

SKKA IDT ALERT

2023-2024/18

Circular No. 196/08/2023-GST and 198/08/2023-GST dated 17.07.2023.

TAXABILITY OF HOLDING OF SHARES OF SUBSIDIARY BY ITS HOLDING COMPANY (NO.196/08/2023-GST) :

In the current tax regime, 'securities' is specifically excluded from the definition of goods as defined under section 2(52) of the CGST Act 2017. But, in recent days, the department has started issuing notices demanding tax on "share capital held in subsidiary companies". All demand of GST is only on one ground that the scheme of classification of services contains an entry "Services provided by holding companies, i.e., holding securities of companies for the purpose of owning a controlling interest" against service code 997171 (tax rate being 18%) hence, taxable under GST.

To clarify the above issue of taxability of shares held by a holding company in subsidiary company, CBIC has issued a ***Circular No. 196/08/2023-GST dated 17.07.2023*** in which it is clarified that shares held by a holding company in a subsidiary company are considered ***neither goods nor services*** under the definition of the CGST Act. For a transaction/activity to be treated as supply of services, there must be a supply as defined under section 7 of CGST Act.

Thus, the activity of merely holding of shares of subsidiary company by the holding company cannot be treated as a supply of services and cannot be taxed under GST. However, if there are other specific services provided by the holding company to its subsidiary (For Example – Management Related Services) in addition/relation to holding shares, the same would be taxable.

E-INVOICING FOR SUPPLY OF GOODS OR SERVICES TO GOVT. DEPT. REGISTERED U/S 51 OF THE CGST ACT 2017 (NO. 198/08/2023-GST) :

The Circular No. 198/08/2023-GST clarifies that the Government Departments or establishments/ Government agencies/ local authorities/ PSUs, registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the CGST Act, are to be treated as registered persons under the GST law. Thus, any registered person whose turnover exceeds the prescribed threshold limit (***Currently turnover > 10 Crores prescribed; From August 2023 turnover > 5 Crores will be applicable***) is also required to issue e-invoice for the supplies made to such Government Departments or establishment/PSUs etc.

The above clarification on the issue of e-invoice applicability brings much-needed clarity to taxpayers who provide supplies to Government entities as non-generation of IRN may attract heavy penalty **(100% of tax due or Rs. 10,000/- whichever is higher)**. Thus, one must be cautious regarding generation of e-invoice for all the B2B supplies including supplies to TDS Deductors registered as per section 51 of the CGST Act 2017.



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