



महेन्द्र रंगा
MAHENDRA RANGA
मुख्य आयुक्त
CHIEF COMMISSIONER



भारत सरकार
वित्त मंत्रालय
मुख्य आयुक्त कार्यालय
सीजीएसटी एवं केन्द्रीय उत्पाद शुल्क
जयपुर
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
OFFICE OF THE CHIEF COMMISSIONER
CGST & CENTRAL EXCISE
Jaipur
6th January 2025
D.O. No. GCCO/TECH/MISC/440/2023

Dear *Colleagues,*

‘SAMVAAD’ : JANUARY 2025

A new year ushers in new possibilities! It is time to reflect on the past, learn from it and grow stronger. Together, we can strive for excellence and achieve seemingly arduous tasks. The future is ours to shape, so let’s make it count. The renowned poet Shri Harivansh Rai Bachchan wrote:

*नवीन वर्ष में नवीन पथ वरो,
नवीन वर्ष में नवीन प्रण करो,
नवीन वर्ष में नवीन रस भरो,
धरो नवीन देश-विश्व धारणा।*

I hope the upcoming year brings us all happiness, health and prosperity!

2. On 21st December, the 55th meeting of the GST Council took place in Jaisalmer, the golden city, where history sings and culture thrives in its dunes, fort and vibrant strings! Chaired by Union Finance Minister Smt. Nirmala Sitharaman, the council put forth notable recommendations, such as reducing GST rates on fortified rice kernels to 5%, exempting gene therapy from GST and continuing IGST exemptions for LRSAM assembly parts. Measures like a track-and-trace mechanism, clarifying voucher taxability, simplified mechanism for charging duty on sale of old & used vehicles and regularizing input tax credit provisions were approved to improve compliance. The council also tackled persistent issues like tax applicability on unredeemed vouchers and penal charges by banks to provide clarity and minimize disputes. It has also been decided to amend the law retrospectively to align Section 17(5)(c) and 17(5)(d) so far as the term ‘plant & machinery’ is concerned. This will take away the effect of the Hon’ble Supreme Court judgment in the matter of Safari Retreats. Key decisions aimed at facilitating trade, supporting economically weaker sections and aligning tax laws with global standards were taken. These significant measures strive to enhance transparency, ease of doing business and economic growth, while fortifying India’s GST framework for a prosperous future. I urge you all to go through the Press Note dated 21.12.2024 and related legal changes to better appreciate the gamut of changes.

केन्द्रीय राजस्व भवन, स्टेच्यू सर्किल, सी-स्कीम, जयपुर-302005

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3. Mrs. Seema Arora, Pr. DG, DGGST, New Delhi, visited Jaipur on 08.12.2024 and engaged with senior officers of the Zone. Issues related to GSTN BO portal, reorganization of field formations on functional basis, scrutiny of returns and the Zone's ranking on key performance parameters were discussed in the meeting. The performance of Jaipur Zone was appreciated. Detailed insights into the 20 ranking parameters, broadly categorized into 3 categories viz. Taxpayer Compliance, Taxpayer Service and Tax Administration, were shared. These parameters, totalling 100 marks, serve as the benchmark for ranking CBIC field formations and State GST authorities on national level which further forms the basis of India's ranking on global forums. A detailed presentation on these parameters has already been circulated. All Commissioners are advised to review these parameters and sensitize the officers to ensure improved performance and enhanced rankings for the Zone.

4. In December 2024, Zonal revenue reached ₹2008 crores, reflecting a 10% increase and surpassing December 2023 figures by ₹182 crores. Our year-to-date growth rate stands at a robust 9.59%, closely matching the national average of 9.49%. This accomplishment highlights our collective efforts to achieve sustained growth.

5. During December 2024, CIU inputs were instrumental in detection of 6 cases, unveiling tax evasion. Acting on CIU intelligence, CGST Jaipur detected two fake registrants, namely M/s Uma Enterprises and M/s Z.K. Enterprises. Both firms were found to be non-existent at their registered addresses and had collectively passed on fake ITC worth ₹30 crores. CGST Jodhpur booked two cases of GST collected but not paid. M/s Shree Karni Maa Construction, a WCS provider to government departments, collected GST amounting to ₹1.7 crores but neither paid nor filed any returns. In another case, CIU intelligence indicated a discrepancy between the turnover declared in GSTR-3B and GSTR-7. In this case, CGST Jodhpur detected a short payment of GST amounting to ₹39 lakhs by M/s Ganpati Business Syndicate. Similarly, CGST Udaipur booked two cases involving GST evasion of ₹1.8 crores. In one case, M/s Samarth Sports Infotech LLP suppressed the taxable value of online gaming services and paid GST only on the commission rather than the gross amount. In another case, M/s Bherunath Enterprises failed to reverse ITC of ₹1.11 crores in respect of exempted turnover under Rule 42/43 of CGST Rules, 2017.

