

G N LAW ASSOCIATES



NEWS UPDATE

NEWS UPDATE – NO. 1
27.06.2024

53rd GST Council meetings and 16 Circulars

In order to give effect to various decisions taken in the 53rd GST Council meeting held on 22.06.2024, 16 circulars have been issued by the government and a brief analysis of these circulars is given below. Wherever the decisions require issue of notifications, amendment to legal provisions, the same would be done in due course. Only those decisions, which require a clarification are dealt with in these circulars.

Circular No. 207/1/2024 Dt. 26.06.2024 – Monetary limits for departmental appeals.

In line with the National Litigation Policy, which aims to reduce the quantum of litigation, in exercise of the powers conferred under Section 120 of the CGST Act, it has been laid down that the department should not normally file appeals, if the tax amounts are below the limits.

For GSTAT Appeals	:	Rs.20,00,000
For High Court	:	Rs.1,00,00,000
For Supreme Court	:	Rs.2,00,00,000

CONTACT



93400 54477



gnlawassociates.com



support@gnlawassociates.com



[@gnlawassociates](https://www.linkedin.com/company/gnlawassociates)

Various guidelines have also been given in the circular.

- ▶ The above limit is with reference to the tax amount involved in the order.
- ▶ If the order is only for interest or penalty or late fee or all (with no tax), the above limit is based on such interest or penalty or late fee or the aggregate of the same.
- ▶ There are some exceptions, where appeal can be filed by the department, even if the amount is less than the above limits.
- ▶ Non filing of appeal on the ground of monetary limit shall not amount to acceptance of the decision by the Government, which they can agitate in other appeals.

Circular No. 208/2/2024 Dt. 26.06.2024 – Special procedure for tobacco products.

Vide Notification 4/2024 Central Tax Dt. 05.01.2024 special procedure has been prescribed for payment of tax on such products, on the basis of capacity of production. Certain doubts in this regard have been clarified. The same are not dealt with here and the circular may kindly be referred to.

Circular No. 209/3/2024 Dt. 26.06.2024 – Place of supply of goods to unregistered persons.

As per Section 10 (1) (a) of the IGST Act, the place of supply of goods, in cases which involves movement of goods shall be the location where the movement terminates for delivery. As per Section 10 (1) (c) of the Act, the place of supply of goods, in cases which does not involve movement of goods, shall the location of the goods at time of their delivery. Clause (ca) was introduced to Section 10 (1), with effect from 01.10.2023. This clause will apply notwithstanding anything contained in clauses (a) and (c) and this clause shall apply, if the recipient is an unregistered person.

CONTACT



93400 54477



gnlawassociates.com



support@gnlawassociates.com



@gnlawassociates



As per this clause, the place of supply of goods to an unregistered person shall be the location of the recipient (Even State is sufficient) recorded in the invoice and if no such address / State is recorded in the invoice, the place of supply shall be the location of the supplier. In the above context, certain clarifications have been issued through this circular, especially in the context of supply by E-commerce operators.

In a case, where an unregistered person from State “X” places an order for supply of goods and directs delivery to a different address in State “Y” it has been clarified that the place of supply shall be State “Y” i.e. the place of delivery.

It is felt that the above clarification is not in tune with clause (ca) of sub-section (1) of Section 10 ibid, according to which the place of supply in case of supply to unregistered persons shall be “the address of the said person recorded in the invoice”, which can only be considered as the billing address and not the delivery address. The circular goes one step further and directs that the place of delivery shall be mentioned in the invoice as address of the recipient. Though the intention seems to be to ensure that the revenue accrues to the State where the goods are ultimately consumed, the solution lies not in issuing such circular, but by suitably amending clause (ca) ibid.

Circular No. 210/4/2024 Dt. 26.06.2024 – Valuation of import of service from related persons, where full ITC is available to the recipient.

As per second proviso to Rule 28 of the CGST Rules, in case of supplies between related persons, where full ITC is eligible for the recipient, any value declared in the invoice would be accepted as the open market value, which can even be zero. It has been clarified that the said provision shall be applicable even in case of import of service from related persons located outside India.

To elaborate, if the related person abroad issues an invoice to the recipient in India for the services supplied by it, then the value declared in the invoice shall be accepted as open market value for the purposes of payment of tax by the recipient under reverse charge. If no such invoice is issued by the related person located outside India, the value shall be deemed to be zero and the receiving unit is not liable to pay any GST, if the recipient is entitled to avail full ITC (not engaged in making any exempt supply).

