

# CBIC issues further clarifications based on recommendations made in 53rd GST Council meeting

12 July 2024

## Summary

Pursuant to recommendations made in the 53rd GST Council meeting, the Central Board of Indirect Taxes and Customs (CBIC) had issued another set of circulars to clarify additional aspects pertaining to the valuation of corporate guarantee arrangements, including taxability of loan takeover, frequency of tax payment, multiple co-guarantors, etc. Guidelines have also been issued regarding the recovery of outstanding demand pending due to non-operation of the Goods and Services Tax Appellate Tribunal (GSTAT) and the pre-deposit adjustment. Further, the refund mechanism for upward price revision of goods post export and Canteen Stores Department (CSD) supplies has also been prescribed.

## Taxability and valuation of corporate guarantee provided to related persons<sup>1</sup>:

Issue	Clarification
<b>Applicability of deemed valuation of corporate guarantee for the period prior to the insertion of Rule 28(2)</b>	<ul style="list-style-type: none"> <li>The supply of corporate guarantee to a banking company or financial institution on behalf of a related party was a taxable service even before the insertion of Rule 28(2) of the CGST Rules.</li> <li>Rule 28(2), inserted w.e.f. 26 October 2023, determines the value of the taxable supply of providing corporate guarantee and not regarding the taxability itself.</li> <li>For the prior period, the valuation of service of providing corporate guarantee or renewal will be in accordance with Rule 28 as it existed during the time.</li> <li>The corporate guarantee issued or renewed on or after 26 October 2023 will be valued as per amended Rule 28(2).</li> </ul>
<b>Valuation and ITC implications in case of part or no availment of loan</b>	<ul style="list-style-type: none"> <li>Providing corporate guarantee amounts to guaranteeing the risk of default and is not linked with the actual loan disbursement.</li> <li>The value of the supply of service will be computed on the basis of the guarantee amount and not the amount of loan actually disbursed.</li> <li>ITC eligibility to the recipient will be determined as per the governing provisions regardless of when and how much loan has been availed.</li> </ul>
<b>GST applicability on takeover of existing loans</b>	<ul style="list-style-type: none"> <li>In corporate guarantee arrangements, the service supplier is the corporate entity providing the guarantee,</li> </ul>

<sup>1</sup> Circular No. 225/19/2024-GST dated 11 July 2024

	<p>and the recipient is the related entity for whom the guarantee is provided.</p> <ul style="list-style-type: none"> <li>• Takeover of a loan provided by a banking company/financial institution by another banking company/financial institution does not fall under the service of providing corporate guarantee and would not be liable to GST.</li> <li>• However, the takeover of a loan, along with the issuance of a fresh corporate guarantee or renewal thereof, would be liable to GST.</li> </ul>
<b>Valuation of corporate guarantee in case of more than one entity/co-guarantor</b>	<ul style="list-style-type: none"> <li>• <b>Total consideration to guarantors is greater than 1% of the amount of corporate guarantee:</b> Sum of consideration paid/payable to guarantors shall be liable to GST.</li> <li>• <b>Total consideration to guarantors is less than 1% of the amount of corporate guarantee:</b> GST is payable proportionately on 1% of the amount guaranteed by each co-guarantor.</li> </ul>
<b>Intra-group corporate guarantee to related persons in India</b>	<p><b>A. By domestic company:</b></p> <ul style="list-style-type: none"> <li>• GST is payable under the forward charge mechanism.</li> <li>• The invoice is to be issued by the supplier to the recipient.</li> </ul> <p><b>B. By foreign/Overseas company:</b></p> <ul style="list-style-type: none"> <li>• GST is payable under the reverse charge mechanism.</li> </ul>
<b>Deemed value of 1% is on a one-time, yearly basis, or monthly basis</b>	<ul style="list-style-type: none"> <li>• As per amended Rule 28(2), a deemed valuation of 1% of the amount of corporate guarantee will be computed on a per-annum basis.</li> <li>• For guarantees issued for multiple years, the value is 1% per year multiplied by the number of years or the actual consideration, whichever is higher.</li> <li>• The computation would be proportionate if the period is less than one year.</li> <li>• Where renewal is done yearly, the deemed valuation would be applicable each year.</li> </ul>
<b>Benefit of value declared in invoice as OMV</b>	<ul style="list-style-type: none"> <li>• Where the recipient is eligible for full ITC, the value declared in the invoice shall be deemed as open market value (OMV).</li> </ul>
<b>Applicability of Rule 28(2) in case of export of services</b>	<ul style="list-style-type: none"> <li>• Rule 28(2) is not applicable in the case of the export of corporate guarantee services between related persons in line with the amended rule.</li> </ul>

## Guidelines for recovery of outstanding demand dues till the operation of Appellate Tribunal<sup>2</sup>:

### A. Payment/adjustment of amount of pre-deposit from demand amount where demand is unpaid

- Where the first appellate authority has confirmed the demand but the taxpayer is unable to file an appeal before the GSTAT due to its non-operational status, the below procedure is required to be followed to avail the benefit of stay from the recovery of demand:
  - Deposit the amount equivalent to the pre-deposit for filing an appeal to the appellate tribunal by navigating to **Services >> Ledgers>> Payment towards demand** on the common portal.
  - Such taxpayers would be navigated to the Electronic Liability Register (ELL) Part-II, wherein they can choose from the outstanding demand orders against which they wish to make the pre-deposit.
  - Upon payment, such an amount would be reduced from the total demand amount in the ELL and adjusted against the pre-deposit amount.
  - File an undertaking/declaration with the jurisdictional proper officer affirming that an appeal will be filed against the demand order before the Appellate Tribunal within the prescribed time limit upon its operation.
  - Upon such fulfilment, the recovery of the remaining demand will be stayed.
- If the pre-deposit payment is not made or such declaration is not given, it will be deemed that no appeal will be filed against such demand order and recovery proceedings can be initiated as per provisions.
- Further, in case an appeal is not filed within the specified timeline after the Appellate Tribunal comes into operation, the remaining demand amount will be recouped in accordance with the recovery provisions.

