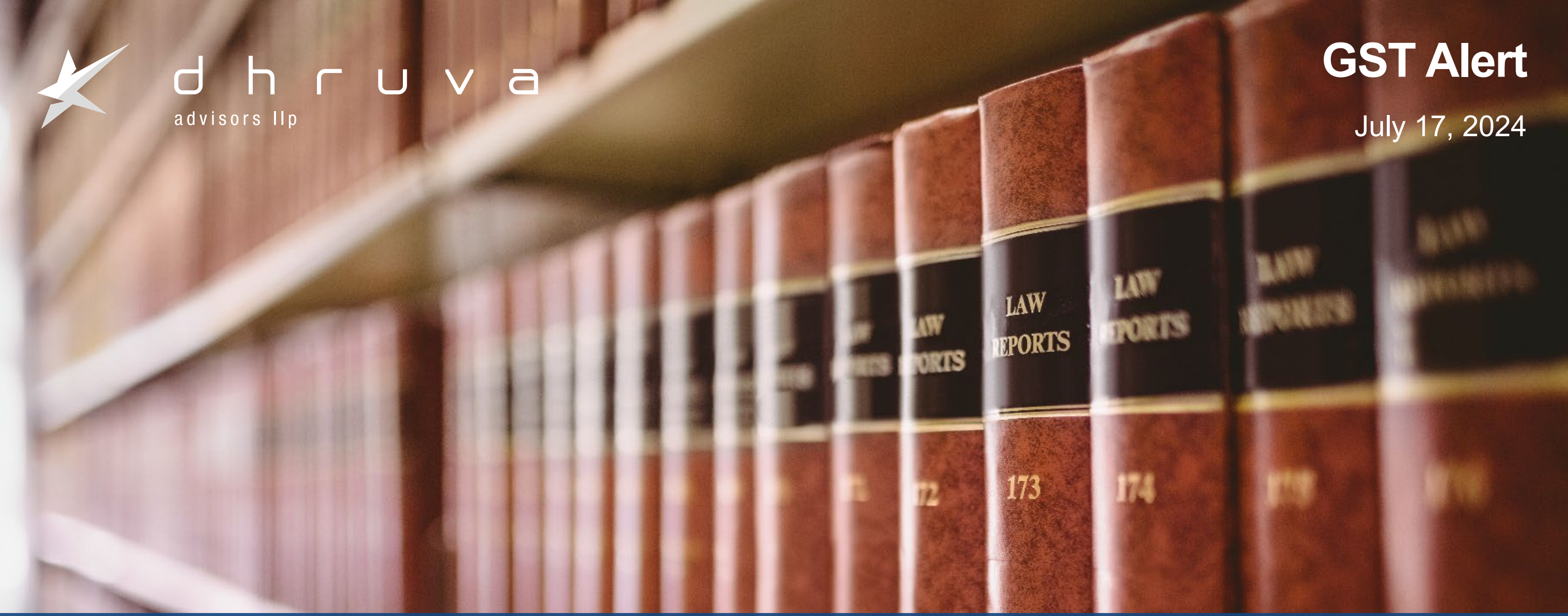

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GST Alert

July 17, 2024

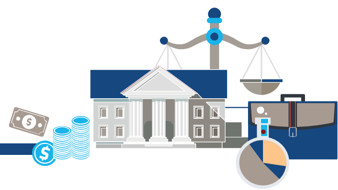
Amendments to CGST Rules and Clarifications by CBIC

The Central Government has recently the notified[1] the Central Goods and Services Tax (Amendment) Rules, 2024 and introduced rate notifications[2] to give effect to various recommendations to the 53rd of the GST Council meeting. The CBIC has also issued 6 more circulars (in addition to 16 circulars issued on June 26, 2024) to clarify the legal positions recommended by the GST Council. These changes are effective on the date of notification, unless otherwise specified.