6. Besides the CIU intelligence, Commissionerates have also booked various cases on the basis of intelligence developed by them. CGST Jodhpur, in a major case, has detected and recovered GST amounting to ₹44.3 crores. M/s Grian Energy Private Ltd. was found to have not reversed the proportionate ITC in respect of exempted supplies of Electrical Energy. CGST Udaipur has also booked two cases on similar issue. M/s Nagar Parishad Chittorgarh was found to have not reversed ITC amounting to ₹1.21 crores w.r.t. exempted supplies. M/s Mahaveer Builders and Developers was found to have not reversed ITC amounting to ₹1.12 crores in contravention of Notification No. 03/2019-CT dated 29.03.2019. In both instances, the taxpayers have admitted the lapse and reversed the respective ITC amounts. In a case of suppression of taxable value by M/s Kumbhagarh Yatri Niwas Private Limited, tax evasion of ₹1.00 crore has been detected. Whole amount of tax evaded has been recovered. In another case of misclassification of Chewing Tobacco by M/s Samanvay Packmark Private Limited, Central Excise and GST evasion of ₹2.04 crores have been detected. Additionally, M/s Jagdamba Traders was found to be non-existent at their registered address. The firm had availed fake ITC of ₹8.77 crores and passed on fake ITC of ₹10.21 crores.

7. CGST Udaipur and CGST Alwar have booked several cases for contravention of Notification No. 11/2017 dated 28.06.2017. As per the notification, the applicable tax rate on food services by Restaurants within hotels (Where the room tariff is more than or equal to ₹7,500), is 18%. In one such case, M/s Seasons Hotel Pvt. Ltd., Udaipur was found to be charging tax at 5% on food services, despite the declared room tariff being ₹7,500 per night. It led to a short payment of tax amounting to ₹1.02 crore. Additionally, CGST Alwar conducted searches at nine hotels and resorts in Ranthambore that offer accommodation with a room tariff of ₹7,500 or more per unit and restaurant service. During these searches, tax evasion of ₹5.46 crore was detected, and a recovery of ₹1.52 crore has been made.

8. Misclassification of automobile parts and components has been a matter of concern, with various cases shared in earlier editions of SAMVAAD. In a recent case, DGGI Jaipur detected the misclassification of CNG fuel tanks, resulting in tax evasion of ₹38 crores. The taxpayer was found classifying the CNG fuel tanks under Chapter sub-heading 7311 and paying GST at 18% instead of Chapter sub-heading 8708, which attracts GST at 28%.

9. During virtual conference with all Chief Commissioners, the Chairman along with all Members of CBIC, has unveiled four new citizen-centric initiatives on CBIC website to enhance the experience and transparency for taxpayers. These initiatives include a revised **Citizen's Charter** to improve service standards, a revamped **Citizen's Corner** for comprehensive tax-related information, an '**Ease of Doing Business**' tab for suggestions, and the **CBIC Archives** for a historical tax repository. These initiatives underscore CBIC's commitment to fostering trust and efficiency in governance.

10. I am excited to share the completion of the 'Behavioural Sensitization Program' in the Zone. Inspired by the Government of India's 'Mission Karmayogi', this initiative aimed to make public services more citizen-centric and reorient the mindset of our officers. As part of this effort, 11 Master Trainers from the Jaipur Zone underwent intensive training at NACIN, Faridabad and subsequently trained more than 1000 officers posted in Rajasthan, including DC/AC, Superintendents and Inspectors. Apart from NACIN Zonal Campus, Jaipur, this extensive training took place across multiple locations such as Alwar, Jodhpur, Udaipur, Kota, Bikaner and Bhilwara. The program wrapped up successfully on 21 December, 2024. A heartfelt appreciation to the officers of NACIN, Jaipur, all Master Trainers and all stakeholders for their unwavering commitment and hard work in driving this initiative to success!

