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Tax Update – Circular no.1 /July 2024

Gist of clarifications issued by the Central Board of Indirect Taxes and Customs ('the CBIC') on various issues vide multiple Circulars dated 26th June 2024:-

I) Circular No.209/3/2024-GST dated 26th June 2024:

1) Issue:

What should be the place of supply of goods (particularly being supplied through e-commerce platform) to unregistered persons where billing address is different from the address of delivery of goods.

2) Legal position under GST:

Section 10 (1) (ca) of Integrated Goods and Services Tax Act, 2017:

10. Place of supply of goods other than supply of goods imported into, or exported from India.

(1) The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under, -

(a) where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;

(b) …

(c) where the supply does not involve movement of goods, whether by the supplier of the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient;

(ca) where the supply of goods is made to a person other than a registered person, the place of supply shall, notwithstanding anything contrary contained in clause (a) or clause (c), be the location as per the address of the said person recorded in the invoice issued in respect of the said supply and the location of the supplier where the address of the said person is not recorded in the invoice.

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Explanation : For the purposes of this clause, recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person;

The above provisions in sub-clause (ca) stipulate that where the supply of goods is made to an unregistered person, the place of supply would be as follows:

S.No.	Place of supply of goods	Remarks
1	Location as per address of the unregistered recorded in the invoice	Where address of the unregistered person is recorded in the invoice.
2	Location of the supplier	Where address of the unregistered person is NOT recorded in the invoice.

Further, as per the Explanation to the sub-clause, where name of the State of the unregistered person is recorded in the invoice then it shall be deemed to be address of the said person recorded in the invoice.

3) Clarification issued by the CBIC:

The CBIC clarified that in such cases involving supply of goods to an unregistered person where billing address is different from the address of delivery of goods, the place of supply of goods in accordance with the provisions of Section 10 (1) (ca) of IGST Act, 2017, shall be address of delivery of goods recorded in the invoice.

The CBIC has also clarified that for the purpose of determination of place of supply of the said supply of goods in such cases involving supply of goods to an unregistered person where billing address is different from the address of delivery of goods, the suppliers can record the delivery address as the address of the recipient on the invoice.

For example:

Mr.A (unregistered person) located in Maharashtra places an order on Amazon for supply of mobile phone which is to be delivered at an address located in Gujarat. While placing

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the order on Amazon, Mr. A provides the billing address located in Maharashtra. In such scenario the place of supply of the said supply of mobile phone will be address of delivery of goods recorded in the invoice i.e. Gujarat.

4) Our Comments:

The Circular clarifying that place of supply of goods to unregistered persons where billing address is different from the address of delivery of goods, shall be the address of delivery of goods recorded in the invoice by the supplier is in line with the feature of GST in India being destination-based tax.

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II) Circular No.210/4/2024-GST dated 26th June 2024:

1) Issue:

When there is supply of services without consideration between two related persons, wherein recipient of services is an Indian entity eligible for full input tax credit and the supplier is a foreign affiliate whether the value of such supply of services declared in the invoice by the said Indian entity be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules, 2017

2) Legal position under GST:

Section 7(1) (c) of Central Goods and Services Tax Act, 2017:

7. Scope of supply.

(1) For the purposes of this Act, the expression "supply" includes-

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

Extracts of Schedule I of CGST Act, 2017:

Schedule I - Activities to be treated as supply even if made without consideration

4. Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

Sub-section (3) and sub-section (4) of Section 9 of the Central Goods and Services Tax Act, 2017*:*

9. *Levy and collection.*

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation

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to the supply of such goods or services or both.

(4) The Government may, on the recommendations of the Council, by notification, specify the class of registered persons who shall, in respect of supply of categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis, as the recipient of such supply of goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Sub-section (3) of Section 13 of the Central Goods and Services Tax Act, 2017*:*

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be earliest of the following dates, namely: -

(a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

PROVIDED that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:

PROVIDED FURTHER that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

Section 15. Value of taxable supply

(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) …

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(3) …

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

Section 31 – Tax invoice

'(3) Notwithstanding anything contained in sub-sections (1) and (2) –

(f) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both;

Rule 28. Value of supply of goods or services or both between distinct or related persons, other than through an agent

