Tax Alert

GST

Gist of Circulars issued by CBIC on 26 June 2024

The Central Board of Indirect Taxes and Customs (CBIC) issued various circulars to clarify the recommendations made in 53rd GST Council meeting. Please find below a summary of the important clarifications issued vide such circulars:

A) Circular No. 207/1/2024-GST

In line with the objectives of the National Litigation Policy to optimize the utilization of judicial resources, the following monetary limits have now been set for filing appeals/applications/SLPs by the GST department before the GST Appellate Tribunal (GSTAT), High Courts and Supreme Court:

Appellate Forum	Monetary Limit (INR)
GSTAT	2 million
High Court	10 million
Supreme Court	20 million

The Circular also attempts to discourage the filing of such appeals, considering these are merely filed because the disputed amount involved in the matter breaches the above threshold.

For the purpose of determining the monetary limit, whether a case falls within the above monetary limits or not, the following principles are to be considered:

Sr. No.	Dispute pertains to	Amount to be considered for monetary limit
1	Demand of tax (with/without penalty and/or interest)	Aggregate tax only (no interest and/or penalty)
2	Demand of interest	Interest
3	Imposition of penalty	Penalty
4	Imposition of late fees	Late fees
5	Demand of interest, penalty and/or late fees (without Tax amount)	Interest, penalty and/or late fees
6	Erroneous refund	Refund amount
7	Composite order (i.e., more than one appeal/demand)	Total amount of tax/interest/penalty/late fees inclusive of all appeal or demand notices.

As an exception, tax authorities may still file an appeal/application/SLP disregarding the monetary limits in the following cases:

- Where any provisions of the GST Act are held to be ultra vires to the Constitution of India, or any Rules, Regulations, Order, Notification, Instruction, or Circular under the GST Act are held to be ultra vires the parent Act;
- Matters pertaining to valuation, classification, place of supply, refunds, or topics of recurring nature;
- Where the Government/Department or their officers have either been criticized and/or cost has been imposed against them;
- Any other case(s) that CBIC may deem necessary to contest in the interest of justice or revenue.

The Circular further clarifies that non-filing of appeal/application/SLP due to the given threshold of amounts should not restrict the department from filing appeals in other cases where the amounts breach the given threshold.

Our Comments

The aforesaid clarifications bring a sigh of relief to taxpayers who can now be assured that unless there is a breach of the given thresholds, the chances of authorities appealing against a favorable order will be relatively less. This will also help reduce the burden on appellate authorities and courts, thereby further helping smoothen the GST litigation process. Certainly, the exception criteria come to aid tax authorities and may slightly pose worry for taxpayers if used with a prejudicial mindset.

In addition, the current limits closely align with those from the pre-GST era (except at Tribunal level where the limits are further reduced instead of increasing), which are now seven years old. Given the passage of time, it would have been beneficial to raise these limits further, ultimately aiding in the goal of minimizing legal disputes and optimizing resource utilization.

B) Circular No. 208/2/2024-GST

A special procedure was notified vide a Notification No. 30/2023 – Central Tax dated 31 July 2023 in case of registered persons engaged in the manufacturing of goods notified in the schedule thereto. The said Notification was subsequently repealed in January 2024 and a revised procedure was subsequently introduced vide Notification No.04/2024- Central Tax.

This Circular clarifies various queries raised by trade associations as follows:

Sr. No.	Issue	Clarification
1	Non availability of make, model number and machine number due to usage of old machines or secondhand machines.	• Make and model number are optional in Table 6 of FORM GST SRM-I. • If make is unavailable, declare year of purchase as the make number. • Where machine number is not available, then manufacturer may assign any number to the machine, either on the machine or as per the documents/records available.
2	Cases where the electricity consumption rating of the packing machine not available.	• Use the details as available either on the machine or in the documents/records of the said machine. • If the above is unavailable, then the manufacturer may get such consumption details of such machine calculated and certified by a Chartered Engineer (Form SRM-III). The copy of such Chartered Engineer certificate to be uploaded along with FORM GST SRM-I and the details of the documents so uploaded to be provided in Table 10 of the said form.

