

TaxBook+ Statutory Updates - GST

For CA Inter Jan 2025

CHAPTER 2 – SCOPE OF SUPPLY

PARA 25 – COMPOSITE SUPPLY – CLARIFICATION - SUPPLY OF F&B AT CINEMA HALLS

Supply of food or beverages in cinema hall [Circular 201/13/2023-GST] - Eating joint is a wide term which includes refreshment or eating stalls/ kiosks/ counters or restaurant at a cinema also.

- Supply of food or beverages in a cinema hall is taxable as 'restaurant service' as long as (a) the food or beverages are supplied by way of or as part of a service, and (b) supplied **independent** of the cinema exhibition service.
- However, where the sale of cinema ticket and supply of food and beverages are **clubbed** together, and such bundled supply satisfies the test of **composite** supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

CHAPTER 3 – CHARGE

PARA 31.3 – RCM ON GOVERNMENT SERVICES – AMENDMENT (highlighted) - SUPPLY BY RAILWAYS

| Entry No. | Category of supply of services | Supplier of service | Recipient of service |
|---|---------------------------------------|---------------------|--|
| 5 – Government services | Services supplied by CG/SG/UT/LA. | CG/SG/UT/LA | Any business entity located in the taxable territory. |
| <p>Following services are excluded:</p> <ol style="list-style-type: none"> 1. Renting of immovable property. <i>It is covered under Entry 5A given below.</i> 2. Services by Department of Posts. 3. Services by the Ministry of Railways (Indian Railways). 4. Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport. 5. Transport of goods or passengers. <p>RCM is not applicable in above listed cases and tax is payable by CG/SG/UT/LA under forward charge (except Entry 5A).</p> | | | |
| 5A – Renting | Renting of immovable property. | CG*/SG/UT/LA | Any person registered under CGST Act |
| <p>*Excluding the Ministry of Railways (Indian Railways)¹</p> <p><i>Renting of immovable property</i> - It means.....</p> <p>RCM does not apply to recipient if not registered under GST, even if it is a business entity.</p> | | | |

¹ The effect of this exclusion (read along with Exclusion No. 3 in Entry 5 above) is that all supplies by Indian Railways are taxable under forward charge, thereby enabling it to avail ITC. This has the effect of reducing the cost for Indian Railways.

PARA 33 – TAX PAYABLE BY ECO – AMENDMENT (highlighted) - TAX ON PASSENGER TRANSPORTATION SERVICES BY OMNIBUS

The Government can notify categories of **services** u/s 9(5), the tax on supplies of which shall be **paid by ECO** if such services are supplied **through it**. In such case, all the provisions of GST law apply to such ECO *as if it is the supplier* liable for paying the tax in relation to the supply of such services. Following services have been notified:

1. Services by way of transportation of **passengers** by a radio-taxi, motorcab, maxicab, motor cycle or any other motor vehicle **except omnibus** (refer #2 below in respect of omnibus);
2. **Services by way of transportation of passengers by an omnibus (except where the person supplying such service through ECO is a company);**
3. Services by way of providing **accommodation** in hotels.....;
4. Services by way of **house-keeping**.....
5. Supply of **restaurant service**.

Omnibus – It is a motor vehicle constructed or adapted to carry > 6 persons **excluding** the driver.

CHAPTER 4 – EXEMPTIONS

PARA 46 – SERVICES PROVIDED BY GOVERNMENT – AMENDMENT (highlighted) - SERVICES BY RAILWAYS

The following Table lists the services which are exempt (**√**) and which are not exempt (**X**). This is dependent on the nature of service and the recipient.

| # | Services provided by <u>CG/SG/UT/LA</u> ↓ | Recipient | | | |
|---|---|--|------------------------------------|-------------------|-----------|
| | | A: Business entity (ATO ≤ registration threshold)* | B: Business entity (not being 'A') | C: CG, SG, UT, LA | D: Others |
| 1 | Services by Department of Post : | | | | |
| | By way of post card, inland letter, book post and ordinary post (envelopes weighing < 10 grams) | √ | √ | √ | √ |
| | All other services | X | X | X | X |
| 2 | Services by the Ministry of Railways (Indian Railways) | X | X | X | X |
| 3 | Services in relation to an aircraft or a vessel , inside or outside the precincts of a port or an airport | X | X | X | X |
| 4 | Transport of goods or passengers | X | X | X | X |
| 5 | Renting of immovable property | X** | X** | √ | √ |
| 6 | Other services | √ | X** | √ | √ |

*Business entity with aggregate turnover (ATO).....