(1) The value of the supply of goods or services or both between distinct persons as specified in sub-sections (4) and (5) of section 25 or where the supplier and recipients are related, other than where the supply is made through an agent, shall –

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order;

PROVIDED that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

PROVIDED FURTHER that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

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Based on the above provisions, the transaction of import of services from a related person outside India, in the course or furtherance of business is treated as supply even if made without consideration. On such transaction being a taxable supply, the recipient of service located in India is liable to issue self-invoice and pay tax on reverse charge basis on the earliest day of date of entry in the books of accounts of the recipient of supply or date of payment. Where the said recipient located in India is eligible for full ITC then the value of such taxable supply as declared in the self-invoice by the Indian entity will be deemed to be open market value of said supply.

3) Clarification issued by the CBIC:

The CBIC clarified that in such cases where the foreign affiliate is providing certain services to the related domestic entity and where full ITC is available to the said related domestic entity, then the value of such supply of services declared in the invoice by the said related domestic entity may be deemed to be open market value in terms of second proviso to rule 28(1) of CGST Rules and further in such case if the invoice is not issued by the related domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.

The CBIC has also clarified that the clarification issued vide Circular No.199/11/2023-GST dated 17.07.2023 in respect of supplies of services between distinct persons in cases where full ITC is available to the recipient, shall equally apply in respect of import of services between related persons.

4) Our Comments:

This clarification shall be useful to drop cases where the demands have been raised by the department seeking tax on reverse charge basis on such activities / transactions even though without consideration being involved based on deeming fiction in S.No.4 of Schedule I of CGST Act, 2017.

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III) Circular No.211/5/2024-GST dated 26th June 2024:

1) Issue:

In case where tax is payable on reverse charge basis by the recipient, such as, where an activity is performed by the overseas related person for the entity located in India and no consideration is involved, such an activity may not be considered as supply of services by the concerned recipient in India and accordingly no invoice is issued as well as no tax is paid by such recipient under RCM in respect of the same. However, later on, either on the basis of their own on the basis of some clarification issued by the department or on the basis of some court judgment or on being pointed out by the tax authorities during scrutiny or audit or otherwise the said recipient issues the invoice and pays the tax under RCM, along with interest and claims input tax credit on such tax paid. In such case whether the time limit for availment of ITC under section 16(4) of CGST Act is only upto September / November of the following financial year in which the said services was received or ITC should be available on said invoice under section 16(4) of CGST Act till the September / November of the following financial year in which such invoice has been issued.

2) Legal position under GST:

As per section 16(2)(a) of CGST Act, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed.

Rule 36(1)(b) of CGST Rules, 2017 prescribes that input tax credit shall be availed by a registered person inter alia on the basis of an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31 of CGST Act, subject to the payment of tax.

Clause (f) of sub-section (3) of section 31 of CGST Act provides that a registered person, who is liable to pay tax under section 9(3) or section 9(4) of CGST Act, 2017 shall issue

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an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both. Thus, where the supplier is unregistered and recipient is registered, and the recipient is liable to pay tax on the said supply on RCM basis, the recipient is required to issue invoice as per requirement specified in Section 31(3)(f) of CGST Act, 2017 and pay the tax on the same under RCM in cash.

Section 16(4) of CGST Act, 2017 before the amendment vide the Finance Act, 2022 and amended vide the Finance Act, 2022 is reproduced below:

Amended Section 16(4):

"A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier."

Section 16(4) before Amendment vide Finance Act, 2022:

"A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier."

On bare perusal of Section 16(4) of CGST Act, it can be seen that time limit for ITC availment is linked with the financial year to which the invoice or debit note pertains. In terms of Section 31(3)(f) of CGST Act, 2017, where the supplier is unregistered and recipient is registered and the tax has to be paid by the recipient on RCM basis, the recipient is required to issue invoice in respect of goods or services or both received by him in terms of the provisions of section 31(3)(f) of CGST Act and pay tax on the same in cash on RCM basis. And in terms of Section 16(2)(a) of CGST Act, 2017 read with Rule 36(1)(b) of CGST Rules, 2017, the registered person

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is not entitled to take ITC in respect of goods or services or both received by him unless he is in possession of a tax invoice or debit note or such other tax paying document as may be prescribed.

