

The CBIC has issued certain circulars and appeal amnesty scheme as proposed in the 52<sup>nd</sup> GST Council meeting held on 07.10.2023. The key notifications and circulars are tabulated below:

Notification/Circular No.	Particulars	Comments
<p><b>Notification No. 53/2023-Central Tax dated 2<sup>nd</sup> November, 2023</b></p>	<ul style="list-style-type: none"> <li>• <b>Amnesty scheme for appeals not filed within the time limit specified under section 107 of the Act for demand orders passed under section 73/74 upto 31.03.2023.</b></li> <li>• <b>One time window to file such appeals till 31.01.2024</b></li> <li>• <b>Appeal can also be filed if already appeal has been rejected on grounds of time barred earlier by the appellate authority</b></li> <li>• <b>Pre deposit of 12.5% of disputed tax to be paid with 2.5% minimum to be paid through cash ledger</b></li> <li>• <b>The amnesty is only applicable for tax demand orders and not for orders for penalty or refund rejection.</b></li> </ul>	<ul style="list-style-type: none"> <li>• The above scheme provides a window to file appeal to assesses who have missed the time limit for want of knowledge on the same. However, the scheme doesn't provide for the following: <ul style="list-style-type: none"> <li>A. Cases where already amount has been recovered from bank or credit ledger, the process to get refund of the amounts already recovered.</li> <li>B. Cases where order has been passed after 31.03.2023 but the time to file appeal has expired.</li> </ul> </li> </ul>
<p><b>Clarification relating to export of services – Section 2(6)(iv) of the IGST Act, 2017- Circular No. 202/14/2023-GST dt. 27.10.2023</b></p>	<ul style="list-style-type: none"> <li>• Export of service is defined in section 2(6) of the IGST Act, 2017. As per clause (iv) of the said definition, the payment for the exported service must have been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India. For this purpose, a clarification has been issued regarding admissibility of export remittances received in Special INR Vostro account, as permitted by RBI, for the purpose of consideration of supply of services to qualify as export of services.</li> <li>• In view of the above, it has been clarified that when the Indian exporters, undertaking export of services are paid the</li> </ul>	<p>The above circular clarifies that even if payment is received in INR for notified cases for export of services, the same will be treated as exports and the benefit shall be available to the assessee.</p> <p>The above circular however does not provide clarity as to whether payments received from third party such as Paypal, TransWise etc. shall qualify for the same or not.</p>

	<p>export proceeds in INR from the Special Rupee Vostro Accounts of correspondent bank(s) of the partner trading country opened by AD banks, the same shall be considered to be fulfilling the conditions of sub-clause (iv) of clause (6) of section 2 of IGST Act, 2017, subject to the conditions/ restrictions mentioned in Foreign Trade Policy, 2023 &amp; extant RBI Circulars and without prejudice to the permissions / approvals, if any, required</p>	
<p><b>Place of supply in case of supply of service of transportation of goods, including through mail and courier Circular No. 203/15/2023-GST dt. 27.10.2023</b></p>	<ul style="list-style-type: none"> <li>• Section 13(9) of the IGST Act, 2017 which provided that the place of supply in case of service of transportation of goods, other than by way of mail and courier, in cases where location of supplier of services or location of recipient of services is outside India shall be the destination of such goods, <b>has been omitted vide Finance Act, 2023, w.e.f. 01.10.2023. Consequently, after the amendment comes into force, the place of supply in such case shall be determined by the default rule under section 13(2) of the IGST Act.</b></li> <li>• <b>Accordingly, in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services.</b></li> <li>• Further, the place of supply in case of service of transportation of goods by mail or courier will continue to be determined by the default rule under section 13(2) of IGST Act.</li> </ul>	<p>The present Circular clarifies the effect of amendment in section 13 of the IGST Act post Finance Act, 2023 and provides that PoS for transport of goods services will be governed by the general provision i.e. 13(2) of the Act and thus the issues pertaining to non availability of ITC to the recipient of service will no longer be there.</p>

<p><b>Applicability of GST on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants- Circular No. 206/18/2023-GST</b></p>	<ul style="list-style-type: none"> <li>• It has clarified that whenever <b>electricity is being supplied bundled with renting of immovable property and/or maintenance of premises, as the case may be, it forms a part of composite supply and shall be taxed accordingly.</b> The principal supply is renting of immovable property and/or maintenance of premise, as the case may be, and the supply of electricity is an ancillary supply as the case may be.</li> <li>• However, where the <b><i>electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.</i></b></li> </ul>	<p>The present Circular holds significance for the following reasons:</p> <ol style="list-style-type: none"> <li>a. The Circular clarifies that when the charges of electricity is part of the rental or maintenance charges, the same will attract GST as per rates applicable to rental or maintenance charge. However, if the electricity charges are being reimbursed on actual basis i.e. at the same rate being charged by the electricity distribution companies, then the reimbursement will be treated as pure agent and no GST shall be payable by the landlord on such charges.</li> <li>b. The point to note in the present case is that on the amounts of reimbursement, the department may take a plea that the same becomes an exempt service and thus ITC reversal on common credits under Rule 42 has to be done by the landlord on such values. This may lead to cost escalation in the hands of the landlord.</li> </ol>
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