Services are **exempt if the consideration for such services ≤ 5,000

Black box – Tax is payable by business entity under RCM

.....

Threshold of ₹ 5,000 does not apply to services referred in #1 to #3. If consideration is > threshold of ₹ 5,000, entire consideration is taxable, not the excess over ₹ 5,000.

Transport of goods or passengers is exempt in certain cases. See paras 49, 50.

PARA 48 – SERVICES PROVIDED TO GOVERNMENT – NEW ENTRY - SERVICES PROVIDED TO GOVERNMENTAL AUTHORITY

| | |
|-----------------------------|---|
| 3B – Govt. Authority | Services provided to a Governmental Authority by way of (a) water supply; (b) public health; (c) sanitation conservancy; (d) solid waste management; and (e) slum improvement and upgradation. |
|-----------------------------|---|

Governmental Authority – It means an authority or a board or any other body, -

(a) set up by an Act of Parliament or a State Legislature; or

(b) established by any Government,

with 90% or more participation by way of equity or control, to carry out any function entrusted to a Municipality or Panchayat under the Constitution.

CHAPTER 5 – PLACE OF SUPPLY**PARA 58C.2 – IMMOVABLE PROPERTY – CLARIFICATION – POS IN CASE OF ADVERTISING SECTOR****Place of supply in case of supply of services in respect of advertising sector [Circular 203/15/2023-GST]:**

Advertising companies are often involved in procuring space on hoardings / bill boards erected and mounted on buildings/land, in different States, from various suppliers ("vendors") for providing advertisement services to its corporate clients. Following clarifications have been issued in respect of determination of place of supply:

| Situation | Clarification |
|---|---|
| There is supply (sale) of space or supply (sale) of rights to use the space on the hoarding / structure (immovable property) belonging to vendor to the client / advertising company for display of their advertisement on the said hoarding / structure. | Hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth. Further, place of supply of any service provided by way of supply (sale) of space on an immovable property or grant of rights to use an immovable property shall be governed u/s 12(3). Therefore, place of supply of service provided by way of supply of sale of space on hoarding / structure for advertising or for grant of rights to use the hoarding / structure for advertising in this case would be the location where such hoarding / structure is located . |
| The advertising company wants to display its advertisement on hoardings / bill boards at a specific location availing the services of a vendor. The responsibility of arranging the hoardings / bill boards lies with the vendor who may himself own such structure or may be taking it on rent or rights to use basis from another person. The vendor is responsible for display of the advertisement of the advertising company at the said location. During this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure. | As the service is being provided by the vendor to the advertising company and there is no supply (sale) of space / supply (sale) of rights to use the space on hoarding/structure (immovable property) by the vendor to the advertising company for display of their advertisement on the said display board/structure, the said service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property. Thus, the situation is not covered u/s 12(3) . Vendor is in fact providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on his structure possessed/taken on rent by him at the specified location. Therefore, such services provided by the Vendor to advertising company are purely in the nature of advertisement services in respect of which Place of Supply shall be determined in terms of Section 12(2) [para 58C.1] |

PARA 58B.1 – SUPPLY INVOLVING MOVEMENT OF GOODS (OR OTHERWISE) – CLARIFICATION – POS WHERE BILLING ADDRESS IS DIFFERENT FROM ADDRESS OF DELIVERY

*Place of supply of goods (particularly being supplied through e-commerce platform) to **unregistered** person where billing address is **different** from the address of delivery of goods:* Place of supply is the **address of delivery** of goods recorded on invoice. In such cases, the supplier may record delivery address as address of recipient on the invoice for purpose of determining the place of supply of the said supply of goods. – [Circular 209/3/2024-GST]

Illustration: Mr. A (unregistered person) located in X State places an order on an e-commerce platform for supply of a mobile phone, which is to be delivered at an address located in Y State. Mr. A, while placing the order on e-commerce platform, provides the billing address located in X state. – Supply is to an unregistered person and the billing address is different from address of delivery. Place of supply is the address of delivery recorded on the invoice, i.e., State Y.