3) Clarification issued by the CBIC:

The CBIC has clarified that in cases of supplies received from unregistered suppliers, where tax has to be paid by the recipient under reverse charge mechanism (RCM) and where invoice is to be issued by the recipient of the supplies in accordance with section 31(3)(f) of CGST Act, the relevant financial year for calculation of time limit for availment of ITC under the provisions of section 16(4) of CGST Act will be the financial year in which the invoice has been issued by the recipient under section 31(3)(f) of CGST Act, subject to payment of tax on the said supply by the recipient and fulfilment of other conditions and restrictions of section 16 and 17 of CGST Act. In case, the recipient issues the invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax. Further, in cases of such delayed issuance of invoice by the recipient, he may also be liable to penal action under the provisions of Section 122 of CGST Act.

4) Our Comments:

This clarification shall be useful to drop cases where the demands have been raised by the department seeking to reverse / pay ITC by taking a view that the time limit for availment of ITC under section 16(4) of CGST Act is only upto September / November of the following financial year in which the said services was received.

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IV) Circular No.212/06/2024-GST dated 26th June 2024:

1) Issue:

Presently, there is no facility available to the supplier as well as the tax officers on the common portal to verify fulfillment of the condition of section 15(3)(b)(ii) of the CGST Act regarding proportionate reversal of ITC by the recipient in respect of discounts given by the suppliers by issuing tax credit notes after the supply has been made.

2) Legal Position under GST:

The relevant extracts of Section 15 of the CGST Act, 2017 are reproduced below:

15. Value of taxable supply

(1) ….

(2) …

(3) The value of the supply shall not include any discount which is given-

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if –

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

Section 15 of the CGST Act, 2017 provides for value of taxable supply of goods or services or both. Upon perusal of sub-section (3) of the said section, it is evident that the value of supply shall not include discount given by the supplier subject to fulfillment of following conditions:

i) The discount given by the supplier is established in terms of an agreement entered into either at or before the time of such supply,

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ii) Such discount amount is specifically linked to the relevant invoices,

iii) The amount of ITC attributable to such discount amount on the basis of document issued by the supplier has been reversed by the recipient.

In other words, where any discount is given by the supplier to the recipient by issuance of tax credit note as per Section 34 of the CGST Act, 2017, after the supply has been effected, the said discount amount can be excluded from the value of taxable supply only if all the conditions specified in Section 15(3)(b) of CGST Act, 2017 are fulfilled. One of the conditions being that the amount of ITC attributable to such discount amount has to be reversed by the recipient.

3) Clarification issued by the CBIC:

Until the time a facility or functionality is made available on the common portal to enable the suppliers as well as the tax authorities to verify whether the corresponding amount of ITC attributable to such discounts given by the supplier through tax credit notes has been reversed by the recipient or not, the supplier may procure a certificate from the recipient of the supply as under:

a) **CA/CMA certificate**:

In cases, where the amount of tax (CGST+SGST/UTGST+IGST+Cess, if any) involved in the discount given by the supplier to a recipient through tax credit notes in a financial year **exceeds Rs.5,00,000/-** then the supplier may procure a certificate from the recipient of the supply issued by a Chartered Accountant (CA) or Cost Accountant (CMA) containing UDIN number certifying that the recipient has made the required proportionate reversal of ITC at his end in respect of such credit note issued by the supplier. And such certificate may include details such as details of credit notes, the details of the relevant invoice number against which the said credit note has been issued, the amount of ITC reversal in respect of each of the said credit notes along with the details of the Form GST DRC-03 / GSTR-3B return/any other relevant document through which such ITC reversal has been made by the recipient.

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b) **Undertaking/certificate from the recipient**:

In cases, where the amount of tax (CGST+SGST/UTGST+IGST+Cess, if any) involved in the discount given by the supplier to a recipient through tax credit notes in a financial year **does not exceed Rs.5,00,000/-** then the supplier may procure an undertaking/certificate from the recipient that the said ITC attributable to such discount has been reversed by him and such undertaking/certificate may include details such as details of credit notes, the details of the relevant invoice number against which the said credit note has been issued, the amount of ITC reversal in respect of each of the said credit notes along with the details of the Form GST DRC-03 / GSTR-3B return/any other relevant document through which such ITC reversal has been made by the recipient.

