

Tax Alert

GST



Gist of Circulars issued by CBIC on 11 July 2024

The Central Board of Indirect Taxes and Customs (CBIC) recently issued a few circulars, in addition to those issued on 26 June 2024, to provide clarity on the recommendations made in 53rd GST Council meeting. Please find below a summary of the important clarifications issued vide such circulars:

A) Circular No. 224/18/2024-GST

Sr. No.	Issue	Clarification
1	<p>Guidelines for recovery of outstanding dues in cases wherein the first appeal has been disposed of till the Appellate Tribunal comes into operation.</p> <p>Whether any amount paid towards the demand but inadvertently through Form DRC-03 be adjusted against the pre-deposit for filing an appeal before the Commissioner (Appeals) or Appellate Tribunal?</p>	<p>Guidelines for recovery of outstanding dues:</p> <ul style="list-style-type: none"> In cases where the First Appellate Authority has confirmed the demand partially or fully, the taxpayers are not able to file an appeal before the Appellate Tribunal. As a result, some tax officers are resorting to initiating recovery proceedings after completion of the stipulated period of 3 months under the pretext that there is no stay against such recovery. Given the above, it has been clarified that taxpayers desirous of filing an appeal before the Appellate Tribunal can make payment of pre-deposit by navigating to the Electronic Liability Ledger (ELL) Part II using the "Payment towards demand" route from his dashboard. The amount so paid and mapped against the selected order will reduce the demand in the ELL and will subsequently be adjusted against the pre-deposit once the appeal is filed in the Tribunal. Taxpayers are also mandated to file an undertaking/declaration with the jurisdictional officer to intimate the desire to file an appeal before the Tribunal. Basis this, the recovery of the remaining amount of confirmed demand will stand. Failure to pay the pre-deposit or furnish the declaration/undertaking can lead to the initiation of recovery. Further, failure to file the appeal within the prescribed timeline will result in the recovery of the remaining amount as per the provisions of law. <p>Adjustment of amounts paid inadvertently through Form DRC-03:</p> <ul style="list-style-type: none"> Form DRC-03A has been introduced vide Rule 142(2B) of CGST Rules vide Notification No. 12/2024-CT dated 10 July 2024, to adjust the amount paid vide Form DRC-03 towards the demand. Upon furnishing such form, the amount so paid earlier vide Form DRC-03 will be considered as if the payment was made towards the demand on the date of Form DRC-03.

Sr. No.	Issue	Clarification
		<ul style="list-style-type: none"> The same form shall be used to adjust the amounts paid inadvertently through DRC-03 for any pre-deposits. The functionality has not yet been activated on the GST portal. Until then, taxpayers can furnish an intimation with the proper officer about the payment made through DRC-03 in order to stay the recovery of the remaining amount payable. However, once the functionality to file Form DRC-03A is activated, the said application should be filed at the earliest; any failure to do so may result in the initiation of recovery proceedings.

Our Comments

The said Circular certainly brings clarity for taxpayers desirous of filing appeals with the Tribunal and will save these taxpayers from the undue pressure of the tax authorities who initiate recovery proceedings. However, the Tribunal is still far from functional and the suspense over the commencement of its operation still persists. In such a situation, asking taxpayers to block their money in pre-deposit may seem slightly taxing. This is further aggravated by the

fact that the recommendation placed in the 53rd GST Council meeting to reduce the pre-deposit mandate from 30% to 20% has still not been implemented, thereby leading to confusion for taxpayers on the amount of deposit to be made here.

At the same time, the implementation of Form DRC-03A is truly welcoming and will ease the process of litigation as well as adjustments of tax demands culminating from audits and investigations.

B) Circular No. 225/19/2024-GST

This Circular aims to provide further clarity on the valuation of service in the nature of providing Corporate Guarantee (CG) between related persons subsequent to the insertion of Rule

28(2) of the CGST Rules and the recently added proviso to the said sub-rule. Additionally, the Circular clarifies the taxability of transactions that occurred before the insertion of this Rule.