Sr. No.	Issue	Clarification
3	Value to be reported in Column 8 of Table 9 of FORM GST SRM-II in case of goods having no MRP?	• The sale price of the goods so manufactured.
4	What should be the qualifications and eligibility of the Chartered Engineer?	• Practicing Chartered Engineer having a COP from the Institute of Engineers India (IEI).
5	Whether the special procedure is applicable to: i. Manufacturing units located in the Special Economic Zone (SEZ)? ii. Do the manual processes use an electrically operated heat sealer and seamer?	• The special procedure is not applicable in both cases.
6	The serial number of which machine is required to be declared in Table 6 of FORM GST SRM-I, where multiple machines are required for filling, capping and packing of containers?	• In the manufacturing process, different machines may be used to fill packages, put seals, and final pack. • The details of the machine used for the final packing of packages of specified goods are required to be reported in Table 6 of FORM GST SRM-I.
7	In case of job work or contract manufacturing, which person shall be required to comply with the special procedure?	• The special procedure shall be applicable to all persons involved in the manufacturing process, including a job worker/contract manufacturer. • However, if the job worker/contract manufacturer is unregistered, then the liability to comply with the special procedure will be the responsibility of the concerned principal manufacturer.

C) Circular No. 209/3/2024-GST

Clause (ca) has been inserted in Section 10(1) of the IGST Act, 2017 w.e.f 1 October 2023, which states that for the supply of goods made to any unregistered person, the place of supply shall 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. The said Clause is non-obstante and overriding provisions of Clause (a) or (c) of Section 10(1) of the IGST Act, 2017.

However, in such situations, specifically in e-commerce sales, where the buyer's address and the delivery address pertain to different states, what should be treated as the place of supply?

The Circular states that in such cases, the location of delivery should be treated as the place of supply. The Circular further emphasizes that in such cases, the supplier may record the delivery address as the recipient's address on the invoice to determine the place of supply of the said supply of goods.

Illustration: *Mr. A, residing in Karnataka purchases a laptop and captures the delivery address of the said laptop to Mr. B's residence in Tamil Nadu. In such cases, the place of supply should be the state where the goods are ultimately getting delivered, i.e., Tamil Nadu.*

D) Circular No. 210/4/2024-GST

Entry No. 4 of Schedule I to the CGST Ac, 2017 implies that the import of services by a person from a related person or from any of his other establishments outside India, even without consideration, shall be treated as a taxable supply. Taking recourse to this, few tax authorities have been demanding taxpayers to discharge GST under reverse charge as a recipient of services by treating various activities undertaken by the outside India-related party as 'import of service,' despite the fact that the activities are neither performed for consideration nor does the Indian counterpart treat the same as 'service.'

In July 2023, vide Circular No. 199/11/2023-GST, the treatment of services between distinct persons within India, where full ITC is available to the recipient, had been clarified and widely appreciated by taxpayers. This Circular extends the clarifications of the aforesaid Circular even in cases of import of services between related persons. The clarification can be summarized as follows:

- The second proviso to Rule 28(1) states that where the recipient is eligible for full ITC, the value declared in the invoice shall be deemed as the Open Market Value (OMV) and shall be applicable in case of import of services.
- Where full ITC is available to the said related domestic entity, the value of such services declared in the invoice by the said related domestic entity may be deemed to be OMV.
- Furthermore, in cases where full ITC is available to the recipient in India if the invoice is not issued by such recipient in relation 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 OMV.

Our Comments

This Circular broadly aims to reduce the extra compliance at taxpayer's end in raising invoices, discharging liability, disclosing it in the GST returns and ultimately availing ITC. This measure will aid in reducing departmental queries as well as rounds of litigations at various levels.

E) Circular No. 211/5/2024-GST

There have been instances where taxpayers have delayed discharging the GST liability under RCM on supplies received from unregistered persons. The delay may even extend to a time period beyond September/ November of the subsequent financial year to which the supply relates to. In such cases, the moot question persisted on the eligibility of ITC of such GST paid in the subsequent financial year.

The Circular states that since the time limit for claiming ITC has to be considered based on the date of invoice, even in case of supplies from unregistered persons where the liability to discharge GST is cast on the recipients, the date of raising of self-invoice will be detrimental to decide the ITC eligibility period. If the recipient has raised the self-invoice at a later date when the liability is discharged, he will be eligible to avail ITC of such GST paid in the financial year in which he has raised the self-invoice.

The Circular also harps upon the certainty of applicability of interest (on the delay in discharging the tax liability) and penal provisions pertaining to such non-compliance.