4) Our Comments:

The CBIC has clarified categorically, that such certificates issued by the CA/CMA or the undertakings/certificates issued by the recipient of supply, as the case may be, shall be treated as a suitable and admissible evidence for the purpose of section 15(3)(b)(ii) of CGST Act, 2017 and that such evidence of requisite reversal of ITC by the recipient can be produced before the concerned investigating / audit / adjudicating authority even for the past period.

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V) Circular No.213/07/2024-GST dated 26th June 2024:

1) Issue:

Whether the transfer of shares / securities by the foreign holding company directly to the employees of the Indian subsidiary company and subsequent re-imbursement of the cost of such shares / securities by the Indian subsidiary company to the foreign holding company can be considered as import of financial services by the Indian subsidiary company from the foreign holding company and whether the same can be considered as liable to GST in the hands of the Indian subsidiary company on reverse charge basis.

2) Background:

The companies are providing option of allotment of securities / shares to their employees as a means of incentivization and is commonly referred to as an Employee Stock Purchase Plan (ESPP) or Employee Stock Option Plan (ESOP) or Restricted Stock Unit (RSU). Fundamentally, the allocation of securities or shares from the employer to employee is part of compensation package with the aim to motivating enhanced performance and to retain the employees. The ESOP/ESPP/RSU is a part of remuneration of the employee by the employer as per terms of employment.

The foreign holding company directly transfers the securities / shares as ESOP/ESPP/RSU to the employees of the Indian subsidiary on the request of the said subsidiary company. The reimbursement of such securities /shares is generally done by Indian subsidiary to the foreign holding company on cost to cost basis i.e. equal to the market value of securities without any element of additional fee, markup or commission.

3) Legal Position under GST:

Securities are considered neither goods nor services under GST law in terms of definition of “goods” under clause (52) of Section 2 of CGST Act and in terms of definition of “service” under clause (102) of the said section.

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As per definition of "securities" under section 2(h) of Securities Contracts (Regulation) Act, 1956, securities include shares.

Thus, purchase or sale of securities or shares, in itself, is neither a supply of goods nor supply of services.

As per Entry I of Schedule III of CGST Act, the services by an employee to the employer in the course of or in relation to his employment are treated neither as supply of goods nor supply of services.

4) Clarification issued by the CBIC:

a) Purchase or sale of securities / shares, in itself, is neither a supply of goods nor supply of services, therefore in absence of such transaction falling under the scope of supply as per GST Act, GST is not leviable on such transaction of sale / purchase / transfer of securities / shares.

b) As per Entry I of Schedule III of CGST Act, the services by an employee to the employer in the course of or in relation to his employment are treated neither as supply of goods nor supply of services. Therefore, GST is not leviable on the compensation paid to the employee by the employer as per terms of employment contract which involve transfer of securities / shares of the foreign holding company to the employees of the Indian subsidiary company.

c) No supply of service appears to be taking place between the foreign holding company and the Indian subsidiary company where the foreign holding company issues ESPP/ESOP/RSU to the employees of domestic subsidiary company and domestic subsidiary company reimburses the cost of such shares / securities to the foreign company on cost to cost basis.

d) GST shall be payable by the domestic subsidiary company on RCM basis as import of services in case where additional amount, by whatever name called, over and above the cost of securities / shares is charged by the foreign holding company from the domestic subsidiary company.

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VI) Circular No.214/8/2024-GST dated 26th June 2024:

1) Issue:

Whether the amount of insurance premium, which is not included in the taxable value as per Rule 32(4) of CGST Rules, 2017 applicable for life insurance business, will be treated as pertaining to an exempt supply / non-taxable supply and accordingly whether the ITC availed in respect of such amount shall be required to be reversed or not in terms of Section 17(2) of CGST Act, 2017 read with Rule 42/43 of CGST Rules, 2017?

2) Background:

Life insurance business consists of providing service of insuring the life of the insured and in return, are charging consideration in the form of premium from the insured.

As per definition of 'Life Insurance Business' provided in Section 2(11) of the Insurance Act, 1938, life insurance business includes any unit linked insurance policy or scrips etc. which provides a component of investment to the policy holder along with component of insurance issued by the insurer. Accordingly, in such cases, the premium charged also includes the component which is allocated for investment on behalf of the policy holder.