Sr. No.	Issue	Clarification
1	<p>Whether Rule 28(2) of CGST Rules will apply to the CGs issued prior to 26 October 2023 (date of insertion of said Rule)?</p> <p>Also, whether taxpayers would be liable to pay GST on "1% of the amount of such guarantee offered" on the intra-group CGs issued prior to 26 October 2023 and is still in force today.</p>	<ul style="list-style-type: none"> Services of providing CG to any banking company or financial institution by a supplier to a related recipient were taxable even before the insertion of Rule 28(2) of CGST Rules. Rule 28(2) of CGST Rules was inserted only to determine the value of such services, not to decide the taxability thereof. Such services were to be valued as per the provisions of Rule 28 of CGST Rules, which existed before the sub-rule was inserted. Thus, the taxability of CG services would be as under: <ul style="list-style-type: none"> CG issued or renewed on or before 26 October 2023 – valuation as per Rule 28, as it existed then (or any value if the recipient is able to claim full ITC). CG issued or renewed after 26 October 2023 - valuation as per Rule 28(2), i.e., 1%.



Sr. No.	Issue	Clarification
2	<p>What will be the value of the supply of CG in cases where only part amount is availed as a loan or in cases where a loan is not availed at all?</p> <p>Also, would the recipient be eligible to avail of full Input Tax Credit (ITC) even before the total loan is disbursed?</p>	<ul style="list-style-type: none"> The service element in CGs is not the actual disbursement of the loan to the recipient but that of taking the risk of default. Thus, the value of service while providing CG is calculated based on the amount guaranteed and not on the amount of loan disbursed. Further, the recipient of CG services shall be eligible to avail full ITC (subject to fulfilment of other customary conditions in GST law), irrespective of the time and value of the loan disbursed against the guarantee.
3	<p>In case of a takeover of existing loans, since there is merely an assignment of an already issued CG, would GST apply again?</p>	<ul style="list-style-type: none"> Assignment of a loan from one banking company or financial institution to another will not trigger GST liability on the existing CG issued. However, if the loan assignment is accompanied by the issuance of a fresh CG, GST would be payable on that transaction.
4	<p>Where CG is provided by more than one entity/co-guarantor, what is the amount on which GST is payable by each co-guarantor?</p>	<ul style="list-style-type: none"> In such cases, the value of service shall be the summation of the actual consideration paid/payable to co-guarantors if the said amount is greater than 1% of the guarantee amount. In cases where there is no consideration or actual consideration is less than 1% of the guarantee amount, then GST shall be payable by each co-guarantor proportionately on 1% of the amount guaranteed.
5	<p>Where intra-group CG is issued, whether GST is paid by the recipient under reverse charge, as in the absence of actual invoice and payment, the recipient entity may not be able to claim ITC of tax paid by the domestic guarantor?</p>	<ul style="list-style-type: none"> In cases where domestic corporates issue intra-group guarantees, GST is to be paid on a forward charge basis, and an invoice is to be issued by the supplier of CG service to the related recipient.
6	<p>Whether the discharge of tax liability on CG at 1% of such guarantee offered to be done once, yearly, or monthly and when issued for a fixed term of, say, 5 or 10 years as per the tenure of the loan?</p>	<ul style="list-style-type: none"> The value of the supply of CG services shall be 1% of the amount guaranteed per annum or the actual consideration, whichever is higher. Accordingly, the value of the supply of CG services will be as follows in case of different situations: <ul style="list-style-type: none"> CG provided for multiple years – the value of supply will be 1% of the amount of such guarantee offered multiplied by the number of years for which the guarantee is provided or actual consideration, whichever is higher. CG is provided for a period less than a year – the valuation is to be done on a proportionate basis for the period multiplied by 1% of the amount of such guarantee is provided or actual consideration, whichever is higher.

Sr. No.	Issue	Clarification
7	Whether the benefit of the second proviso to sub-rule (1) of Rule 28 of CGST Rules, which states that the value declared in the invoice is deemed to be the open market value in cases where full ITC is available to the recipient of services, is not applicable in cases falling under sub-rule(2) of Rule 28?	<ul style="list-style-type: none"> • A similar proviso has been inserted in Rule 28(2) of CGST Rules retrospectively w.e.f. 26 October 2023 to provide the benefit in cases involving the supply of service of corporate guarantees provided between related persons. • Accordingly, in cases involving the supply of CG services between related persons, where full ITC is available to the recipient of services, the value declared in the invoice shall be deemed to be the value of the supply of the said service.
8	Whether the valuation in terms of Rule 28(2) of CGST Rules will apply to the export of the service of providing CG between related persons?	<ul style="list-style-type: none"> • The provisions of Rule 28(2) of CGST Rules (amended retrospectively from 26 October 2023) will not apply in cases where the recipient of CG services is located outside India. Accordingly, the said provisions shall not apply to the export of services.