Our Comments

While industry players have been adhering to similar practices even without such clarifications, the go-ahead provided by the Circular will now act as a shield in similar cases. This should put the ongoing discussion on the manner of computing the time limit for claiming ITC with respect to prescribed RCM supplies to rest. The taxpayers involved in such RCM litigation matters up to FY 2019-20 may consider strategically settling their tax obligations and claiming the same amount in ITC without incurring interest and penalties by taking advantage of the amnesty scheme that requires tax payment by 31 March 2025.

F) Circular No. 212/6/2024-GST

Sr. No.	Issue	Clarification
1	Mechanism for tracking proportionate reversal of Input Tax Credit (ITC) by the recipients in case of post-sale discounts given by suppliers through tax credit notes.	• The discount offered after effecting supplies is not includible in the value thereof, if it satisfies the conditions stipulated in Section 15(3)(b) of the CGST Act, 2017. One such condition prescribes reversal of ITC by the recipient attributable to the said discount. • In absence of any system functionality/facility on the common portal, it is difficult to verify the compliance of said condition for the supplier as well as the tax officers. • Considering this, it is clarified that till the the time an online functionality/facility is made available, the supplier should obtain the following from the recipient: ○ **Where the tax involved in discount is more than INR 0.5 million in a financial year** A CA/CMA certificate containing details of the credit reversal, including the mode thereof (DRC-03/return/any other relevant document), as well as the details of the credit notes and related invoices, and the UDIN. ○ **Where the tax amount in the discount does not exceed INR 0.5 million in a financial year** Undertaking/certificate from the recipient, instead of CA/CMA certification, contains the aforesaid credit reversal details. • Such certificates/undertakings will be treated as admissible evidence for the fulfilment of statutory conditions and can be submitted to the tax officers wherever required, including for the prior periods.

Our Comments

This mechanism is similar to the one prescribed for GSTR-2A vs GSTR-3B mismatch cases, whereby the suppliers were allowed to obtain certifications from the recipient to substantiate their claim of ITC for initial years. This should help taxpayers who were denied the benefit of adjusting tax liability in the absence of evidence of proportionate credit reversal by the recipient.

G) Circular No. 213/7/2024-GST

Sr. No.	Issue	Clarification
1	Taxability of ESOP/ESPP/RSU provided by a company to its employees through its overseas holding company.	• Regardless of whether it is an Employee Stock Purchase Plan (ESPP), Employee Stock Option Plan (ESOP) or Restricted Stock Unit (RSU), the fundamental essence of the transaction remains the same, i.e., the allocation of securities or shares from the employer to employee as part of a compensation package designed to motivate enhanced performance. • Under GST law, securities/shares are considered neither 'goods' nor 'services' under Section 2(52) and Section 2(102) of the CGST Act, 2017 respectively. Thus, the transfer of securities/ shares is not subject to GST. • The securities/shares being issued as a part of the remuneration of the employee by the employer as per terms of employment fall outside the ambit of scope of supply by virtue of Entry 1 of Schedule III of CGST Act, 2017. • Hence, cost-to-cost reimbursement (equal to the market value of shares without any element of additional fee, markup or commission) by the Indian subsidiary to the foreign company towards the transfer of such securities/shares falls outside the scope of GST. • In view of the above, it is clarified that GST is not leviable on the issue of ESOP/ESPP/RSU as there is no supply in terms of provisions of GST law. • However, if the foreign company charges any additional amount over and above the cost of such securities/shares, it can be considered as consideration towards the supply of services of facilitating/arranging the transaction in securities/shares by the foreign company to the Indian subsidiary. In such a scenario, GST shall be payable only on such additional amount and payable by the Indian subsidiary company.

Our Comments

This clarification should settle the ambiguity surrounding the taxability of such transactions/arrangements. It should also stem the flow of notices from various field formations, including the investigation arm, which sought to recover tax on the transfer of securities/shares by the foreign holding company to the employees of the Indian subsidiary company.

H) Circular No. 214/8/2024-GST

Sr. No.	Issue	Clarification
1	Requirement of reversal of ITC with respect to the portion of the premium for life insurance policies that is not included in the taxable value.	• The life insurance business includes unit-linked insurance policies or scrips, which provide a component of investment/savings as a component of insurance issued by an insurer. • In terms of Rule 32(4) of the CGST Rules, the value of the supply of services in the life insurance business is determined by deducting the amount of premium allocated for investment/savings on behalf of the policyholder from the gross premium charged. • The service of providing life insurance coverage is neither Nil rated nor is there any Notification issued under Section 11 of the CGST Act, 2017, which exempts the said deducted portion from the GST levy. • Given this, it is clarified that since the amount excluded from the taxable value does not pertain to non-taxable or exempt supply, there is no requirement for reversal of ITC under Rule 42 or Rule 43 of the CGST Rules, read with Section 17 of the CGST Act, 2017.