CONTACT



93400 54477



gnlawassociates.com



support@gnlawassociates.com



@gnlawassociates

Circular No. 211/5/2024 Dt. 26.06.2024 – Time limit for ITC under Section 16 (4) vis-à-vis tax paid under RCM.

It has been clarified that the time limit for availing ITC of the tax paid under reverse charge mechanism, on the basis of self invoice shall be computed from the date of issue of such invoice. Even though the said tax liability for past period is paid belatedly now and self invoice is raised only now, ITC can be availed by computing the time limit from the date of invoice. For the delayed payment of tax, interest would be leviable. But ITC cannot be denied on the ground that the tax pertain to an earlier period, for which the time limit under Section 16 (4) is already over.

Our opinion in this regard expressed in the below article is vindicated.

<https://www.gnlawassociates.com/articles/2021/2.%20Time%20limit%20for%20availing%20ITC.pdf>

Circular No. 212/6/2024 Dt. 26.06.2024 – Issue of Credit notes by suppliers and reversal of ITC by recipient.

As per clause (b) to sub-section (3) of Section 15 of the CGST Act, secondary discounts extended after the supply are excludible from the value. For this purpose the supplier can raise a Credit Note on the recipient with GST and reduce his output tax liability, subject to reversal of such ITC by the recipient. But, in the GST portal currently there is no mechanism available for the supplier to verify whether the recipient has reversed the ITC or not, leading to objections being raised by the department.

It has been clarified, till suitable mechanism is introduced in the portal, the suppliers can obtain self certificates from the recipients (if the reversal amount is less than Rs. 5 lakhs in a financial year) or from their CAs / CMAs, as to the fact of reversal of ITC and based on such certificate, the suppliers can reduce their output tax liabilities.

CONTACT



93400 54477



gnlawassociates.com



support@gnlawassociates.com



@gnlawassociates



We wish to add that it may be noted that Section 34 does not mandate reversal of ITC by the recipient, though various demands are raised on the recipients for reversal of credit. The mandate is for the supplier, i.e the supplier can reduce their output tax liabilities, if the recipient reverses the credit. If the recipient does not reverse the ITC, no demand can be made against the recipients but the supplier cannot reduce his output tax liability.

Circular No. 213/7/2024 Dt. 26.06.2024 – Allotment of shares by foreign holding company to the employees of Indian subsidiary company.

It has been clarified that there is no GST impact on such allotment of shares, on the grounds, i.e. such allotments are made as part of the compensation package for the employees and hence not a supply as per Schedule III of the CGST Act; shares are securities, which are excluded from the definition of goods as well as services.

Circular No. 214/8/2024 Dt. 26.06.2024 – Valuation of life insurance service and impact on ITC.

As per Rule 32 (4) of the CGST Rules, in case of life insurance policies, the value of supply is only that portion of the premium which is attributable to risk cover. Such portion of the premium which is attributable to investment / savings is not included in the value. This rule also provides the manner of determination of such value. It has been clarified that to the extent of value attributable to investment / savings, it is not an exempt supply and hence no proportionate reversal of ITC would be required.

Circular No. 215/9/2024 Dt. 26.06.2024 – Treatment of salvage value in motor insurance claims.

In case of insurance claim for loss / damage of motor vehicles, from the claim amount, the salvage value of damaged items would be reduced. It has been clarified that such deduction is not a consideration in the hands of the insurance company for any supply and hence the insurance company is not liable to pay any GST on such deductions. The damaged motor vehicle is the property of the owner, who can dispose it of in any manner.

CONTACT



93400 54477



gnlawassociates.com



support@gnlawassociates.com



@gnlawassociates

But, if full value is settled by the insurance company and if the damaged vehicle becomes the property of the insurance company, upon disposal of such damaged motor vehicle, appropriate GST is payable by the insurance company.

Circular No. 216/10/2024 Dt. 26.06.2024 – Warranty replacements.

Circular No. 195/7/2023 Dt. 17.07.2023 had already been issued clarifying various issues relating to warranty replacements, impact on ITC, levy of GST, etc. The present circular seeks to issue some further clarifications.

It has been clarified in Circular No. 195/7/2023 if the manufacturer replaces any parts free of cost during warranty period, neither he is liable to pay any GST thereon, nor any ITC availed on such parts needs to be reversed. It has now been clarified that the same clarification is equally applicable, even when the entire goods supplied or replaced completely (instead of only parts) during warranty.

It has been further clarified that if the distributor replaces the parts / goods during warranty, from his own tax paid tax on behalf of the manufacturer and gets replenishment of the same from the manufacturer, the same treatment shall apply, i.e the manufacturer is neither liable to charge any GST or liable to reverse any ITC.