CHAPTER 6 – TIME OF SUPPLY

PARA 62 – TOS OF SERVICES UNDER FORWARD CHARGE – CLARIFICATION – NHAJ PROJECTS IN HAM MODEL

*TOS for NHAJ projects in HAM model [Circular 221/15/2024-GST] – Under Hybrid Annuity Model (HAM) of National Highways Authority of India (NHAJ), the concessionaire has to construct new road and provide Operation & Maintenance (O&M) of the same which is generally over a period of 15-17 years and payment of the same is spread over the years. A HAM contract is a **single** contract for construction as well as O&M of the highway. Concessionaire is bound contractually to complete not only the construction of the highway but also to operate and maintain the same. Payment is made spread over the contract period in installments and payment for each installment is to be made after specified periods, or on completion of an event, as specified in the contract. This appears to be covered under the '**Continuous supply of services**'.*

- Thus, tax liability on the concessionaire under 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 the date of completion of the event specified in the contract, as applicable. If invoices are not issued on or before the specified date or the date of completion of the event specified in the contract, tax liability would arise on the date of provision of the said service (i.e., the due date of payment as per the contract), or the date of receipt of the payment, whichever is earlier.
- As installments/annuity payable by NHAJ to the concessionaire also includes some interest component, the amount of such interest shall also be includible in the taxable value for purpose of payment of tax [para 70.4].

CHAPTER 8 – INPUT TAX CREDIT

PARA 77 – TIME LIMIT TO AVAIL ITC – CLARIFICATION – RCM SUPPLIES FROM UNREGISTERED PERSONS

*Time limit in case of RCM supplies received from unregistered persons [Circular 211/5/2024-GST] – In case of supplies received from **unregistered** suppliers, where tax has to be paid by the **recipient** under RCM and where invoice is to be issued by recipient [para 106], it has been clarified that the relevant FY for calculation of time limit for availment of ITC u/s 16(4) is the FY in which invoice has been issued by recipient and not the FY in which supply was received.*

PARA 80.3 – BLOCKED ITC – IMMOVABLE PROPERTY – CLARIFICATION – DUCTS/MANHOLES IN OFC NETWORK

*ITC on ducts/manholes used in OFC network [Circular 219/13/2024-GST] – Ducts and manholes are covered under the definition of "plant and machinery" as they are used as part of optical fiber cables (OFC) network for making **outward** supply of transmission of telecommunication signals from one point to another. Further, they do not fall any of the exclusions (a) to (c) referred above. Hence, ITC is **not** blocked in respect of such ducts and manhole.*

**** Ducts and manholes are basic components for OFC network used in providing telecommunication services. The OFC network is generally laid with the use of PVC ducts/sheaths in which OFCs are housed and service/connectivity manholes, which serve as nodes of the network, and are necessary for not only laying of optical fiber cable but also their upkeep and maintenance. ****