I) Circular No. 215/9/2024-GST

Sr. No.	Issue	Clarification
1	Liability on the insurance company to discharge GST on the salvage/wreckage value earmarked in the claim assessment of the damage caused to the motor vehicle.	• The liability to pay GST on the salvage/wreckage value depends on the terms and conditions of the claim settlement mentioned in the insurance contract. • In cases where the insurance claim is settled by payment of the Insured Declared Value (IDV) of the vehicle less the salvage/wreck value in case of a total loss to the vehicle, the salvage/wreck does not become the property of the insurance company and the ownership of the vehicle remains with the insured. • In the aforesaid cases, the deduction of the salvage value from the insurance settlement amount is as per the terms of an insurance contract and cannot be treated as a consideration towards supply made by the insurance company. Therefore, there is no liability under GST on the part of the insurance company in respect of the salvage value. • On the other hand, where the terms of the insurance contract provide for the settlement of the claim on full IDV, i.e., without deduction of the value of salvage/wreck, the salvage becomes the insurance company's property after settling the full amount. Here, since the insurance company is obligated to dispose of the salvage, the insurance company is liable to discharge GST on the disposal/sale of salvage to the salvage buyer.

J) Circular No. 216/10/2024-GST

The instant Circular extends the applicability of Circular No. 195/07/2023-GST (Circular 195) issued in relation to the taxability and availability of ITC in respect of warranty replacement of parts and repair services during the warranty period.

Sr. No.	Issue	Clarification
1	GST liability and reversal of ITC are required in cases where goods or parts are replaced under warranty.	• Circular 195 clarified inter alia that no GST is chargeable on the replacement of parts and/or repair services to the customer during the warranty period since the value of the original supply of goods (provided along with warranty) includes the likely cost of replacement of parts and/or repairs services to be incurred. Furthermore, these replacements could not be considered as exempt supplies and accordingly, no reversal of ITC is required in such cases. • However, in cases where additional consideration is charged from the customer, GST would be payable thereon. • This Clarification has now been extended to the replacement of damaged/defective goods as well.
2	Warranty replacement of parts/goods by the distributor out of his own stock, which the manufacturer subsequently replenishes.	• It has been reiterated that no GST is payable on such replenishment of goods or parts, as the case may be. Furthermore, no reversal of ITC is required to be done by the manufacturer with respect to the goods or the parts, as the case may be, so they are replenished to the distributor.
3	Nature of supply of extended warranty sold by the manufacturer or third person at the time or after the original supply.	• In cases where the agreement for extended warranty is made at the time of original supply of goods, and the supplier of extended warranty is different from the supplier of goods, the two supplies cannot be treated as composite supply. In such a case, the supply of extended warranty will be treated as separate from the original supply of goods. • Furthermore, the extended warranty is in the nature of an assurance provided by the manufacturer/third party to the customers that the goods will operate free of defects during the extended warranty coverage period, and in case of any defect, the same will be repaired/replaced. • Accordingly, it has been clarified that the supply of extended warranty shall be treated as a supply of services where the same is made subsequent to the original supply of goods. • Resultantly, Sr. No.6 of Table in para 2 of Circular 195 has been substituted to this effect.