11. The Board has issued Circular No. 239/33/2024-GST dated 04.12.2024, amending Circular No. 31/05/2018-GST. This amendment pertains to the empowerment of ADC/JCs of Central Tax with all India jurisdiction for adjudicating SCNs issued by DGGI. This authority has been granted through Notification No. 27/2024-Central Tax dated 25.11.2024, which substitutes Table V in Notification No. 02/2017-Central Tax. The amendment, effective from 01.12.2024, enables efficient adjudication of cases involving multiple noticees or complex jurisdictional overlaps. It further provides clear criteria for allocating adjudication responsibilities based on the highest tax demand and corresponding zones, ensuring streamlined operations.

12. I am delighted to inform you that the Department of Pension and Pensioners' Welfare (DOPPW) has issued a comprehensive compendium consolidating essential

instructions and guidelines issued from time to time to Ministries and Departments on pension-related matters. This resource aims to enhance general awareness and ensure clarity on pension processes. Additionally, CBIC has introduced a 'Guidance Book for Timely Processing of Pension Papers.' This handbook serves as a valuable tool to streamline and expedite the preparation and submission of pension papers, ensuring a smooth transition for retiring employees.

13. I am deeply saddened to learn about the untimely passing of our colleague, Shri Jai Singh Rathore, LDC. He left us at a very young age. This loss is truly heartbreaking for all of us. We extend our heartfelt condolences to his family during this incredibly difficult time. May his soul rest in eternal peace and may his loved ones find comfort and strength in the cherished memories they shared with him.

14. This month's **Gyan-Sangrah** brings you following two informative articles:

- (a) *Demand of wrongly availed ITC based on the figures reported in Table-8 of Annual Return in Form GSTR-9* – By Shri Devi Dutt Sharma, Superintendent, CGST Division, Behror; and
- (b) *Valuation of supplies of goods or services to related or distinct persons – Second proviso to Rule 28(1) of the CGST Rules, 2017* – By Shri Varun Jain, Inspector, CCO, Jaipur.

We sincerely appreciate the officers for contributing their profound perspectives to this edition.

15. Shri Narendra Pal Singh, DC and Shri Deep Chand Bagri, Head Hawaldar bid adieu to their prestigious careers upon superannuation at the end of last month. Shri Deepak Kumar Gupta, Inspector has also taken voluntary retirement from service w.e.f. 04.12.2024. We express our heartfelt gratitude for their dedicated service and wish them a happy, healthy and fulfilling life post-retirement.

I sign off with wishes for a happy and successful New Year to all.

Till next month,

Yours


(Mahendra Ranga)
Chief Commissioner

To:- Team Jaipur Zone.

Copy for information to:-

- (i) OSD to the Chairman, CBIC, New Delhi.
- (ii) PS to the Member (GST & Zonal Incharge), CBIC, New Delhi.
- (iii) DG, DGGST, New Delhi
- (iv) Pr. ADG/ ADG, NACIN/ DGGI, Jaipur.

ज्ञान संग्रह

जनवरी, 2025

GYAN SANGRAH

JANUARY, 2025

Demand of wrongly availed ITC based on the figures reported in Table-8 of Annual Return in FORM GSTR-9

*By – Devi Dutt Sharma, Superintendent,
CGST Division, Behror*

In terms of section 44 of CGST Act, 2017 read with Rule 80 of CGST Rules, 2017, a taxable person (with some exceptions) is required to furnish an annual return for every financial year in FORM GSTR-9. A self-certified reconciliation statement in FORM GSTR-9C reconciling the figures with audited annual financial statement is also required to be filed as part of the annual return by registered person having aggregate turnover exceeding five crore rupees.

A. Table 8D of GSTR-9

2. Negative value in Row- D of Table 8 of the annual return in FORM GSTR-9 has been a major source of information for alleging wrong (excess) availment of ITC by a taxable person. Demands are generally raised on the ground that the amount of ITC claimed in GSTR-3B returns (for the current financial year or during the next financial year upto the specified period) on inward supplies during the current financial year (other than import and inward supplies liable to reverse charge) including ITC reclaimed is more than the amount of ITC available as per GSTR-2A statement for the current financial year.

B. Claim of ITC and consolidated reporting

3. Two important aspects of the matter are that while ITC can not be claimed through filing of annual return in FORM GSTR-9 but excess availment of ITC can be declared therein and payment thereof declared in GSTR-9C. Thus, while the actual act of availment of ITC happens in the periodical return in FORM GSTR-3B only but consolidated reporting of the figures of ITC claimed for the entire financial year is done through GSTR-9.

