
Utilisation of ITC in excess of balance available on which interest would be applicable [(IGST wrongly availed)- (sum of IGST + CGST + SGST balances on the date of reversal)]	6,000		

(iii) It has also been clarified that since ITC in relation to GST compensation cess can be utilised for payment of liabilities under compensation cess only, ITC of compensation cess cannot be considered while determining interest on wrongly availed and utilised IGST, CGST or SGST credit.



II. [Circular No. 193/05/2023-GST](#)

- Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01-04-2019 to 31-12-2021

Brief background:	<p>The discrepancies between ITC availed as per GSTR 3B vis-à-vis auto-population in GSTR 2A report are being highlighted by the officers during scrutiny and audit proceedings seeking explanation and reversal of such excess claims. Circular No. 183/15/2022 – GST dated 27 December 2022 was issued to prescribe procedures for dealing with cases of ITC mismatch for the FY 2017-18 and FY 2018-19. In view of several requests seeking clarifications on similar issues for the period April 2019 to December 2021, the department has issued the said circular.</p>
Clarification through the Circular:	<p>The manner of dealing with difference in ITC availed in Form GSTR 3B as against amounts reflecting in GSTR 2A for the period 01 April 2019 to 31 December 2021 and the applicability of earlier Circular No. 183/15/2022 to period 01 April 2019 to 31 December 2021 has been clarified through the said circular.</p>
Relevant majorly to:	<p>Registered taxpayers who are facing difficulties while addressing departmental notices/litigation due to issues of ITC mismatch with regards to availment in GSTR 3B as compared to reflection of ITC in auto-generated GSTR 2A would be benefitted by the Circular</p>

- (i) Rule 36(4) of CGST Rules, 2017 came into effect from 09 October 2019 thereby allowing additional availment of ITC up to a certain specified limit beyond the eligible ITC appearing in auto-populated

GSTR 2A report. The limits were slowly brought down in a staggered manner. With effect from 01 January 2022, ITC can be availed only on inward invoices on matching with GSTR 2B report.

(ii) In conformity with the applicability of Rule 36(4) of CGST Rules 2017 allowing additional claim of ITC as per specified limit of percentages over and above the amount of eligible ITC reflecting in GSTR 2A report, and with a view to extend the applicability of Circular No. 183/15/2022 – GST dated 27 December 2022 which is applicable to cases pertaining to the FY 2017-18 and FY 2018-19, the said circular has been issued specifying the manner to deal with cases of ITC mismatch between GSTR 3B and GSTR 2A during the period 01 April 2019 to 31 December 2021.

(iii) The clarification provided through the said circular is illustrated as under:

Period	% of ITC allowed in excess of 2A	As per 2A (Rs.)	As per 3B (Rs.)	Excess ITC allowed if Declaration/Certificate as per Circular 183 are submitted	Total admissible ITC if Declaration/Certificate as per Circular 183 are submitted	Inadmissible amount
	(I)	(II)	(III)	(IV) = (II) * (I)	(V) = (II) + (IV)	(VI) = (III) – (V)
01-04- 2019 to 08-10-2019	Rule 36(4) not applicable	1,000	1,500	No bar as Rule 36(4) was not introduced	1,500	0
09-10-2019 to 31-12-2019	20%	1,000	1,500	200	1,200	300
01-01-2020 to 31-12-2020	10%	1,000	1,500	100	1,100	400
01-01-2021 to 31-12-2021	5%	1,000	1,500	50	1,050	450
01-01-2022 onwards	Circular No. 183/15/2022 – GST dated 27 December 2022 is Not Applicable					

(iv) It is further clarified that the circular would be applicable only to the ongoing cases for the period 01 April 2019 to 31 December 2021 and in cases of pending appeal proceedings in relation to the period covered through the circular.

III. [Circular No. 194/06/2023-GST](#)

- Clarification on TCS liability under Section 52 of the CGST Act, 2017 in case of multiple E-commerce Operators (ECOs) in one transaction

Brief background:	There have been certain apprehensions with regards to applicability of TCS provisions in case of involvement of multiple ECOs in a single transaction.
Clarification through the Circular:	The said circular has been issued in the light of Open Network for Digital Commerce (ONDC) and provides clarity on issues of taxability and compliances under Section 52 of the Act where multiple ECOs are present in one transaction
Relevant majorly to:	Seller-side ECOs and Buyer-side ECOs forming a part of the ONDC environment

The below has been clarified in case of multiple ECOs in a single transaction of supply:

- (i) The supplier-side ECO is not the supplier in the said supply – Collection of TCS liability and necessary compliances under Section 52 of the CGST Act, 2017 shall be done by the supplier-side ECO.
- (ii) The supplier-side ECO is himself the supplier of the said supply - Collection of TCS liability and necessary compliances under Section 52 of the CGST Act, 2017 shall be done by the buyer-side ECO.

