



**Newsflash:  
GST Quarterly Digest  
[October 2023 to December 2023]**

THE POWER OF BEING UNDERSTOOD



## GST Quarterly Digest

### [October 2023 to December 2023]

For Circulation  
9 January 2024



#### QUARTER AT A GLANCE

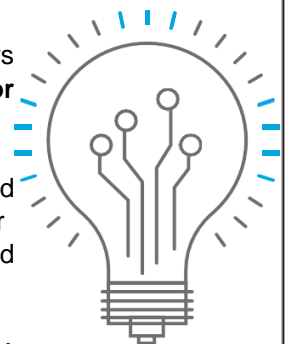
We are pleased to present the **GST Quarterly Digest**, summarizing the significant amendments, clarifications, case laws, notifications and circulars released during **October 2023 to December 2023**. The report incorporates key highlights under the Indirect Tax, providing a concise overview of the important updates during this period.

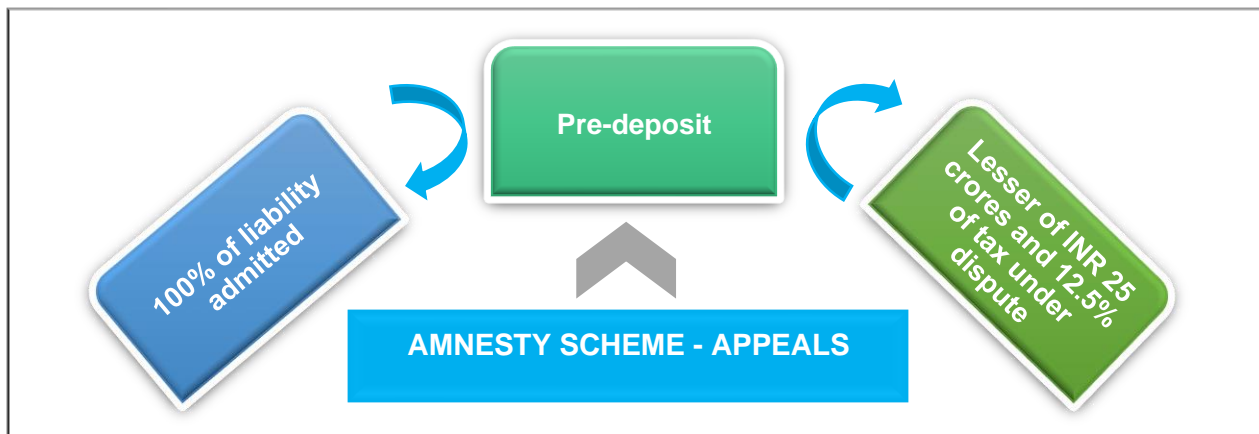


#### KEY NOTIFICATIONS

##### [Notification No. 53/2023- Central Tax dated, 2nd November 2023](#)

- The said notification seeks to introduce an **Amnesty scheme** for taxpayers who are in receipt of **demand order u/s 73 or 74 of CGST Act, 2017 on or before 31<sup>st</sup> March 2023** and –
  - (i) failed to file an appeal u/s 107 of CGST Act, 2017 against the impugned order within three months from the date of communication of the order or
  - (ii) where the appeal was belatedly filed and got rejected on the sole ground of filing beyond the prescribed timeframe.
- As per the notification, an **appeal in such cases may be filed latest by 31 January 2024**. Further it is stated that **no Appeal** shall be entertained in respect of a demand which does not involve Tax amount.



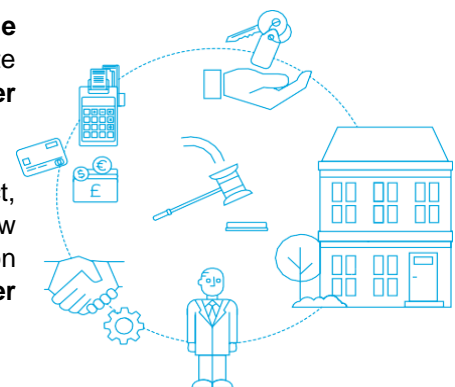


### Notification No. 54/2023- Central Tax dated 17th November 2023

- The process of verification and grant of new GST registrations has become stringent and robust documentary submission have been mandated by the departmental authorities pursuant to the conduct of nationwide fake registration identification drive.
- Central Government vide CGST Notification No. 54/2023 has extended the **Biometric based Aadhaar Authentication** (based on data analysis and risk parameters) to the states of **Andhra Pradesh, Gujarat and Puducherry** whereby the persons seeking to get registered under GST shall be compulsorily required to complete their Biometric based Aadhaar Authentication.
- For the GST registration applicants of the said states, the process of Aadhaar Authentication shall be completed **physically at GST Suvidha Kendra (GSK)**. Such **promoters/authorised signatories** shall receive an **email communication** for **booking a slot with GSK** and they shall be required to physically visit the GSK at designated schedule and complete their Biometric Aadhaar Authentication along with the official documents which are submitted while filing of New GST registration application.
- Only after the successful biometric based Aadhaar Authentication shall the ARN in relation to the GST registration application be generated.