3) Legal position under GST:

Rule 32. Determination of value in respect of certain supplies:

'(4) The value of supply of services in relation to life insurance business shall be-

(a) the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such amount is intimated to the policy holder at the time of supply of service;

(b) in case of single premium annuity policies other than (a), ten per cent of single premium charged from the policy holder; or

(c) in all other cases, twenty-five per cent, of the premium charged from the policy

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holder in the first year and twelve and a half per cent of the premium charged from the policy holder in subsequent years:

PROVIDED that nothing contained in this sub-rule shall apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance.

Section 2(47) – Exempt supply

"exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

Section 2(78) – Non taxable supply

"non-taxable supply" means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Service Tax Act;

It can be seen that Rule 32(4) stipulates that where the any portion of premium amount, from the gross premium charged from the policy holder, is allocated for investment/savings on behalf of the policy holder, then the value of supply of services in relation to the life insurance business shall be determined by reducing such portion of premium allocated for investments/savings on behalf of the policy holder. The said sub-rule also provides for determination of value of supply of such services based on certain percentage of the gross premium in certain situations and where the entire premium is only towards the risk cover in life insurance, the entire premium paid by the policy holder shall be treated as value of supply of services in relation to life insurance business.

The definition of exempt supply has following three limbs:

a) Supply of goods or services or both which are nil rated,
b) Supply of goods or services or both which are exempted under section 11 of CGST Act, or under section 6 of IGST Act,
c) Supply of goods or services or both which are non-taxable supply.

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'Non-taxable supply' means a supply of goods or services or both which is not leviable to tax under the CGST Act or under the IGST Act.

4) Clarification issued by the CBIC:

i. There is no doubt that the supply of service of providing life insurance services by the insurance company to the policy holders is taxable supply.

ii. The service of providing life insurance cover is neither nil rated nor there is any notification issued under section 11 of CGST Act by virtue of which the said service or any portion of the said service has been exempted from GST.

iii. Just because some amount of consideration is not included in value of taxable supply as per the provisions of the statute, it cannot be said that the said portion of consideration becomes attributable to a non-taxable or exempt supply.

iv. Hence the portion of premium which is not includible in taxable value of supply as per Rule 32(4) cannot be considered as pertaining to an exempt supply.

v. Therefore, there is no requirement of reversal of ITC as per provisions of Rule 42 or Rule 43 of CGST Rules, 2017 read with Section 17(1) and Section 17(2) of CGST Act, 2017 in respect of said amount.

5) Our Comments:

This clarification clearly mentions that a supply can be considered as a non-taxable supply only when it is not leviable to tax under the CGST Act or under the IGST Act and exempted supply only when such supply is nil rated or exempted by virtue of any notification issued under section 11 of CGST Act. Accordingly, in our view this clarification can also be applied to other businesses wherein the entire amount of consideration is not required to be included in the determination of taxable value of supply.

For example – In case of Construction services provided by builder / developers to the buyers where only 2/3rd of the total amount charged is deemed to be value of taxable supply the remaining 1/3rd of the total amount charged is deemed to be value of land cannot be considered as exempt supply or non-taxable supply.

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VII) Circular No.215/9/2024-GST dated 26th June 2024:

1) Issue:

Whether in case of motor vehicle insurance, GST is payable by the insurance company on salvage / wreckage value earmarked in the claim assessment of the damage caused to the motor vehicle ?

2) Background:

The insurance companies are engaged in providing general insurance services in respect of insurance of motor vehicles wherein they insure the cost of repairs / damages of motor vehicles incurred by the policyholders. The damages to the insured vehicles are classified in two categories:

i. Total Loss / Constructive Total Loss or Cash Loss; and
ii. Partial Loss Situation.

In other words, the insurance companies are providing service of insuring the vehicle/automobile for any damages and in return, charging consideration in the form of premium charged from the owner of the vehicle. It is responsibility of the insurance company to get the damaged vehicle repaired or to compensate the insured person against the damage caused to the vehicle, to the extent covered under the terms of the insurance.

In cases where as per the policy contract, the insurance company's liability to pay the insured is limited to Insured's Declared Value (IDV) of the vehicle less the value of salvage / wreck in cases of total loss to the vehicle then in such case of insurance claim settlement by the insurance company, the ownership of salvage/wreckage remains with the insured who dispose/sale of the salvage as per his wish and choice. However, in situations where the insurance contract provides for settlement of claim on full IDV without deduction of value of salvage / wreck, then the salvage becomes the property of Insurance Company and the Insurance company shall dispose/sale of the salvage.