IV. [Circular No. 195/07/2023-GST](#)

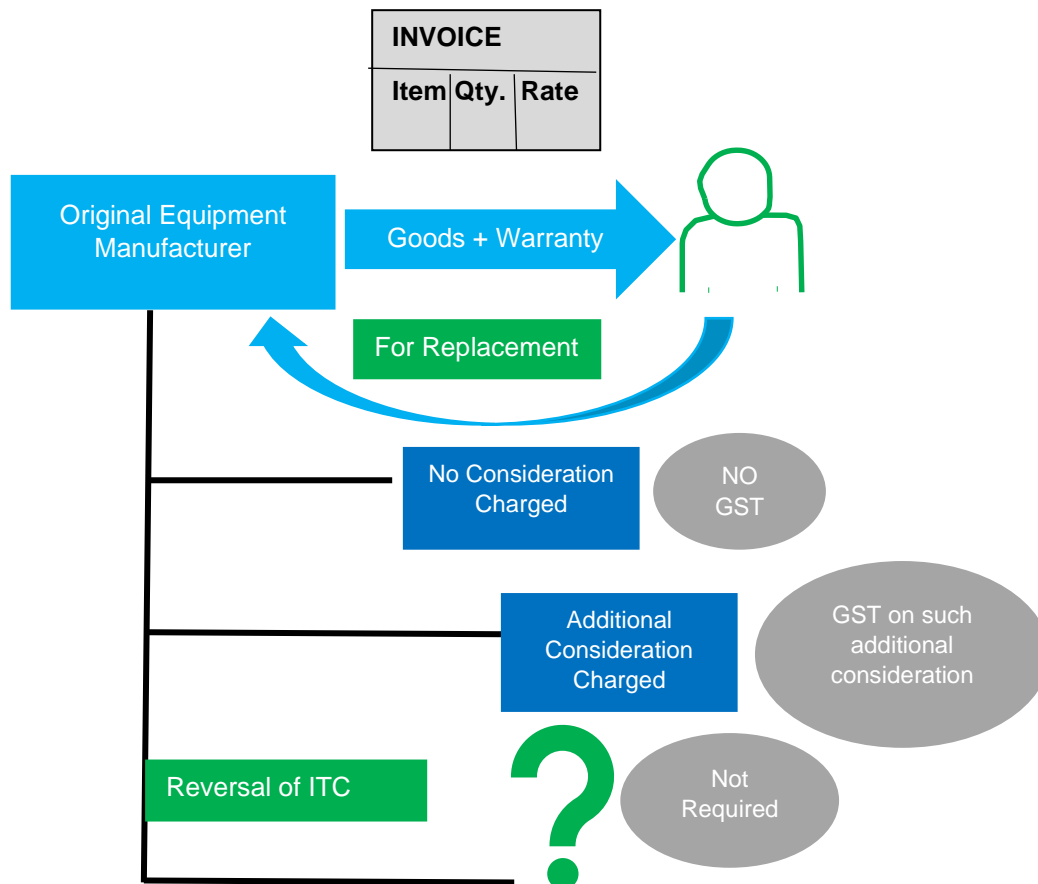
- **Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period.**

Brief background:	With a view to combat unnecessary litigation due to divergent interpretations in respect of GST liability and reversal of ITC against supplies of replacement of parts and repair services during the warranty period without any charge to the customers.
Clarification through the Circular:	The said circular seeks to provide clarity on several ambiguities surrounding the taxability and claim of ITC on warranty replacement of parts and repair services during warranty period
Relevant majorly to:	Manufacturers, distributors, third-party warranty service providers

Few of the significant clarifications provided by the said circular is tabulated as under:

Issue	Clarification
GST implications on replacement of parts or supply of repair services during the warranty period without any separate charge of consideration provided by the original manufacturer	<p><u>Taxability under GST</u></p> <ul style="list-style-type: none"> - No GST would be payable on replacement of parts and/or repair services as part of warranty. - If any additional consideration is charged by the manufacturer for such replacement or service charges, then GST would be payable with respect to such additional consideration. <p><u>Reversal of ITC</u></p> <ul style="list-style-type: none"> - Supply of replacement goods/services without any consideration during the warranty period do not qualify to be exempt supplies. - Hence, no reversal of ITC is required.
GST implications on replacement of parts or supply of repair services during the warranty period without any separate charge of consideration by the distributor on behalf of the original manufacturer	<p><u>Taxability under GST</u></p> <ul style="list-style-type: none"> - No GST would be payable by the distributor if no consideration is charged by the distributor from the customer - If any additional consideration is charged by the distributor from the customer, then GST would be payable with respect to such additional consideration.

	<p>Reversal of ITC</p> <ul style="list-style-type: none"> - If the distributor charges the consideration for the replaced parts from the manufacturer, GST would be payable by the distributor on such a transaction and the manufacturer may avail ITC subject to conditions under the CGST Act, 2017. - No reversal of ITC on part of the distributor is required.
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V. [Circular No. 196/08/2023-GST](#)

- **Clarification on taxability of shares held in a subsidiary company by the holding company**

Brief background:	In order to address numerous representations received from the trade and industry in relation to taxability of holding of shares in a subsidiary company by the holding company.
Clarification through the Circular:	Securities are neither goods nor services as per the definitions laid down under GST. Thus, the activity of holding of shares of subsidiary company by its parent company would not be per se treated as a supply of services.
Relevant majorly to:	Bears significant relevance to wholly owned subsidiaries in India of foreign parent holdings.