The key highlights of these changes/ circulars are summarised as under:

1. **Corporate Guarantee**
   - **Valuation:**
     - Valuation to be 1% of the guarantee amount or the actual consideration, whichever is higher
     - Such valuation shall be applicable on a per annum basis. For guarantees provided for part of a financial year, valuation shall be done proportionately
     - Where the recipient is eligible for full Input Tax Credit (ITC), the invoice value is deemed to be the taxable value
     - Valuation of higher of 1% or actual consideration does not apply to guarantees provided on behalf of overseas entities (i.e., for export of services). In such cases, the other valuation rules need to be accorded to
   - **Taxability:**
     - Corporate guarantees are taxable even before the insertion of Rule 28(2) of the CGST Rules on October 26, 2023
     - For guarantees issued or renewed before this date, valuation follows the provisions of Rule 28(1)
   - **Risk of Default vs. Loan Disbursal:**
     - Service of providing a corporate guarantee is linked to the risk of default, not the loan disbursal. Therefore, the value of the supply is the higher of 1 percent per annum of the guarantee amount or the consideration paid/payable, regardless of partial or non-disbursal of the loan
   - **Eligibility for ITC:**
     - Recipients can avail ITC irrespective of the timing (years of guarantee) or amount of loan disbursal

[1] Notification No.12/2024- Central Tax dated July 10, 2024
[2] Notification No.02/2024-Central Tax (Rate) dated July 10, 2024
Notification No.03/2024-Central Tax (Rate) dated July 10, 2024
Notification No.04/2024-Central Tax (Rate) dated July 10, 2024



- **Multi-Year Guarantees:**
  - For guarantees spanning multiple years, the taxable value is cumulative (e.g., a five-year guarantee has a taxable value of 5% of the guarantee amount). The taxability arises on grant of guarantee
  - If renewed annually, GST is payable on 1 percent per annum, of the guarantee value each year

- **Co-Guarantors:**
  - If multiple co-guarantors are involved, the taxable value is the higher of the total consideration paid/payable or 1% of the guarantee amount, distributed based on the guarantee provided by each
  - If no specific ratio is provided, the 1% value shall be distributed equally among co-guarantors

- **Takeover of Loans:**
  - GST is payable only if a fresh or renewed corporate guarantee is issued upon the takeover of the underlying loan by another financial institution. Hence, the activity of pure taking over of the loan does not fall under the service of providing corporate guarantee to any banking company or financial institution by a supplier to a recipient

(amendments to Rue 28(2) are effective retrospectively w.e.f. October 26, 2023, and Circular No. 225/19/2024-GST dated July 11, 2024)

2. Input Service Distributor (ISD)

- Provisions governing the distribution of Input Tax Credit (ITC) by an ISD revised and aligned to Section 20, as amended by the Finance Act, 2024
- Mechanism of ITC distribution by ISD largely remains same as existed earlier
- A specific rule introduced, allowing a registered person with the same PAN and State code as the ISD, to transfer the ITC of input services taxed under the Reverse Charge Mechanism (RCM) to the ISD registration. This transfer is facilitated through the issuance of an invoice, debit note, or credit note

(amendment to Rule 39 of CGST Rules are effective from a date to be notified)

3. Return for outward supplies

- Form GSTR-1A introduced for amending the details provided in GSTR-1 or further adding details of outward supplies of a particular period before filing Form GSTR-3B
- Additional details or amendments furnished through Form GSTR-1A to get reflected in the Form GSTR-2B of same month (if Form GSTR-1A is filed by 11th) and subsequent month (if Form GSTR-1A is filed subsequently)
- With effect from August 1, 2024, the threshold for mandatory reporting of invoice-wise details of interstate supplies made to unregistered person has been reduced from Rs. 2.5 Lakh to Rs.1 Lakh

(amendment to Rule 59 of CGST Rules)