K) Circular No. 217/11/2024-GST

Sr. No.	Issue	Clarification
1	Whether ITC is available to insurance companies in respect of invoices issued by the garage in case of reimbursement mode of claim settlement, i.e., the amount to the garage is first paid by the insured and later on reimbursed by the insurance company?	• Section 16 of the CGST Act 2017 allows every registered person to avail the ITC, which is used or intended to be used in the course or furtherance of his business. • There is no bar under Section 17(5) of the CGST Act, 2017, to prevent the insurance companies from availing ITC in respect of services of repair of motor vehicles used for providing outward supply of insurance services. • Moreover, as per the definition of "recipient" r/w the definition of "consideration" as defined under the CGST Act, 2017, insurance companies are liable to pay for the repair cost and, thus, are covered under the definition of "recipient." • In view of the above, it is clarified that ITC is available to insurance companies with respect to motor vehicle repair expenses incurred by them, even in the case of reimbursement mode of claim settlement.
2	What is the extent of ITC available to the insurance company in case the garage issues an invoice in excess of the approved claim cost?	• The CBIC has made it clear that in case separate invoices in respect of repair services are issued,i.e., one to the insurance company for the approved claim and the second to the customer for the amount in excess of the approved claim, ITC will be available to the insurance company on the invoice raised on them subject to reimbursement of said amount to the customer. • However, in case a single invoice is raised by the garage for the full amount on the insurance company and the reimbursement is made to the insured only for the approved claim cost, then proportionate ITC will be available to the insurance company to the extent of approved claim cost so reimbursed.
3	Whether ITC is available where the invoice for the repair of the motor vehicle is not in the name of the insurance company?	• In such a case, since the invoice is not in the name of the insurance company, the condition of Section 16(2)(a) of the CGST Act, 2017 is not satisfied per se. Also, such an invoice will not appear in GSTR-2B of the insurance company; thus, the condition of Clause (aa) of Section 16(2) will not be satisfied. • Accordingly, ITC will not be available to the insurance company with respect to such an invoice.

Our Comments

This will be a huge relief for the entire Insurance Industry providing general insurance services as the said clarification will resolve all the ambiguities revolving around the claim to ITC in case of repair expenses of motor vehicles incurred by insurance companies in reimbursement mode of claim settlement and will certainly help in reducing the quantum of litigations.

L) Circular No. 218/12/2024-GST

Sr. No.	Issue	Clarification
1	Taxability of the transaction of providing a loan by an overseas affiliate to its Indian affiliate or by a person to a related person.	• The service of granting loan/credit/advances by an entity is a supply under GST; however, the same is exempt by virtue of Sr. No. 27(a) of Notification No. 12/2017-Central Tax (Rate) insofar as the consideration is represented by way of interest or discount. • As regards the chargeability of any processing fee/service fee, CBIC has compared the activities undertaken by a bank/financial institution/independent lender before granting a loan vis-à-vis loans provided between related persons, and has concluded that both the transactions are not comparable and cannot be placed on an equal footing. • Accordingly, it is clarified that in cases where no consideration in the form of processing fee/service fee to cover administrative costs is charged by the lender from the related person or by an overseas affiliate from its Indian party, for extending a loan or credit, it cannot be said that any service is being provided between the said related persons in the form of processing/facilitating/administering the loan by taking the shelter of Section 7(1)(c) r/w Sr. Nos. 2 and 4 of Schedule I of the CGST Act, 2017. Therefore, there should not be any levy of GST by referring to Rule 28 of the CSGT Rules and determining the open market value of the said transaction. • However, in case any fee is charged by the related person over and above the interest or discount amount, the same may be treated as the consideration for the supply of services of processing/facilitating/administering of the loan and will be liable to GST as supply of services.

Our Comments

The above clarification will certainly help in clearing all the pending issues on which observations have been raised by the tax authorities during departmental audits/scrutiny matters and provide a much-needed relief to the taxpayers.

M) Circular No. 219/13/2024-GST

Sr. No.	Issue	Clarification
1	Whether ITC on the ducts and manholes used in the network of optical fiber cables (OFCs) for providing telecommunication services is restricted in terms of Clauses (c) and (d) of Section 17(5) of the CGST Act r/w the explanation thereto?	• Section 17(5)(c) and 17(5)(d) prevent the registered person from availing ITC in relation to the construction of immovable property (other than plant and machinery). • It is clarified through evaluation of the explanation of "plant and machinery" as provided in Section 17(5) that ducts and manholes are covered under the definition of "plant and machinery" as the same is used as part of OFC network for supplying telecommunication services. • Furthermore, ducts and manholes used in the OFC network have not been specifically excluded from the definition of "plant and machinery". • Accordingly, it is clarified that availment of ITC is not restricted either under Section 17(5)(c) or 17(5)(d).