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3) Legal Position under GST:

Section 7 of CGST Act defines supply to mean 'all forms of supply of goods or services or both made or agreed to be made for a consideration by a person in the course or furtherance of business.

Under GST law, supply is the relevant taxable event for levying tax. For an activity/transaction to be liable to GST existence of 'supply' as defined under section 7 of CGST Act should be there.

4) Clarification issued by the CBIC:

a) In cases where insurance claim is settled on IDV less value of salvage/wreck, the salvage remains the property of insured as per terms of contract or conditions of the contract, the insurance company is not liable to discharge GST liability on the same.

b) In cases where the insurance claim is settled on full claim amount without any deduction of value of salvage/wreckage as per terms of contract, the salvage becomes the property of the insurance company. Upon disposal / sale of salvage to the buyer, the Insurance company will be liable to discharge GST liability om the same.

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VIII) Circular No.217/11/2024-GST dated 26th June 2024:

1) Issues:

a) Whether ITC is available to insurance companies in respect of repair expenses reimbursed by it in case of reimbursement mode of claim settlement ?

b) What is the extent of ITC available to the insurer in case where insurance company reimburses the approved claim cost of the garage after considering the deductibles to be borne by the insured, depreciation, improvements outside the coverage, value of salvage of damaged parts of the motor vehicles, etc. ?

c) Whether ITC would be available to the insurer where the invoice for the repair of the vehicle is not in the name of the insurance company ?

2) Background:

The insurance companies are engaged in providing general insurance services in respect of insurance of motor vehicles. They insure the cost of repairs / damages of motor vehicles incurred by the policy holders and settle the claims in two modes i.e. Cashless or Reimbursement.

Under both modes of settlement, the insurance company account for repair liability as assessed by the Surveyor / Loss Assessor as claim cost and is liable to make payment of approved repair charges to the garage.

In both the modes, the invoices are generally issued by the garages in the name of Insurance companies. In case of Caseless settlement, the insurance companies directly make the payment of approved repair charge to the Network Garage, and in case of Reimbursement mode, the payment is first made by the policy holder to the Non-Network Garage which is subsequently reimbursed by the insurance company to the policy holder, to the extent of approved repairs / claim cost. In some cases, the garage issues two

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separate in respect of the repair services, one to the insurance company in respect of approved claim cost and second to the customer for the amount of repair services in excess of approved claim cost.

The liability to pay for the repair service for the approved claim cost lies with the insurance company and to pay for excess amount over the approved claim cost lies with the policy holder.

3) Legal Position under GST:

Section 16 of CGST Act provides that every registered person shall subject to such conditions and restrictions as may be prescribed and, in the manner, specified in section 49 of the said Act, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

As per condition of clause (a) and (aa) of Section 16(2), no registered person shall be entitled to the credit of any ITC in respect of any supply of goods or services or both unless he is in possession of a tax invoice or debit note issued by the supplier registered under the said Act, and the details of the invoice or debit note has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37 of the said Act.

The term *"recipient"* of supply of goods or services or both is defined under section 2(93) of CGST Act, as the person who is liable to pay the consideration where such consideration is payable for the said supply of goods or services or both.

As per Section 2(31) of CGST Act, *"consideration"* includes any payment made or to be made in relation to supply of the goods or services or both, whether by the recipient or by

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any other person.

Section 17(5) of the CGST Act provides that ITC in respect of service of repairs of motor vehicles shall be available where received by a taxable person engaged in the supply of general insurance services in respect of motor vehicles insured by him.