Our Comments

The said Circular addresses the valuation issues taxpayers face when discharging the tax liability on CG services. While it favourably covers cases with multiple guarantors and a single borrower, it does not specifically address situations involving multiple borrowers and a single guarantor (having joint and several guarantees and liability thereof). Additionally, the clarity provided regarding the timing of discharging the tax liability, i.e., at the time of issuing CG, coupled with the insertion of the words 'per annum' in the valuation rule, will significantly impact working capital in cases where CG is provided for multiple years and the recipient is not eligible for full ITC.

Separately, it has also been clarified that valuation for past transactions (prior to 26 October 23) will be determined by Rule 28(1) of CGST Rules, thereby encouraging tax officers to issue notices demanding tax on CG services. It is highly likely that tax officers will issue notice u/s 74 also for tax periods FY 2017-18 to FY 2019-20. However, taxpayers can potentially defend themselves by asserting the absence of any malicious intent. The decision of Punjab and High Court, which has currently stayed the effect and operation of Circular 204/2023, is highly anticipated and will address multiple issues, including the taxability of services in the first place and the potential concerns about arbitrary or discriminatory valuation.

C) Circular No. 226/20/2024-GST

The CBIC has issued a much-awaited Circular regarding claiming a refund of additional Integrated Tax (IGST) paid due to an increase in the price of goods subsequent to their exports. Vide the said Circular, the CBIC has laid down the mechanism and procedure to be followed for claiming a refund of such additional IGST paid.

Generally, in the case of the export of goods with payment of IGST, the customs authorities directly process the IGST refunds in an automated manner without manual intervention, as the Shipping Bill filed by the exporter is treated as the refund application as per Rule 96 of CGST Rules. However, there is no mechanism for claiming a refund of any additional IGST paid on account of an upward revision in the price of goods subsequent to exports. Accordingly, it has been decided that the exporter may file an application in Form GST RFD-01 to claim a refund of such additional IGST paid and such refunds would be processed by the jurisdictional GST officer of the exporter. To give effect to this, a new sub-rule (1B) has been inserted in Rule 89 of CGST Rules for prescribing mechanism for claiming a refund of additional IGST paid subsequent to the export of goods.

The Circular states that the Goods and Services Tax Network (GSTN) is developing a separate

category of refund applications to claim such refunds. However, till the time the specific category is being developed and made available on the GST portal, the Circular clarifies that the exporters may file a refund application in FORM GST RFD-01 under the category "Any other" along with remarks "Refund of additional IGST paid on account of increase in price subsequent to the export of goods" along with relevant documents as stated in the said Circular.

It has been further clarified that for claiming a refund in respect of past period exports, the time limit of two years will begin from the date on which sub-rule (1B) of Rule 89 of CGST Rules comes into force.

It is important to highlight that the Circular even talks about a downward revision in the price of goods subsequent to exports. In a contrary case, where export has been made with payment of IGST and a refund has been issued to the taxpayer, pursuant to down revision in the price of exported goods, the exporter is required to deposit the refund of the IGST received in proportion to the reduction in the price of exported goods along with applicable interest. The proper officer shall verify downward revision-related transactions and deposit a refund of the same at the time of processing the refund application filed for an upward revision in prices of exported goods.

Our Comments

This Circular aims to provide relief to such exporters, where refund claims of additional IGST paid on account of upward revision in price were denied by the GST as well as the Customs officer on the grounds of non-jurisdiction. The procedure and mechanism laid down in the said Circular will aid such affected exporters.

However, it will be interesting to see how the downward revision in the price of exported goods will be analyzed by the GST officers while reviewing the refund application filed for an upward revision. The exporter will have to evaluate this before making the refund applications.



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