N) Circular No. 220/14/2024-GST

Sr. No.	Issue	Clarification
1	Place of supply (POS) of Custodial Services provided by banks or financial institutions to Foreign Portfolio Investors (FPIs).	• 'Custodial Services'[1] means the safekeeping of a client's securities and providing services incidentally thereto. The primary activity carried out by banks as custodians is maintaining the account of the specified securities held by the FPIs. • As per Section 13(8)(a) of the IGST Act,2017, the place of supply of services supplied by a banking company, or a financial institution, or a non-banking financial company to account holders will be the location of supplier of service, i.e., banking company. • Notably, provisions of the erstwhile Rule 9(a) of Place of Provision of Supply Rules, 2012 (PoPS Rules) were identical to that of Section 13(8)(a) of the IGST Act, 2017. • While discussing the scope of the term "account holder", the Education Guide under the Service Tax Law inter alia clarified that a banking company or financial institution does not provide custodial and depository services to an account holder in the ordinary course of business. • In view of the above, the custodial services provided by banks or financial institutions to FPIs are not to be treated as services provided to 'account holder' and accordingly, the place of supply of said services would be determined under the default provision i.e., Section 13(2) of the IGST Act, 2017 instead of Section 13(8)(a).

Our Comments

The aforesaid clarification comes as a relief to the banking as well as non -banking financial institutions engaged in providing such services to FPIs, whereby in light of the ongoing departmental inquiries/assessments, several industry players were envisaging to conservatively discharge GST on these services. This clarification will put to rest any anticipated litigation, as well as provide an opportunity to those who have already deposited the tax in terms of Section 13(8)(a) to claim a refund of excess tax so paid.

A point to ponder here, however, is that the Circular only delves into custodial services, which are generally provided to a non-banking entity. Whether the said clarification would also apply to sub-custodial services, which are usually provided to banking entities, remains to be seen.

1. Securities and Exchange Board of India (Custodian of Securities) Regulations 1996

O) Circular No. 221/15/2024-GST

Sr. No.	Issue	Clarification

1	Time of supply in respect of services of construction, operation and maintenance of roads under National Highway Projects of National Highways Authority of India (NHAI) in Hybrid Annuity Model (HAM).	• Under the HAM, the highway development projects are under the Design, Build, Operate and Transfer model (DBOT), wherein the concessionaire is required to undertake new construction as well as the Operation and Maintenance (O&M) of Highways. The payment terms for the construction, as well as the O&M portions, are provided in the agreement and are generally spread over a period of 15-17 years.
		• The HAM contract needs to be looked at holistically and cannot be artificially split into two separate contracts for construction and O&M based on the payment terms.
		• Such contract appears to be covered under the 'continuous supply of services' as defined under Section 2(33) r/w Section 31(5) of the CGST Act, 2017.
		• Accordingly, the tax liability on the concessionaire under the HAM contract, including on the construction portion, would arise:
		  ○ At the time of issuance of invoice or receipt of payments, whichever is earlier, if the **invoice is issued** on or before the specified date or date of completion of the event specified in the contract, as applicable.
		  ○ On the date of provision of said service (i.e. due date of payment as per the contract) or the date of receipt of payment, whichever is earlier, where the **invoices are not issued** on or before the specified date or the date of completion of specified event.
		• It has further been clarified that interest component included in the installments / annuity shall also be includible in the taxable value in view of Section 15(2)(d) of the CGST Act, 2017.

Our Comments

Interestingly, the Board has based its clarification on the principle of contract interpretation, emphasizing that a contract must be interpreted holistically rather than isolated portions.

P) Circular No. 222/16/2024-GST

Sr. No.	Issue	Clarification
1	Time of supply of spectrum allocation services in cases where the successful bidder (i.e., the telecom operator) opts for making payments in installments under the deferred payment option as per Frequency Assignment Letter (FAL) issued by the Department of Telecommunications (DoT).	• GST on spectrum allocation services provided by the DoT is required to be paid by the recipient, i.e., telecom operator, on a reverse charge basis[2]. • Some telecom operators opt to pay such spectrum fees in installments spread over a period as specified in the FAL. • FAL is in the nature of a bid acceptance document intimating to the telecom operator that the competent authority has accepted the result of the auction and that the details of blocks and spectrum have been allotted to the telecom operator. • As per Section 31(5)(a) of the CGST Act, 2017, in cases of continuous supply of services, where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of such payment. In the instant case, the telecom operator's payment date is clearly ascertainable from the Notice Inviting Applications r/w the FAL. • Therefore, it is clarified that in a case where the telecom operator makes full payment upfront, GST would be payable when such payment is made or is due, whichever is earlier. On the other hand, in the case of deferred payments, GST would be payable as and when the payments are due or made, whichever is earlier. • Similar treatment shall be accorded to cases where the government is allocating any natural resources to the successful bidder/purchaser for the right to use the said natural resource over a period of time.

2. Notification No. 13/2017-Central Tax (Rate) dated 28 June 2017

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