It has been further clarified, if extended warranty against payment is provided by the supplier of the goods itself, it shall be a composite supply, But if the supplier of goods (Dealer / Distributor) and the supplier of extended warranty (manufacturer) are different, the supply of extended warranty would be a distinct supply of service.

Circular No. 217/11/2024 Dt. 26.06.2024 – Availment of ITC by insurance companies for repairs carried out to motor vehicles.

As per Section 17 (5) of the CGST Act, services of repairs and maintenance of motor vehicles are blocked for ITC, except in the hands of insurance companies (and manufacturers of motor vehicles). In case of cashless insurance, the supplier of service (garage) would issue the invoice directly in the name of the insurance company, who would also make payment against such invoice and there would be no difficulty in availing ITC.

CONTACT



93400 54477



gnlawassociates.com



support@gnlawassociates.com



@gnlawassociates

But in case of reimbursement model, where the vehicle owner first settles the bill and then the insurance company reimburses the claim to the vehicle owner, either fully or partially, the following clarifications have been issued.

- ▶ The insurance company is eligible to avail ITC in such cases also.
- ▶ If the entire bill value is reimbursed to the vehicle owner, the insurance company can avail ITC of the entire tax paid.
- ▶ If only partial settlement is made, ITC can be availed by the insurance company proportionately.
- ▶ The vehicle owner cannot avail any ITC for the portion of expenses borne by him, as it is blocked credit for him.

Circular No. 218/12/2024 Dt. 26.06.2024 – Loans between related entities.

Services of providing loans is exempted from levy of GST, to the extent the consideration is in the form of interest. If any other charges such as processing fee, administrative fee, etc. are charged, the lender is liable to pay GST thereon.

Between related parties, one entity may give loan to the other entity, often without charging any consideration like processing fee, administrative fee, etc. It has been clarified that such processing fee, administrative fee, etc are charged normally by lenders to undertake various activities such as, carrying out due diligence, etc. sometimes, in case of known customers, such charges are also waived by the lending institutions. Such requirement is not there in case of loans given to related entities. Hence, if no other consideration such as processing fee, administrative fee are charged by the lending entity for extending loans to related entities, it has been clarified that there is no requirement to determine such fee on the basis of open market value.

Circular No. 219/13/2024 Dt. 26.06.2024 – ITC on ducts and manhole used for laying Optical Fire Cables.

It has been clarified that ITC on such items is not barred under Section 17 (5) on the ground that these are used in immovable property, but eligible as the same are in the nature of “plant and machinery”.

CONTACT

 93400 54477

 gnlawassociates.com

 support@gnlawassociates.com

 [@gnlawassociates](https://www.linkedin.com/company/gnlawassociates)



Circular No. 220/14/2024 Dt. 26.06.2024 – Place of supply for custodial services provided by banks to foreign portfolio investors.

By drawing reference to the Education Guide issued under Service Tax, it has been clarified that such custodial services are not considering to have been provided to “account holders” and hence the provisions of Section 13 (8) (a) of the IGST Act is not applicable (which lays down the place of supply as the supplier’s location), but only the provisions of Section 13 (2) is applicable (which lays down the place of supply as the recipient’s location). Accordingly such services provided to foreign portfolio investors would qualify as export of service.

Circular No. 221/15/2024 Dt. 26.06.2024 – Laying of roads under Hybrid Annuity mode.

Road works are often awarded under Design, Build, Operate and Transfer model, where, apart from laying the road, the contractor has to operate and maintain it for a fixed period. Consideration for such works are fixed under Hybrid Annuity Model, where part of the consideration (say 40 %) is paid during the construction stage and the remaining amount is paid during O & M period in instalments. The contract price also factors into the interest component for the delayed payment.

Scores of notices have been issued by the department demanding GST on whole contract value, on the ground that the construction is completed, even though the annuity payments are not yet due.

It has been clarified that the activity is a continuous supply of service and GST is payable only when the amounts are due. This brings much relief to the contractors community who are faced with huge demands.

CONTACT



93400 54477



gnlawassociates.com



support@gnlawassociates.com



@gnlawassociates



Circular No. 222/16/2024 Dt. 26.06.2024 – Time of supply for spectrum usage.

It has been clarified that where the telecom operator chooses to make payments in instalments, during the contract period, the liability to pay GST under reverse charge mechanism would arise only as and when the instalments are due and paid.

In respect of other announcements made by the GST Council, which require amendment to the statutory provisions or issue of notifications, we have to wait for the same.

CONTACT



93400 54477



gnlawassociates.com



support@gnlawassociates.com



@gnlawassociates