4. The issue that arises sometimes is as to whether every case of negative value in Table 8D, which is the difference between the figures of ITC available as per GSTR-2A and ITC claimed as per GSTR-3B, can be taken to be a case of wrong (excess) availment of ITC by the taxable person. This point is significant especially because the reporting in Table 8 of GSTR-9 is not the comprehensive reporting of all aspects concerning availment of ITC by the taxable person during the given financial year.

C. Diverse arguments against the demand of excess claimed ITC

5. While opposing the demands based on the difference between the figures of GSTR-2A and GSTR-3B as reported in Table 8D, taxable persons often argue in the following manner:-

- (A) ITC for a given tax period is claimed in GSTR-3B returns and not in the annual return in FORM GSTR-9 or GSTR-9C;
- (B) It is only the ITC claimed in GSTR-3B return that is credited to the Electronic Credit Ledger and such a credit entry can only be termed as availment of ITC;
- (C) GSTR-9 and GSTR-9C is simply a mechanism of consolidated reporting of figures reflecting somewhere in the periodical returns and reconciliation thereof with the books of account;

(D) Table- 8 of GSTR-9 does not cover the entire spectrum of ITC availability and ITC availment; and, therefore, the negative value as reported in Table-8(D) does not necessarily constitute excess availment of ITC.

6. As a matter of fact, it is only the availment or claim of ITC made in a GSTR-3B return which is credited to the Electronic Credit Ledger of the taxable person and the amount of tax paid by utilization of ITC in GSTR-3B is debited to the said ledger. Thus, in case of conflict with the figures reported in GSTR-9 or in case of an argument that incorrect reporting happened in GSTR-9, it is only the figures reported in GSTR-3B returns and the figures available in GSTR-2A statements which will have to be taken as the amount of ITC availed and ITC available. And excess availment can not be alleged on the basis of GSTR-9 alone especially if the consolidated figures of GSTR-3B return, Electronic Credit Ledger and individual GSTR-2A statements show something contrary to what has been reported in GSTR-9 return.

D. ITC on inward supplies received during the earlier financial year

7. One of the important points worth noting is that Row-D of Table-8 calculates the difference between (i) the amount of ITC available as per GSTR-2A and (ii) ITC claimed in GSTR-3B during the current financial year including ITC relatable to current financial year but claimed in the next financial year upto the specified period. However, the said calculation does not take into account the amount of ITC availed during the current financial year upto the specified period which pertains to the inward supplies received during the previous financial year. Such amount of ITC reflects in the GSTR-2A statement for the previous financial year which is not the subject matter of Table 8A of GSTR-9. Thus, such amount of ITC availed needs to be deducted from the negative value of Row-D of Table-8.

8. Typically the return in FORM GSTR-9 does not require declaration of the amount of ITC pertaining to inward supplies of the previous financial year but claimed during the current financial year upto the specified period. Therefore, the annual return for the previous financial year may need to be consulted for arriving at a fair conclusion as regards excess availment of ITC during the current financial year.

9. ITC on inward supplies of the current financial year availed during the next financial year up to the specified period is declared in Table-8C as well as Table-13 of GSTR-9. However, Table-8C takes the figures relating to inward supplies other than imports and inward supplies liable to reverse charge only whereas Table-13 simply requires declaration of "ITC availed for the previous financial year" with reference to "transaction declared in returns of the next financial year". Thus, the figures in Table-13 may also include ITC on imports and RCM as well and the same should be utilised accordingly.

10. Part-IV of the Reconciliation Statement in FORM GSTR-9C also requires declaration of "ITC booked in earlier financial years claimed in current financial year" in Table-12B which may seem to be the amount of ITC availed during the current financial year on inward supplies received during the previous financial year. However, typically the reporting of figures in the instant table is required only if the amount of ITC on inward supplies of the previous financial year was booked in the books of account of the previous financial year but not claimed in GSTR-3B returns. Thus, if any amount of ITC on inward supplies received during the previous financial year was not even booked in the books of account for the

previous financial year the instant table would be of no help to ascertain the amount of ITC relating to supplies of the previous financial year.