### Notification No. F. No. A-50050/99/2018-Ad. 1CCESTAT(Pt.) dated 29th December 2023

- The said notification seeks to notify the **constitution of the Principal Bench** of the Goods and Services Tax Appellate Tribunal (**GSTAT**) at **New Delhi** with effect from **29 December 2023**.
- It is pertinent to note that as per Section 109 of the CGST Act, 2017, there would be constituted a Principal Bench (at New Delhi) and 31 State Benches (in a phased manner - Notification **S.O. 4073 (E) - Central GST (CGST)** dated **14<sup>th</sup> September 2023**) of the Appellate Tribunal.



## KEY INSTRUCTIONS

### Instruction No. 05/2023-GST dated 13th December 2023

- The GST Policy Wing under the Ministry of Finance has issued the said instruction directing that the judgement in the case of **M/s Northern Operating Systems** wherein the matter revolved around the taxability of **secondment of employees by overseas entities to Indian firms under Service Tax should not be applied mechanically for initiating proceedings and adjudication in similar cases under GST.**
- While the Hon'ble Supreme Court upheld the taxability of secondment of employees by overseas entities to Indian firms as services of 'Manpower Supply', however, it is pertinent to note that there may be multiple types of arrangements and the tax implications may be different depending upon the factual matrix which arise from the terms of contract between the overseas company and the Indian entity.
- It is accordingly instructed that each case be examined separately and distinctly rather than reliance upon any singular test.



### Instruction No. F. No. CBIC- 20006/15/2023-GST dated 18th October 2023

- The said instruction brings into focus the **actions that would be taken in case of non-issuance of e-invoices by notified taxpayers.** It is pertinent to note that w.e.f. 01<sup>st</sup> August 2023, taxpayers (other than notified exempted categories) having Aggregate Annual Turnover (AATO) more than **INR 5 crores during any financial year from FY 2017-18 onwards are mandatorily required to issue E-Invoices for B2B transactions and Export supplies.**
- On statistical analysis, the departmental authorities have identified considerable gaps in number of e-invoices generated vis-à-vis the number of eligible taxpayers falling under the e-invoicing net. To **curb such non-compliance**, the ground officers are instructed to initiate below actions on the list of defaulting taxpayers provided by GSTN:
  - (i) Tax authorities shall necessitate **clarifications from taxpayers for non-generation of e-invoices.** On non-satisfactory responses from such taxpayers, they shall be directed to immediately start issuance of e-invoices for applicable transactions.
  - (ii) Tax authorities shall inform taxpayers that an invoice **shall not be treated as a valid invoice if the e-invoicing procedure is not followed** and that penalty may be imposed for failure to issue e-invoices through the designated Invoice Reporting Portals (IRPs).
  - (iii) On continuance non-compliance of provisions of e-invoicing, appropriate **penal action may be initiated against such taxpayer.**