4. Interest on late payment of tax

- Amount credited to the Electronic Cash Ledger before the due date for filing a return but is debited for tax payment after the due date, shall not be considered for calculating interest on delayed payment of tax, provided the amount remained in the cash ledger from the due date until the debit date

(amendment to Rule 88B of CGST Rules)

5. Refunds

- Refund of additional IGST paid due to a price increase of goods after export to be claimed in Form GST RFD-01 within two years from the relevant date defined in Section 54
- For past periods, the application can be filed within two years from the date this provision takes effect
- To process the refund, exporters need to furnish details such as export invoices, shipping bills, related bank realisation/ remittance certificates along with reconciliation statement, details of previously sanctioned refunds,

supplementary invoices issued, proof of additional tax payment etc.

- The refund application shall be processed by the jurisdictional GST officer
- Till the time a separate category is developed on the GST portal, exporters can file application in Form RFD-01 under the category "Any other" with remarks "Refund of additional IGST paid on account of increase in price subsequent to export of goods"
- Upon verification of refund application, the proper officer shall issue refund sanction order along with a detailed speaking order in Form RFD-06 and payment order in Form RFD-05
- The officer shall also validate as to whether the exporter has deposited excess refund of IGST amount in cases where there is a downward revision in price of goods after exports

(amendment to Rule 89 of CGST Rules and Circular No. 226/20/2024-GST, dated July 11, 2024)

6. Export of services under Letter of Undertaking

- Provision requiring payment of tax along with interest within 15 days after the expiry of one year from the date of invoice, upon failure to receive payments for export of services, substituted to align timeframe with FEMA provisions
- The requirement to pay tax along with interest now triggers upon the expiry of one year from the date of the invoice or within the period allowed under FEMA, whichever is later

(amendment to Rule 96A of CGST Rules)

7. Demands paid through Form DRC-03

- If tax, interest, penalty or any other tax demand, under litigation, has been paid using Form DRC-03 instead of Form PMT-01, an application can be filed electronically in Form DRC-03A to get this payment credited in the Electronic Liability Register (Form PMT-01) as if it was paid directly towards the demand, provided an order concluding the proceedings has not been issued in Form GST DRC-05
- In absence of filing application in Form DRC-03A on the portal for the time being, taxpayers may intimate the proper officer about the same basis which the proper officer would not insist recovery of remaining amount till the time functionality of DRC-03A is made available on the portal
- Once functionality of DRC-03A is available on the portal, taxpayers must promptly file the application to ensure proper adjustment and stay of the relevant recovery proceedings

(amendment to Rule 142 of CGST Rules)

8. Recovery of Dues Amidst Non-Functioning of GST Appellate Tribunal

- When a taxpayer decides to file an appeal to the GST Appellate Tribunal and wants to make the pre-deposit as per Section 112(8) of the CGST Act, they need to make such payment by navigating to Services >> Ledgers >> Payment against an outstanding demand order created in order in ELL Part-II. The amount deposited will be adjusted against the pre-deposit required when filing an appeal before the GST Appellate Tribunal
- The taxpayer must also file an undertaking/declaration with the jurisdictional proper officer about their decision to file an appeal before the GST Appellate Tribunal when it becomes operational
- Recovery proceedings by the department shall only be stayed as per Section 112(9) of the CGST Act if taxpayers pay the pre-deposit in ELL Part-II

(Circular No. 224/18/2024-GST dated July 11, 2024)

9. Appeal to Appellate Tribunal

- The appeal as well as memorandum of cross objection to the Appellate Tribunal shall be mandatorily filed electronically, unless the Registrar allows manual filing by issuing a special or general order to that effect
- Procedure of filing of certified copy of the decision or order is done away with, where the order is communicated on the common portal.