11. In any case it is the ITC ledger of the taxable person that shows the invoice-wise claim of ITC for every tax period. Thus, the entries of ITC ledger supported by GSTR-9 for the previous financial year and GSTR-9C for the current financial year need to be consulted for arriving at the figure of ITC pertaining to previous year's inward supplies which has been claimed in the current financial year.

E. Reversal of ITC in GSTR-3B and Ineligible ITC

12. Sometimes it is claimed that the taxable person has already reversed ITC in a given sum in the GSTR-3B returns and, therefore, the amount of ITC availed, and consequently the amount of excess availment, should be reduced to that extent. Reversal of ITC is shown in Table 4(B) of the GSTR-3B return but what needs to be noted is that reversal can be taken into account only if the same has been made purely for the reason that the amount of ITC was not reflecting in GSTR-2A statement meaning thereby that the supplier did not pay tax on inward supplies to the taxable person. Any other reversal for the reason of ineligible ITC etc. does not reduce the difference because the amount of ineligible ITC will also reduce the amount of ITC available as per GSTR-2A statement.

13. The amount of ineligible ITC as shown in Table- 4(D) is required to be reduced from the amount of ITC available as per GSTR-2A but care should be taken to ensure that such amount of ineligible ITC reflects in GSTR-2A. There have been cases where the taxable person has claimed that a portion of the ineligible ITC as shown by him in Table-4(D) was not reflecting in the GSTR-2A. In such a situation the amount of ineligible ITC not reflecting in GSTR-2A can not be deducted from the amount of ITC available as per GSTR-2A for arriving at the difference. In any case the amount of ineligible ITC has to be deducted from the amount of ITC availed if the same has been reversed and from the ITC available as per GSTR-2A as well if the same is reflecting therein.

G. Dealing with a variety of claims

14.1. In a typical case it was the claim of the taxable person that the a portion of the amount of difference between the ITC available as per GSTR-2A statement and ITC claimed in GSTR-3B return is attributable to the amount of reduction in tax liability claimed on the basis of credit note issued against outward supplies on account of sales return or otherwise which was, instead of being reduced from the outward tax liability, added to the amount of ITC availed.

14.2. For the purpose of ascertaining the factual position in this regard, GSTR-1 return filed by the taxable person needs to be checked to verify that the amount of tax involved in credit notes shown in the CDN section so as to pass on the reduction in tax liability to the recipient as negative ITC. Further, the amount of tax paid in GSTR-3B should exceed the amount of tax payable as per GSTR-1 by the amount of tax involved in the credit notes shown in the GSTR-1 return. All other compliances including reversal of ITC by the recipient also need to be confirmed to arrive at a conclusion.

15.1. Another claim, in most of the cases, is that the amount of ITC available as per GSTR-2A as shown on the common portal is more than such amount of ITC shown in GSTR-9 return. The reasoning given is that the amount of ITC available as shown in GSTR-9 is auto-populated in GSTR-9 whereas the amount of ITC available on the portal keeps changing with every updation on part of the suppliers of the taxable person.

15.2. The figures of ITC available in GSTR-2A Statement of a given financial year keep changing with the filing of GSTR-1 by the suppliers of the taxable person. Thus, the claim is required to be verified from GSTR-2A statements for individual tax periods of the year and it is the actual amount of ITC available as per individual tax periods which needs to be taken as the amount of ITC available as per GSTR-2A if the figure reported in Table 8A is at variance. However, while taking the updated figure of GSTR-2A into account due care is required to be taken to take into account the amount of ineligible ITC, ITC from cancelled taxpayer and ITC reversal besides the provisions of section 16(4).

16. In one case it was claimed that a portion of ITC availed during the current financial year was reversed by the taxable person during the next financial year. In such a situation, two things need to be done. One is that the reversal relating to individual invoices should be verified from the ITC ledger which is maintained invoice-wise for claiming ITC in GSTR-3B. Another is that care should be taken to ensure that the said reversal is not deducted from the amount of ITC availed for the next year while reconciling the figures of ITC for the next year especially when the next year is not the subject matter of the current proceedings.

17. In another case supplier of the taxable person issued credit notes to the taxable person and reduced his own tax liability which resulted in reduction of the ITC available to the taxable person. Simultaneously the taxable person issued debit notes to the supplier and paid tax thereon. Thus, it was the claim that the tax payment against debit notes should be considered as reversal of ITC availed. However, it may be noted that reversal of ITC is quite different from payment of tax by issuing debit notes. In the case of reversal of ITC, the electronic credit ledger of the taxable person gets debited whereas payment of tax against the debit notes issued to the supplier is shown in GSTR-1 of the taxable person which is made available as ITC to the supplier. Thus, payment of tax by way of debit notes can not be allowed to be reduced from the amount of ITC availed as equivalent to reversal. And the reduction in ITC availability owing to credit notes issued by supplier has to be deducted from the amount of ITC available as per GSTR-2A.