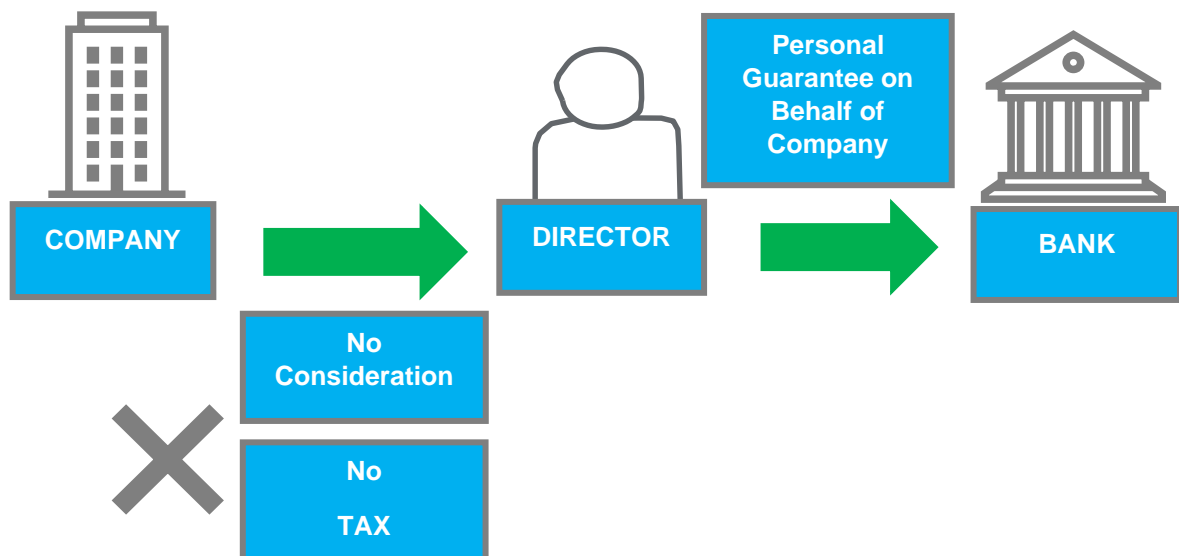


## KEY CIRCULARS

### Circular No. 204/16/2023-GST dated 27th October 2023

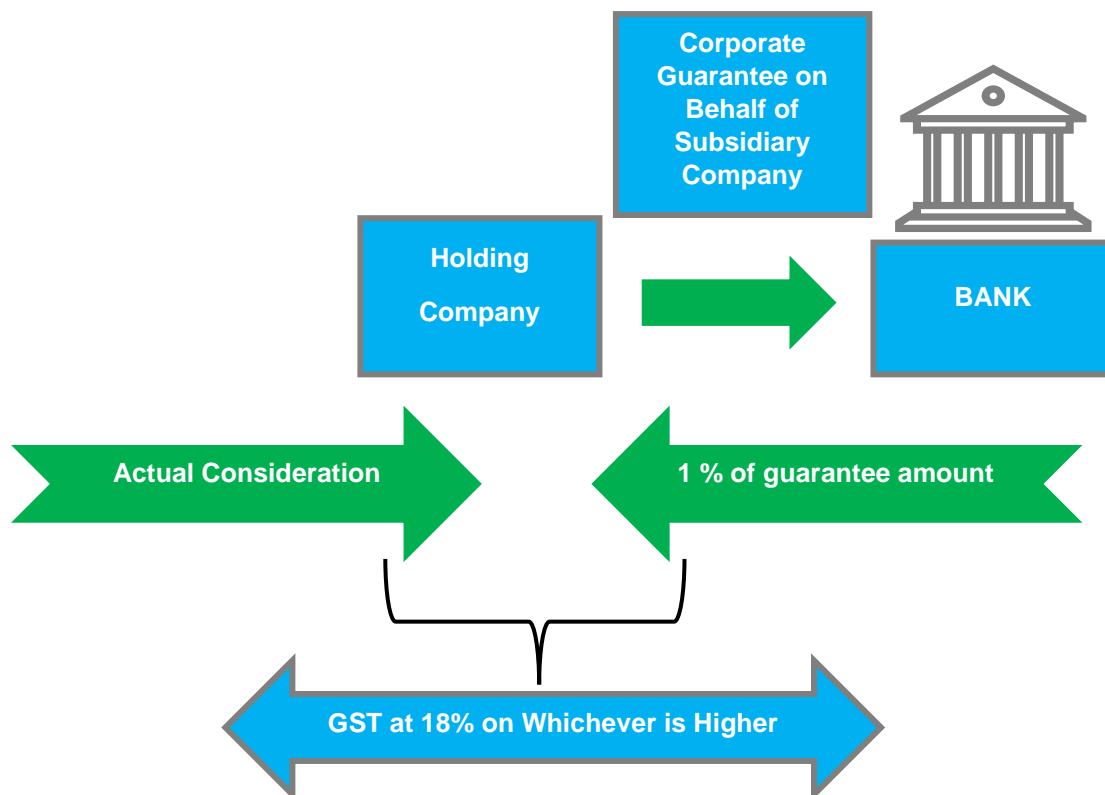
#### Clarification in relation to taxability of personal guarantee by directors

- **Personal guarantee provided by director of the company to bank / Financial Institution for sanctioning credit facilities to company and for which no consideration is being paid by such company to director.**
- **Whether Supply of Services?**  
Yes. As per Schedule I of CGST Act, 2017, supply of goods or services made between the related persons shall be treated as a supply even if made without consideration.
- **What will be the Value of such Supply?**
  - Valuation in case of transactions made between related persons shall be determined as per Rule 28 of CGST Rules, 2017 i.e. the **taxable value shall be the Open Market Value (OMV) of such supply.**
  - Reference is made to Circular No. **RBI/2021-22/121 dated 09 November 2021** whereby **RBI has provided guidelines for obtaining personal guarantee of promoters, directors etc. of the borrowing companies.** As per the mandates laid by RBI through the said Circular, no consideration by way of commission, brokerage fee or any other form, can be paid by the company to the director in lieu of providing personal guarantee to bank.
  - Since no consideration can be paid directly or indirectly by company to director, there cannot be any open market value for the said transaction/supply. Thus, in such cases, the OMV of such transaction may be treated as Zero. Accordingly, **GST shall not be payable on such supply of service by the director to the company.**