4) Clarification issued by the CBIC:

i. Irrespective of the mode of claim settlement of the repair services, the liability to pay for the repair services for the approved claim cost lies with the insurance company and thus the insurance company is the recipient under section 2(93) of CGST Act, in respect of such supply of services of vehicle repair provided by the garage to the extent of approved claim cost. Moreover, availment of credit in respect of input tax paid on motor vehicle repair services received by the insurance company for outward supply of insurance services for such motor vehicles is not barred under section 17(5) of CGST Act. Accordingly, ITC is available to insurance company in respect of motor repair expenses incurred by them in case of reimbursement code of claim settlement.

ii. Input tax credit may be available to the insurance company only to the extent of reimbursement of the approved claim cost to the insured irrespective of the fact whether the garage issues a separate invoice in respect of repair services to the insurance company in respect of approved claim cost or issues invoice for full amount for repair services to the insurance company.

iii. Input tax credit will not be available to the insurance company on account of non fulfilment of condition of clause (a) and (aa) of section 16(2) of CGST Act where the invoice for the repair of vehicle is not issued by the garage in the name of insurance company

5) Our Comments:

This clarification shall be useful to drop cases where objections have raised by the department on availment of ITC by the insurance companies to the extent of approved

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claim cost under reimbursement mode of claim settlement, in respect of repair invoices issued by the non-network garages.

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IX) Circular No.218/12/2024-GST dated 26th June 2024:

1) Issues:

i. Whether the transaction of providing loan by an overseas affiliate to its Indian affiliate or by a person to a related person against consideration only by way of interest or discount will be treated as a taxable supply of service under GST or not ?

ii. Where no consideration is charged by the person from the related person, or by an overseas affiliate from its Indian affiliate, for extending loan or credit, other than by way of interest or discount, whether GST is leviable on the same by resorting to open market value for valuation of supply of service in the form of processing / facilitating/ administering the loan as per Rule 28 of CGST Rules, 2017 ?

2) Background:

The overseas affiliate provide loan to its Indian affiliate or loan is provided by an entity to its related entity where the consideration is represented only by way of interest or discount.

There is no consideration in the nature of processing fee, administrative charges, loan granting charges etc. which is also generally charged by the bank / financial institution from the recipient of loan in order to cover the administrative cost of processing the loan application, credit assessment, due diligence on the collateral offered borrower etc.

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 like bank / financial institution. In case of loans provided between related parties, there may not be activity of processing the loan, and no administrative cost may be involved in granting such a loan.

The services provided for the banks / independent lenders for processing of loans cannot be placed on same footing vis a vis the loans provided by a related party.

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Even in case of loans provided between unrelated persons, processing fee, administrative charges, loan granting charges etc. may not be charged / waived based on the nature and amount of loan granted, relationship between the independent lender and the borrower.

3) Legal Position under GST:

As per clause (c) of sub-section (1) of Section 7 of CGST Act, read with S.No.2 and S.No.4 of Schedule I of CGST Act, supply of goods or services or both between related persons. When made in the course or furtherance of business, shall be treated as supply, even if made without consideration.

Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) are exempted under sub-entry (a) of entry 27 of Notification No.12/2017-Central Tax (Rate).

At Sr.no.42 in the Sectoral FAQ on Banking, Insurance and Stock Brokers Sector issued by CBIC, it has been clarified that the services of loans, advances or deposits are exempt in so far as the consideration is represented by way of interest or discount. Any charges or amounts collected over and above the interest or discount would represent taxable consideration and would be liable to GST.

4) Clarification issued by the CBIC:

a) The service of granting loan / credit / advances by an entity to its related entity is a supply under GST.
b) The supply of services of granting loan / credit / advances, in so far as the consideration is represented by way of interest or discount. Is fully exempt from GST under Entry 27 of Notification No.12/2017-Central Tax (Rate).
c) Even in case of loans provided between unrelated persons, processing fee, administrative charges, loan granting charges etc. may not be charged / waived based on the nature and amount of loan granted, relationship between the independent

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lender and the borrower. Accordingly, there is no question of levy of GST by resorting to open market value for valuation as per rule 28 of CGST Rules, 2017 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, other than by way of interest or discount, it cannot be said that any supply of service is being provided between the said related persons in the form of processing/facilitating/administering the loan by deeming the same as supply of services as per Section 7(1)(c) read with Sr.No.2 and Sr.No.4 of Schedule I of CGST Act.

d) In cases of loans provided between related parties, wherever any fee in the nature of processing fee/ administrative charges/ service fee/ loan granting charges etc. is charged, over and above the amount charged by way of interest or discount, the same will be treated as consideration for supply of services of processing / facilitating / administering of the loan which will be liable to GST as supply of service by the lender to the related person availing the loan.