18. There have been many cases where the supplier has reported the supplies for a given tax period in his GSTR-1 returns for any subsequent tax period and consequently the ITC is reflected in the GSTR-2A for the next financial year. Typically ITC of supplies reported subsequently can also not be denied if reported within the specified time limit which has since been extended substantially. However, the point worth noting is that it may so happen that the amount of ITC availed during a given tax period has already been utilized by the taxable person before the transaction was reported by the supplier in his GSTR-1 and tax was paid in GSTR-3B for a subsequent tax period. In such a situation the condition of payment of tax by the supplier does not stand satisfied till the point of time when the ITC was utilized by the taxable person and, therefore, the consequences resulting from non-compliance with the relevant conditions shall follow.

19. In a typical case of difference in tax rate, a supplier of the taxable person raised invoices showing the tax amount at the rate of 18% which was paid by the taxable person to the supplier. However, the GSTR-2A of the taxable person shows the amount of tax which is equivalent to the tax rate of 5% which was the reduced rate applicable to the supply starting from a subsequent point of time. The taxable person claimed that since he is in possession of tax invoice showing tax @18% which has been charged by and paid to the supplier, ITC of higher amount of tax should not be denied. However, ITC is available of the tax which has been paid by the supplier and the amount reflecting in GSTR-2A of the recipient of supply is what has been shown by the supplier in his GSTR-1 return and consequently paid in GSTR-3B return. Thus, unless contrary evidence is available to establish that despite lesser amount of tax having been shown in GSTR-2A of the recipient of supply, the supplier has paid tax at the applicable higher rate as charged in the invoices, ITC of such higher amount can not be availed by the recipient.

H. Conclusion

20. In view of above, final determination of the amount of ITC wrongly availed or otherwise should be done by reconciliation of the information available in individual GSTR-3B returns, GSTR-2A statements and the Electronic Credit Ledger supported by the ITC ledger maintained by the taxable person for individual tax periods where the taxable person claims that the annual return in FORM GSTR-9 contains incomplete or inaccurate figures.

(The write-up is simply intended to share the personal experience of the writer with the colleagues and the views expressed therein may not necessarily represent the stand taken by him on the provisions of law in his official capacity.)

Valuation of supplies of goods or services to related or distinct persons – Second proviso to Rule 28(1) of CGST Rules, 2017

*By – Varun Jain, Inspector,
CCO, Jaipur*

Valuation of outward taxable supplies of goods and/ or services under GST is governed, mainly, by Section 15 of the CGST Act, 2017. Value of any supply of goods or services is normally determined according to the market conditions but the GST law adopts a lesser typical method of (simplistic approach for) valuation by applying “transaction value” of the outward supplies as the taxable value thereof for the purpose of charging tax thereon.

A. Valuation of taxable supply

2.1. Section 15 of the CGST Act, 2017 provides for valuation of a supply in the following manner:-

“(1) The value of a supply of goods or services or both shall be **the transaction value**, which is the price actually paid or payable for the said supply of goods or services or both where **the supplier and the recipient of the supply are not related** and the price is **the sole consideration** for the supply.”

2.2. The term “**related persons**” has been defined in the “**Explanation**” to the said section 15 in the following manner:-

“Explanation. – For the purposes of this Act,- (a) persons shall be deemed to be “related persons” if-

- (i) Such persons are **officers or directors** of one another’s businesses;
- (ii) Such persons are legally recognized **partners** in business;
- (iii) Such persons are **employer and employee**;
- (iv) Any person directly or indirectly owns, controls or **holds 25% or more** of the outstanding voting stock or shares of both of them;
- (v) One of them directly or indirectly **controls the other**;
- (vi) Both of them are directly or indirectly **controlled by a third person**;
- (vii) Whether they directly or indirectly **control a third person**; or
- (viii) They are members of **the same family**;

B. Distinct Person

3.1. Another term of a similar nature in GST is the concept of “distinct person” which is described in sub-section (5) of section 25 of the CGST Act, 2017 as follows:-

“(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.”