PARA 80.4 – BLOCKED ITC – OTHERS – CLARIFICATION – WARRANTY

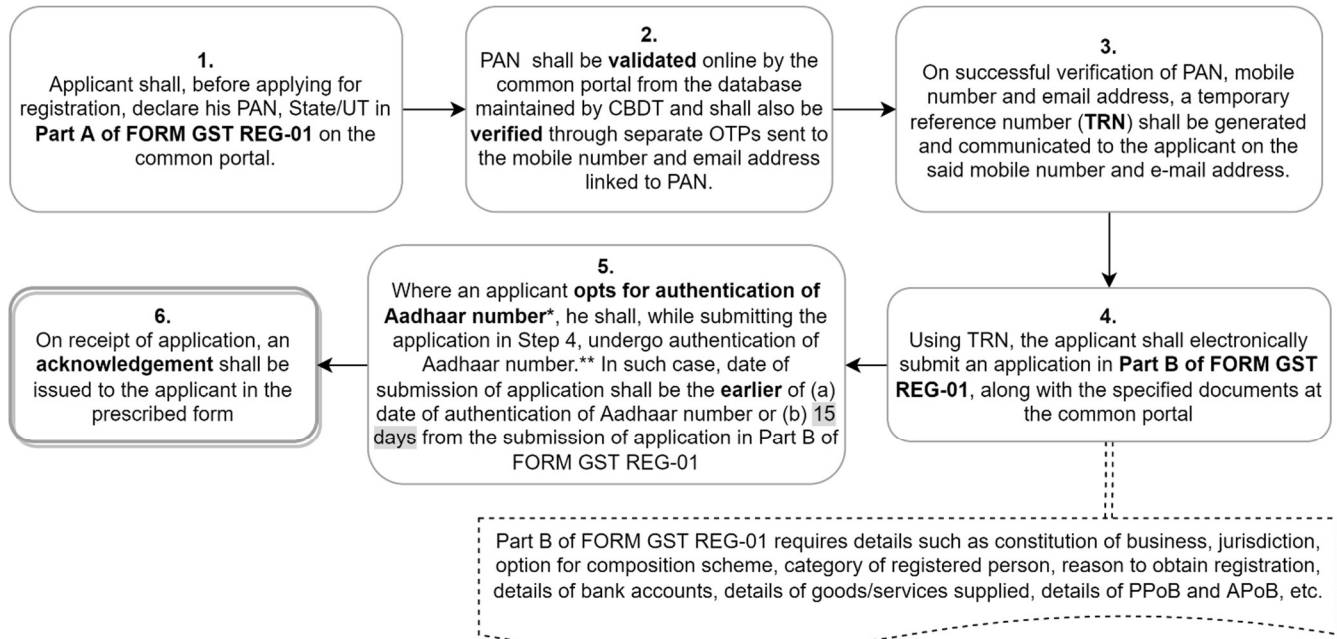
Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period [Circular 195/07/2023-GST; 216/10/2024-GST] – The following clarifications have been issued:

| Issue | Clarification |
|--|--|
| <p>1: There are cases where original equipment manufacturer offers warranty for goods supplied by him to customer and provides replacement of goods or its parts, as the case may be, and/ or repair services to customer during warranty period, without separately charging any consideration. Is GST payable in such case?</p> | <p>Value of original supply of goods (provided along with warranty) by manufacturer to customer includes likely cost of replacement of goods/parts and / or repair services to be incurred during warranty period, on which tax would have already been paid at the time of original supply of goods.</p> <p>As such, where manufacturer provides such replacement/repair to the customer during warranty period, without separately charging any consideration, no further GST is chargeable.</p> <p>However, if any additional consideration is charged by manufacturer from customer, for such replacement/repair, then GST will be payable on such supply with respect to such additional consideration.</p> |
| <p>2: Whether in such cases, manufacturer is required to reverse ITC in respect of such replacement/repair as part of warranty, in respect of which no additional consideration is charged from customer?</p> | <p>In such cases, value of original supply of goods (provided along with warranty) by manufacturer to customer includes likely cost of such replacement/services to be incurred during the warranty period.</p> <p>Therefore, these supplies cannot be considered as exempt supply [para 78]. Hence, manufacturer, who provides such replacement/services to the customer, is not required to reverse ITC in respect thereof.</p> |
| <p>3: Is GST payable on replacement of goods/parts and / or repair services provided by a distributor without any consideration from the customer, as part of warranty on behalf of manufacturer?</p> | <p>There may be instances where distributor of company provides replacement/repair to customer as part of warranty on behalf of manufacturer and no separate consideration is charged by him from customer.</p> <p>As no consideration is being charged by distributor from customer, no GST is payable by distributor thereon. However, if any additional consideration is charged by distributor from customer, for replacement or for any service, then GST is payable on such supply with respect to such additional consideration.</p> |
| <p>4: In the <i>above scenario</i> where distributor provides replacement of goods/parts to the customer as part of warranty on behalf of manufacturer, whether any supply is involved between distributor and manufacturer and whether distributor is required to reverse ITC in respect of such replacement?</p> | <p>Case A: Distributor replaces goods/part to customer under warranty either by using his stock or by purchasing from a third party and charges the consideration for such goods/parts from the manufacturer, by issuance of a tax invoice, for the said supply made by him to the manufacturer.</p> <p>In such case, GST is payable by distributor on the said supply by him to the manufacturer and manufacturer is entitled to avail ITC of the same. In such case, no reversal of ITC by distributor is required in respect of the same.</p> <p>Case B: Distributor raises a requisition to the manufacturer for goods/parts to be replaced by him under warranty and manufacturer then provides the said goods/parts to distributor for such replacement.</p> <p>In such case, where manufacturer is providing such goods/parts to distributor for replacement to customer during warranty period, without separately charging any consideration, no GST is payable on such replacement by the manufacturer. Further, no reversal of ITC is required to be made by manufacturer in respect of goods/parts so replaced by distributor.</p> |