- (i) It has been clarified vide the said circular that the activity of holding of shares by the parent company in its subsidiary would not be considered as a supply of services and thus, shall not be subjected to GST.

VI. Circular No. 197/09/2023-GST

Brief background:	To provide clarity on several refund related issues
Clarification through the Circular:	Various concerns have been examined and necessary clarifications have been issued
Relevant majorly to:	Taxpayers applying for refund under GST especially the exporting community

▪ **Clarification on refund related issues**

The below has been clarified through the said circular:

- (i) Refund of the accumulated input tax credit for a tax period (from January 2022 onwards) shall be available in relation to those invoices, the details of which are reflected in FORM GSTR-2B of the applicant for the said tax period or for any of the previous tax periods. However, the same shall apply to open cases only and the refunds already disposed of shall not be reopened consequent to issuance of this circular.
- (ii) Amendments in undertaking in Form GST RFD 01 and Annexure A of the Circular No. 125/44/2019 dated 18-11-2019.
- (iii) The value of goods exported out of India to be included while calculating 'adjusted total turnover' would be determined as per the explanation inserted in Rule 89(4) of CGST Rules, 2017.
- (iv) Refund would be admissible in case where an exporter files a refund claim after compliance with Rule 96A(1) of the CGST Rules, 2017 for the below categories:
- Refund of unutilised ITC in relation to export of goods or services
 - Refund of IGST paid on account of goods not been exported or non-realisation of foreign receipts within prescribed timelines

VII. Circular No. 198/10/2023-GST

▪ **Clarification on issue pertaining to e-invoice**

Brief background:	With a view to clarify the doubts raised on e-invoicing requirement where invoices are raised by registered persons upon government departments etc. who are registered solely for complying with TDS provisions under GST.
Clarification through the Circular:	It has been clarified that TDS deductors would be treated as registered under GST as they are liable for compulsory registration and hence, registered persons meeting the e-invoicing applicability criteria shall be required to comply with e-invoicing requirements.
Relevant majorly to:	Registered persons issuing invoices to TDS deductors under GST

- (i) The said circular seeks to clarify that e-invoicing would be mandatorily required by registered persons who fall within the purview of e-invoicing due to crossing of prescribed turnover threshold in case of issuance of tax invoices to government departments or establishments, government agencies, local authorities, PSUs who are registered under GST solely for the purposes of deduction of TDS.
- (ii) It is clarified that since registration as a tax deductor at source (Section 51 of the CGST Act, 2017) is mandatory under the GST regulations, outward supplies to such entities registered for purpose of compliances with the provisions of TDS would be treated as B2B supplies, thereby attracting e-invoicing applicability.

VIII. [Circular No. 199/11/2023-GST](#)

- **Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons.**

Brief background:	There has been a constant lack of clarity on ISD related requirements as to whether the mechanism of ISD is a mandate or a facilitation measure for distribution of ITC. Further, the requirement of invoicing amongst distinct branches of a registered person for apportionment of internally generated services such as employee costs has been under vigilant eyes of the departmental officers.
Clarification through the Circular:	Due clarifications on the concerned topic have been brought about in the said circular.
Relevant majorly to:	All registered persons having multiple locations/branches in same or different states

The below has been clarified through the said circular with respect to taxability of activities:

Issue	Clarification
Whether it is necessary for a Head Office to follow the ISD mechanism for distribution of ITC in respect of common input services procurement from a third party amongst several Branch Offices.	<ul style="list-style-type: none"> - It is clarified that the Head Office shall have an option to distribute ITC in respect of such common input services by following ISD mechanism and that the present GST provisions do not mandate compliance with the ISD mechanism. - Head Office can issue tax invoices upon the Branch Offices to whom the services are attributable and the recipient Branch Offices may avail ITC on the same subject to conditions and restrictions under the law.
Whether mandatory invoicing by Head Office to Branch Offices is required in respect of internally generated services and whether all the cost components such as salary cost of employees are to be included for valuation purposes if the Branch Offices are entitled to full input tax credit.	<ul style="list-style-type: none"> - Reference is made to second proviso of Rule 28 of CGST Rules 2017 which provides that the value declared on the invoice shall be deemed to be the open market value where the recipient is eligible for full input tax credit. - Thus, value declared by the Head Office shall be deemed to be the open market value of such services, irrespective of any particular component such as salary cost being included or not. - Further, even if no invoice is issued by the Head Office upon the Branch Office/s, the value of services may be deemed to be declared as NIL and be considered as the

	open market value in accordance with second proviso of Rule 28 of CGST Rules 2017.
Whether salary costs of the employees of the Head Office involved in providing services to branches is required to be mandatorily included while computing taxable value for billing by Head Office to Branch Office if the Branch Office is not entitled to full input tax credit.	- It has been clarified that the salary costs of the employees of the Head Office involved in providing services to branches is not required to be mandatorily included while computing taxable value for billing by Head Office to Branch Office even if the Branch Office is not entitled to full input tax credit.

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