3.2. Since every supplier making taxable supplies of goods or services from a State is required to be registered in that State in terms of sub-section (1) of section 22 of the CGST Act, 2017, he has to obtain separate registration in every State from where he makes taxable supplies. Further, every such establishment shall be treated as distinct person for the purposes of the CGST Act, 2017 in terms of sub-section (4) of section 25 ibid which reads thus:

“(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

C. Valuation of supplies between related or distinct person

4.1. Owing to the peculiar nature of relationship of related persons, valuation of supplies between them can not be done on the basis of transaction value. Further, different establishments of the same person are also in a way related to each other, the concept of transaction value can not apply to them as well. Thus, valuation of supplies between distinct or related persons is governed by Rule 28 of the CGST Rules, 2017 read with sub-section (4) of section 15 of the CGST Act, 2017. The said Rule 28 provides as follows:-

“(1) The value of the supply of goods or services or both between distinct persons as specified in sub-sections (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

- (a) be the open market value of such supply;
- (b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;
- (c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

XXXXX

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

4.2. Normally, the value of supplies between related or distinct persons shall not be less than the open market value of such supply or of like kind of supply. Rule 30 provides for determination of the value by adding profit element equivalent to ten percent of the cost of production, manufacture or acquisition. But for the proviso, valuation on the lower side owing to the relationship [related or distinct] should not affect the tax liability which is determined according to open market value or its almost equivalent cost plus method.

4.3. On the one hand, sub-rule (1) of rule 28 requires that the value of supply between related or distinct persons should be determined on the basis of open market value of such supply or of the supply of goods or services of like kind and quality while on the other hand the second proviso says that the value declared in the invoice shall be deemed to be the open market value of such supply. Thus, some more leverage has ben provided through the second proviso in the matter of valuation of supplies to related persons.

D. The Condition to second proviso - Eligibility of the recipient to avail ITC

5.1. It may be noted that the benefit of invoice value being taken as the open market value is available only in such cases where the related or distinct recipient of supply is eligible to avail ITC of the tax payable by the supplier. Thus, where the recipient is not eligible for ITC, the invoice value can be discarded if the same happens to be lesser than the open market value of the supply or the value arrived at by applying the cost plus method. Thus, in such cases it has to be ascertained as to whether the recipient of supply is eligible for ITC of the tax payable by the supplier.

5.2. So far as a 'distinct person' is concerned it is simply another business establishment of the taxable person making taxable supplies in another State, therefore, a distinct person receiving taxable supplies from a taxable person will always be eligible for full input tax credit unless the supplies are such that the ITC thereof is blocked in terms of Section 17 of the CGST Act, 2017.

5.3. However, in the case of related person, not all types thereof happen to be taxable persons making taxable supplies. Especially employees, officers, directors, partners and family members etc. may normally happen to be individuals who are ultimate consumers though sometimes they may also be operating as taxable persons involved independently in business activities making taxable supplies themselves. Thus, where the recipient related person or distinct person has received the supply for ultimate consumption or he is not eligible to avail full ITC of the tax paid on the supplies to him, valuation of the supply will have to be done by taking recourse to the open market value or cost plus method.

E. CBIC's Circular No. 199 dated 17.07.2023 and 210 dated 26.06.2024

6. There are certain situations of supplies between related or distinct persons which involve typical questions of proper valuation which have been addressed by the CBIC through the above said circulars.

7.1. **Circular No.199/11/2023-GST, dated 17.07.2023** deals with the valuation of **internally generated services** provided by "Head Office" to its "Branch Office" in the following manner:-

"Accordingly, in cases where full input tax credit is available to a BO, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the open market value of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice.

Further, in such cases **where full input tax credit is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value** in terms of second proviso to rule 28 of CGST Rules.

7.2. Once it has been clarified that where no invoice has been issued by the HO the value shall be deemed to be declared as Nil and treated as open market value it is quite natural that

the said circular goes on to clarify that each component of cost is not mandatorily required to be included in the taxable value of the supply of internally generated services.

8.1. Another Circular No. 210/4/2024-GST, dated 26.06.2024 clarifies the position with respect to valuation of services imported by a registered person in India from a related person located outside India as follows:-

“3.7. In view of the above, it is clarified that in cases where the foreign affiliate is providing certain services to the related domestic entity, and where full input tax credit is available to the said related domestic entity, the value of such supply of services declared in the invoice by the said related domestic entity may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.