| | |
|---|---|
| | <p>Case C: Distributor replaces goods/parts to the customer under warranty out of the supply already received by him from manufacturer and manufacturer issues credit note in respect of goods/parts so replaced. Accordingly, tax liability may be adjusted by manufacturer, subject to the condition that the distributor has reversed the ITC availed against goods/parts so replaced.</p> <p>Case D: Distributor replaces goods/parts to the customer under warranty by using his stock and then raises a requisition to the manufacturer for the goods/parts. Manufacturer then provides said goods/parts to distributor through a delivery challan, without separately charging any consideration.</p> <p>In such case, no GST is payable on such replenishment of goods/parts. Further, no reversal of ITC is required to be made by manufacturer in respect of goods/parts so replenished.</p> |
| <p>5: Where distributor provides repair service, in addition to replacement of goods/parts or otherwise, to customer without any consideration, as part of warranty, on behalf of manufacturer but charges manufacturer for such service (by way of issue of tax invoice or debit note), is GST payable on such activity by the distributor?</p> | <p>In such scenario, there is a supply of service by distributor and manufacturer is the recipient of such supply of repair services. Hence, GST is payable on such provision of service by distributor to manufacturer and manufacturer is entitled to avail ITC of the same.</p> |
| <p>6: Sometimes companies provide offers of extended warranty to customers which can be availed at the time of original supply or just before expiry of standard warranty period. Is GST payable in both the cases?</p> | <p>Case A: If customer enters into agreement of extended warranty with supplier of goods at the time of original supply, then consideration for such extended warranty becomes part of the value of composite supply, principal supply being supply of goods, and GST is payable accordingly. However, if supply of extended warranty is made by a person different from the supplier of the goods, then supply of extended warranty is treated as a separate supply from original supply of goods and is taxable as supply of services.</p> <p>Case B: Where consumer enters into agreement of extended warranty at any time after the original supply, then same is treated as supply of services distinct from original supply of goods and supplier of said extended warranty is liable to discharge GST liability applicable on such supply of services.</p> |

CHAPTER 10 – REGISTRATION

PARA 92.2 – PROCEDURE FOR REGISTRATION (STEP 1 – APPLICATION FOR REGISTRATION) – AMENDMENT (highlighted) – BIOMETRIC BASED AADHAAR AUTHENTICATION



**See para 92.2-1 below. **The provisions also provide for biometric-based Aadhaar authentication (and taking photograph) along with verification of original documents in cases identified based on data analysis and risk parameters. In such case, the application is deemed to be complete only after completion of such process. For the time being, this provision is applicable only in the State of Gujarat, Andhra Pradesh and Puducherry.*

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