- Date of issue of provisional acknowledgement (generated on common portal) shall be considered as date of filing of the appeal
- After removal of defects, if any, the final acknowledgment containing appeal number shall be generated. An appeal shall be treated as filed upon issuance of final acknowledgment
- Minimum appeal filing fees of INR 5,000 prescribed
- The facility for withdrawal of an appeal provided in Form APL-05/07W

(amendment to Rule 110 and insertion of 113A of CGST Rules)

10. E-way bill

- An unregistered person who needs to generate an e-way bill (Form EWB-01) or chooses to generate one, must submit details in Form ENR-03. A unique enrolment number will be generated and communicated to the person post validation of details.

(amendment to Rule 138 of CGST Rules)

11. Changes in GST return forms

- Negative tax liability adjustment has been added in Table 6.1 of Form GSTR-3B. Earlier, negative liability reported in Form GSTR-1 were to be manually adjusted in Form GSTR-3B of subsequent tax period. Now the same would be auto-populated in Form GSTR-3B
- Separate fields for reporting supplies made through e-commerce operator have been introduced in Form GSTR-9.

13. GST rate change - Goods

- Following key rate changes have been notified:

Rate change in goods	Existing	New
Cartons, boxes and cases of corrugated paper, non-corrugated paper or paper board	18%	12%
Solar cookers whether single or dual energy source	18%	12%
Milk cans made of Iron, Steel, or Aluminium	18%	12%
Agricultural farm produce in package(s) containing quantity of more than 25 kilogram or 25 litre	5%	NIL

- It has been clarified[3] that all types of sprinklers including fire water sprinklers shall also attract GST at the rate of 12%. Issues for the past period regularised on "as is where is basis"

- Goods imported by units or developers in Special Economic Zones (SEZs) for authorized operations to be exempt from GST Compensation Cess

14. GST rate change - Services

- **Hostel services:**
  - Supply of accommodation services for students in student residences, services provided by hostels, camps, paying guest and the like, valued at or below INR 20,000 per person per month exempted from GST, provided the service is supplied for a continuous period of at least ninety days. For past period, it has been clarified[4] to regularise its taxability on "as is where is basis"

- **Statutory collections made by RERA[4]:**
  - Real Estate Regulatory Authority (RERA) is a 'governmental authority' as per the definition in the exemption Notification No. 12/2017-CT(R) dated June 28, 2017, and thus the statutory collections made by RERA are exempt from GST

- **Insurance services[4]:**
  - Pursuant to the exemption granted with effect from January 25, 2018 to reinsurance services in respect of certain specified general insurance and life insurance schemes, it has been clarified that the taxability of said services for the past

[3] Circular No 229/22/2024-GST dated July 15 2024

[4] Circular No 228/22/2024-GST dated July 15 2024

period i.e. July 1, 2017 to January 24, 2018 shall be regularized on ‘as is where is basis’

- Similarly, reinsurance services of government sponsored insurance schemes had been exempted with effect from July 27, 2018. Accordingly, the taxability of said services for the past period i.e. July 1, 2017 to July 26, 2018 shall be regularized on ‘as is where is basis’
- Retrocession services are included in the term ‘reinsurance’ and are thus exempt from GST

Dhruva Comments

The amendments to the CGST Rules and the circulars issued are in line with the recommendations from the 53rd GST Council meeting. The Government has thus far ensured that the legal and practical challenges faced by the taxpayers are largely addressed (like interest on cash ledger, refund of IGST paid for price increases on exports, acceptance of demands through DRC-03A, and so on). The balance of convenience has, however, shifted towards the Government when it comes to the taxation of corporate guarantee transactions, specifically when the circular provides for taxability on multi-year guarantees and relevance to the guarantee amount vis-à-vis the loan amount. Likewise, mandating the taxpayers to make a pre-deposit, in the absence of the functioning of the GST Appellate Tribunal, could prove onerous to the industry. There is also no clarity on the date of implementation of new ISD provisions, which the industry has been seeking for long. To conclude, these changes introduce new compliance requirements for businesses, necessitating swift adaptation to the regulatory requirements.

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