### B. Payment/adjustment of amount of pre-deposit where a certain amount is already paid via DRC-03

- In cases where specific amounts have been paid towards the demand order through GST DRC 03 instead of making such payment through ELL, the taxpayer can file GST DRC 03A electronically to adjust such amounts against the demand order.
- Such amounts paid will be adjusted against the amount of pre-deposit for filing an appeal against the demand order before the Appellate Tribunal, and the recovery of the remaining amount will be stayed unless proceedings are concluded by issuance of order in GST DRC 05.
- Until the functionality of the DRC 03A is not available on the common portal, the taxpayer can inform the proper officer of such inadvertence, and no recovery can be made against such a demand order.
- In case the appeal is not filed within the specified timeline after the Appellate Tribunal comes into operation, the remaining demand amount will be recouped in accordance with the recovery provisions.

## Refund mechanism for additional IGST paid on account of upward revision of price of goods post export<sup>3</sup>:

- Exporters can obtain refund of additional IGST paid on account of an upward revision of the price of goods post exports through GST RFD-01 under the category of 'Any Other' with remarks 'Refund of additional IGST paid on account of increase in the price of goods subsequent to exports', along with relevant documents as prescribed in Rule 89(2)(bb) & (bc).
- Additionally, GSTN is developing a separate refund category in GST RFD -01 for obtaining a refund of such additional IGST.
- The refund claim shall be processed based on documentary evidence submitted by the applicant, which should *inter alia* include:
  - Copy of shipping bill or bill of exports;
  - Copy of original invoices;
  - Copy of contract/other documents, as applicable, indicating requirement for revision in price of such goods post export;

<sup>2</sup> Circular No. 224/18/2024 dated 11 July 2024

<sup>3</sup> Circular No. 226/20/2024-GST dated 11 July 2024

- Copy of original invoices, as well as relevant debit note(s)/supplementary invoices, etc.
- **Minimum refund amount:** No refund shall be paid if the amount claimed is less than INR 1,000.
- **Time limit for filing claim:** The refund application shall be filed within two years from the relevant date<sup>4</sup>. In cases where the relevant date is prior to when the amendment in Rule 89(1B) has been undertaken, the refund claim should be filed within two years from the date on which the rule comes into force.
- Proper scrutiny of the application regarding completeness and eligibility should be done by the proper office (PO), which shall scrutinise the application.
- In case of a downward revision in the price of goods post export, where goods are exported with payment of the IGST, the exporter shall deposit the proportionate refund received, along with interest.

## Refund mechanism for CSD<sup>5</sup>:

- The CSD is required to file GST RFD-10A electronically to claim a refund of 50% of the input tax (CGST/SGST/IGST/UTGST) paid towards goods supplied to its unit-run canteens or its authorised customers.
- The refund shall be granted based on the invoices for inputs received for the above purpose and subsequent proper reporting in returns on a quarterly basis. However, the CSD has also been given the option to file refund claims for multiple quarters, clubbing FYs.
- The following declarations should accompany the refund application:
  - Refund is being claimed only for the inputs obtained for subsequent supply to the unit-run canteens and authorised customers of the CSD.
  - No refund has been claimed earlier against the invoice on which the refund is claimed.
- **Relevant date for filing refund:** The CSD should file the refund application within two years from the last day of the quarter on which the supplies were received.<sup>6</sup>
- Proper scrutiny of the application regarding the completeness and eligibility should be done by the PO

<sup>4</sup> Relevant Date has been defined in Explanation 2(a) of the Section 54 of the CGST Act

<sup>5</sup> Circular No. 227/21/2024-GST dated 11 July 2024

<sup>6</sup> Relevant date as per Section 55 of the CGST Act



## Our comments

In the case of corporate guarantee arrangements for taxpayers eligible for full ITC, a notable relief comes from the amended rule and clarification. However, for taxpayers who are not eligible for full ITC, the per annum criteria since the inception of the amended rule may require businesses to re-evaluate the past positions to assess potential consequences. The delinking of corporate guarantees from the actual loan disbursements may be challenged before the higher forums, as, in essence, guarantees come into play upon loan default.

Additionally, taxpayers intending to litigate before the GSTAT are now required to adhere to the prescribed guidelines, which include making pre-deposit payments and filing an undertaking before the jurisdictional authorities to obtain a stay on the demand. Although the GST Council has reduced the pre-deposit requirements from 20% to 10% of the demand amount, these changes are not yet operational. This may lead to ambiguity about the required deposit amount until the amendment comes into effect.

Further, a detailed mechanism for exporters claiming refunds of additional IGST paid due to upward price revisions post-export till functionality is developed on the GSTN portal ensures uniformity in processing the claims across field formations.

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