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X) Circular No.219/13/2024-GST dated 26th June 2024:

1) Issue:

Whether the input tax credit on the ducts and manholes used in network of optical fiber cables (OFCs) for providing telecommunication services is barred in terms of clause (c) and (d) of sub-section (5) of Section 17 oof the CGST Act, read with Explanation to section 17 of CGST Act ?

2) Background:

The Optical Fiber Cable (OFC) network is generally laid with the use of PVC ducts / sheaths in which OFC's are housed and service / connectivity manholes serve as nodes of the network and are necessary for not only laying of OFC but also their upkeep and maintenance.

Ducts and manholes are basic components for the optical fiber cable (OFC) network used in providing telecommunication services.

3) Legal Position under GST:

Sub-section (5) of Section 17 of CGST Act provides that ITC shall not be available, inter alia, in respect of the following:

i. works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service or

ii. goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation for the purpose of clause (c) and clause (d), the expression "construction" includes re-construction, renovation, additions or alteration or repairs, to the extent of

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capitalization, to the said immovable property.

Explanation in Section 17 of CGST Act, provides that the expression "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 such foundation and structural supports *but excludes* land, building or any other civil structure, telecommunication towers, and pipelines laid outside the factory premises.

4) <u>Clarification issued by the CBIC</u>:

a. 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.
b. Ducts and manholes used in network of OFC have not been specifically excluded from the definition of *"plant and machinery"* in the Explanation to section 17 of CGST Act, as they are neither in nature of land, building or civil structures nor are in nature of telecommunication towers or pipelines laid outside the factory premises.
c. Thus, availment of ITC in respect of such ducts and manholes used in network of OFC is not restricted/barred either under clause (c) or under clause (d) of Section 17(5) of CGST Act.

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XI) Circular No.220/14/2024-GST dated 26th June 2024:

1) Issue:

Whether the activity of providing Custodial Services by banks or financial institutions to Foreign Portfolio Investors (FPI) will be treated as services provided to 'account holder' under Section 13(8)(a) of the IGST Act, 2017 or said services are not covered under Section 13(8)(a) of the IGST Act, 2017 hence the place of supply of such service has to be determined under the default provision sub-section (2) of Section 13 of IGST Act, 2017?

2) Background:

Various banks enter into custodial agreements with the FPIs for the provision of custodial services. The main activity carried out by banks as a custodian in relation to custodial services is maintaining account of the securities held by the FPIs.

According to the SEBI (Custodian of Securities) Regulation 1996, 'Custodial Services" in relation to securities means safekeeping of securities of a client and providing services incidental thereto, and includes:-

- maintaining accounts of securities of a client
- collecting the benefits or rights accruing to the client in respect of securities
- keeping the client informed of the actions taken or to be taken by the issuer of securities, having a bearing on the benefits or rights accruing to the client, and
- maintaining and reconciling records of the services referred above.

3) Legal Position under GST:

As per clause (a) of sub-section (8) of section 13 of IGST Act, Place of Supply of services supplied by banking company or a financial institution or a non-banking company to account holders shall be the location of the supplier of services.

As per Explanation (a) to Section 13(8) of IGST Act, 'account' means an account bearing interest to the depositor and includes a non-resident external account and a non-resident

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ordinary account.

As per clause (2) of Section 13 of IGST Act, the place of supply of services except specified in sub-sections (3) to (13) shall be the location of the recipient of services.

4) Clarification issued by the CBIC:

a. The Education Guide under Service Tax Regime, had clarified that the custodial services are not considered to be covered under the services provided by bank to account holders but have been considered to be covered under the services which are not provided to account holder.
b. The provisions of Section 13(8)(a) of IGST Act and Rule 9(a) of Service Tax Place of Provision of Supply Rules, 2012 are similar and identical hence the clarification given in Education Guide under Service Tax Regime is equally applicable under GST Regime.
c. The Place of supply of such services is not to be determined under section 13(8)(a) of IGST Act, 2017 but has to be determined under the default provision sub-section (2) of Section 13 of IGST Act, 2017.

5) Our Comments:

The provisions of CGST Act or IGST Act and rules made thereunder which are similar and identical to Service Tax law, then it will be interesting to see whether the clarification on various other aspects related to service tax regime given in the Education Guide or Board Circulars issued under Service Tax Regime is being equally made applicable under GST regime or not.

Sincerely,

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(M.Com., F.C.A., LL.B., C.T.M.)

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