Further, in cases where full input tax credit is available to the recipient, **if the invoice is not issued by the related domestic entity** with respect 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 open market value in terms of second proviso to rule 28(1) of CGST Rules.”

8.2. Thus, in effect the import of services from a related entity located outside India has been allowed without payment of any tax on reverse charge basis by adopting nil value as the declared value if full ITC is available to the recipient in India of the tax that was payable on the import of services by the recipient on reverse charge basis.

9.1. The clarification has, however, been given to remedy the situation where invoice under Section 31(3)(f) of CGST Act, 2017 has not been issued and the open market value of the supply to related person is also not available. Para 2 of the said circular dated 26.06.2024 states that:-

“XXXXX, based on an expansive interpretation of the deeming fiction in Sl. No. 4 of Schedule I of CGST Act, though no consideration is involved in the said activities and the same are not considered as supplies by the said related person in India.”

9.2. Thus, in cases where the open market value of the supply of services to the related domestic entity from the foreign affiliate is available in the accounting entries between the two showing the cost of (or value of) the services imported by or provided to the domestic entity, the situation will be altogether different as the activity is considered as a transaction with consideration having been recorded in the books of account and, therefore, need for determination of the value of supplies through some other method may not arise in such situations.

F. Extent of coverage of the circulars & true import of second proviso to rule 28(1)

10.1. It is worthwhile to note that the circulars referred to above apply to two specific situations which involve the following types of supplies:-

- (A) Supply of internally generated services between distinct persons in India; and
- (B) Import of services by related domestic entity from its foreign affiliate.

10.2. Thus, it can be concluded that in so far as supply of goods between related or distinct persons is concerned the clarifications contained in the said circulars do not apply. Accordingly, valuation of supply of goods between related or distinct persons will have to be done in accordance with the provisions of rule 28 read with rule 30 and 31 of CGST rules, 2017.

11. The sequence of the measures to be adopted for valuation of the supply of goods according to the said rules is as follows:-

- (A) Open market value of such supply [Rule 28(1)(a)];
- (B) Open market value of goods of like kind or quality [Rule 28(1)(b)];
- (C) One hundred and ten percent of the cost of production or acquisition [Rule 30]; or
- (D) Using reasonable means consistent with the principles and general provisions of section 15 [Rule 31].

G. Overriding effect of second proviso to section 28(1)

12. Despite the rules providing for the adoption of open market value or value determined according to cost plus profit method, the second proviso to rule 28(1) has an overriding effect by providing that where the recipient of supply is eligible for full input tax credit, the value declared in the invoice shall be the open market value of the said goods or services. The question, thus, arises is as follows:-

Question- Whether the value declared in the invoice can be lesser than the cost of acquisition or production or the book value of the supply in question ?

13. Superficially it may seem as if the proviso allows an unbound freedom to declare any amount as value of the supply but when seen in the context of the language employed in the proviso it comes out that the invoice value would depend on certain factors which can be described thus:-

- (A) The proviso finds a substitute for the open market value or the value arrived at by adopting the cost plus method;
- (B) The condition is that full ITC of tax payable on the supply is available to the recipient of the supply;
- (C) This also implies that the entire amount of ITC relatable to the supply to related or distinct person is eligible for being transferred to the related or distinct recipient of supply; and
- (D) Transfer of ITC would also imply transfer of the book value of the goods to the recipient.

14. Thus, the condition concerning availability of full ITC to the recipient when applied in conjunction with the accounting principles would lead to a situation where the supply of goods to related or distinct person will have to be valued not below the cost of acquisition, production or manufacture or at least not below the book value of the goods proposed to be transferred to the related or distinct person. Any other value of the supply which is lesser than the cost of the goods or the book value of the goods when adopted will lead to a situation where the goods will get transferred to the related or distinct person while a portion of the cost of acquisition or production or a part of book value of such goods will remain in balance in the accounts of the supplier which is impermissible according to the accounting principles.

15. It is also important to note that the second proviso, or for that matter, the circulars as well, do not provide that nil value can be adopted for valuation of such supply of goods to related or distinct persons. Thus, ideally speaking, the invoice value should be equal to, at least, the book value of the goods being subjected to supply to related or distinct person.

(The write-up is simply intended to share the personal experience of the writer with the colleagues and the views expressed therein may not necessarily represent the stand taken by him on the provisions of law in his official capacity.)