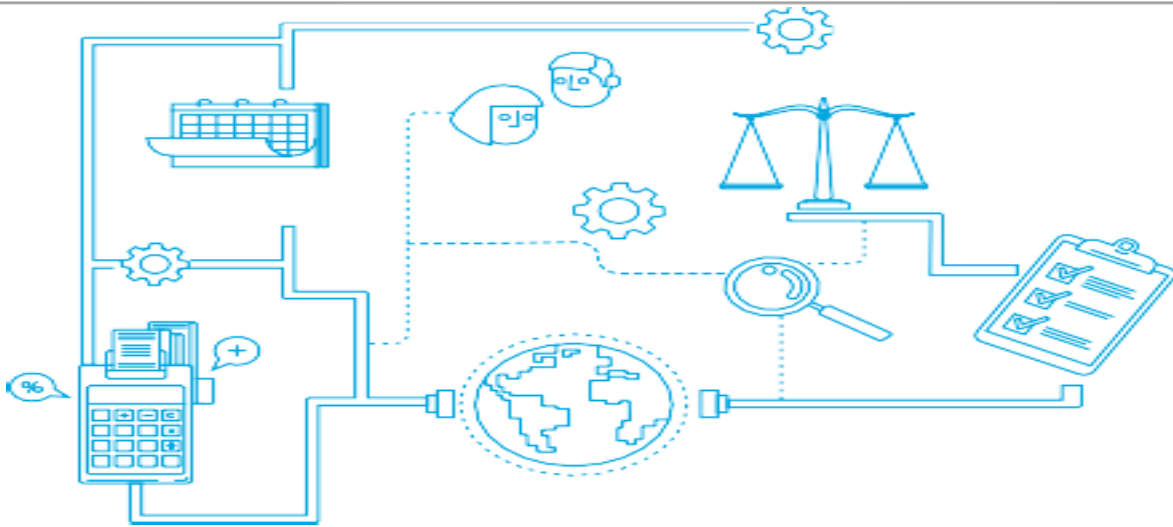
Clarification in relation to taxability of corporate guarantee

- **Taxability of corporate guarantee provided between related persons such as the one provided by holding company to its subsidiary company.**
  - It has been clarified vide **Circular No. 204/16/2023-GST dated 27<sup>th</sup> October 2023** that where a corporate guarantee is provided by a holding company for its subsidiary company, those two entities qualify to be treated as related persons under GST. Hence, the activity of provision of corporate guarantee between them shall be considered as a supply of services, even if there is no consideration flowing between parties.
  - To eliminate doubts with respect to valuation and to ensure uniformity in trade practices, sub-rule (2) has been inserted under Rule 28 of CGST Rules, 2017 with effect from 26 October 2023 to prescribe valuation mechanism for supply of services of corporate guarantee provided between related entities as higher of:
    - **1% of the guarantee amount offered or**
    - **the actual consideration.**
  - Further, sub-rule (2) of Rule 28 shall alone govern the valuation of supply of services of corporate guarantee between related persons regardless of the recipient of services being entitled to full input tax credit or not.





## KEY JUDICIAL PRONOUNCEMENTS



**Name of the case:** CARE COLLEGE OF NURSING AND OTHERS. VERSUS KALOJI NARAYANA RAO UNIVERSITY OF HEALTH SCIENCES REP BY ITS REGISTRAR, AND OTHERS

**Judgement pronounced by:** Telangana High Court [2023 (11) TMI 49]

### Highlights of the case:

- The services of conducting entrance examination and collection of entrance fees stands exempted by **Notification No. 12/2017 of CGST Act, 2017**. The petitioner **interprets that the services of Affiliation and Inspection fees seek to qualify as exempt services considering that it falls under the exempted category of examination entrance fees.**
- The petitioner further contends that charging **GST on Affiliation and Inspection fees would compel educational institutions to pass such burden on students**. Since the notified services provided by educational institutions to students are exempt, the colleges/institutions should not be subjected to GST otherwise it would be detrimental to the interest of the students.
- The Hon'ble High Court observed that **unless there is any specific exemption granted** to Affiliation and Inspection fees through **CGST (Rate) Notification No. 12/2017**, the petitioner shall **not be entitled to claim any benefit of exemption**. On careful perusal of **CGST (Rate) Notification No. 11/2017**, it becomes clear that the **broader category of educational services is classified as one which is liable to tax**. Further, educational services rendered by the educational institutions to the students, faculty and staff alone enjoy the relaxations granted vide CGST (Rate) Notification No. 12/2017.
- The Hon'ble High Court re-emphasized that **Notification No. 12/2017 specifically enumerates the specific nature of services rendered by educational institutions which would stand exempted. However, inspection and affiliation fees is not part of the said notification granting exemption.**
- The petitioner's writ was thus, dismissed.



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9th January 2024

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