



Inside this edition

- CBIC clarifies GST on service supplied by restaurants through e-commerce operators CBIC reduces Road and Infrastructure Cess (RIC) on Petrol and Diesel
- No GST on employee transport recovery.
- Renting/Leasing of immovable property reimbursement of electricity expenses are Part of Taxable Value

and more...

NOTIFICATIONS



CBIC clarifies GST on service supplied by restaurants through e-commerce operators

CBIC vide Circular No- 167 / 23 /2021 of GST 17th December 2021 dated 17th December 2021 has clarified applicability of GST on service supplied by restaurants through e-commerce operators. Certain representations have been received requesting for clarification regarding modalities of compliance to the GST laws in respect of supply of restaurant service through e-commerce operators (ECO). Clarifications are as follows:

S.No	Issue	Clarification
1	Would ECOs have to still collect TCS in compliance with section 52 of the CGST Act, 2017?	As 'restaurant service' has been notified under section 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided, with effect from the 1st January, 2022, through ECO. Accordingly, the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5). On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present.
2	Would ECOs have to mandatorily	As ECOs are already registered in accordance with rule 8(in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of

	take a separate registration w.r.t supply of restaurant service [notified under 9(5)] through them even though they are registered to pay GST on services on their own account?	their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017.
3	Would the ECOs be liable to pay tax on supply of restaurant service made by unregistered business entities?	Yes. ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.
4	What would be the aggregate turnover of person supplying 'restaurant	It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or

	service' through ECOs?	any other purpose in the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover.
5	Can the supplies of restaurant service made through ECOs be recorded as inward supply of ECOs (liable to reverse charge) in GSTR 3B?	No. ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge).
6	Would ECOs be liable to reverse proportional input tax credit on his input goods and services for the reason that input tax credit is not admissible on 'restaurant service'?	ECOs provide their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges commission/fee etc. for the services it provides. The ITC is utilized by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act.

		It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash (No ITC could be utilized for payment of GST on restaurant service supplied through ECO)
7	Can ECO utilize its Input Tax Credit to pay tax w.r.t 'restaurant service' supplied through the ECO?	No. As stated above, the liability of payment of tax by ECO as per section 9(5) shall be discharged in cash.
8	Would supply of goods or services other than 'restaurant service' through ECOs be taxed at 5% without ITC?	ECO is required to pay GST on services notified under section 9(5), besides the services/other supplies made on his own account. On any supply that is not notified under section 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS on such supplies. Thus, present dispensation continues for ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.

9	Would 'restaurant service' and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?	Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order.
10	Who will issue invoice in respect of restaurant service supplied through ECO - whether by the restaurant or by the ECO?	The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.

11	Clarification may be issued as regard reporting of restaurant services, value and tax liability etc. in the GST return.	A number of other services are already notified under section 9(5). In respect of such services, ECO operators are presently paying GST by furnishing details in GSTR 3B. The ECO may, on services notified under section 9 (5) of the CGST Act,2017, including on restaurant service provided through ECO, may continue to pay GST by furnishing the details in GSTR 3B, reporting them as outward taxable supplies for the time being. Besides, ECO may also, for the time being, furnish the details of such supplies of restaurant services under section 9(5) in Table 7A (1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose. Registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table 8 of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being.
----	---	---

Source: Circular No- 167 / 23 /2021,

Dated: 17th December 2021

JUDGEMENTS AND ADVANCE RULING



No GST on employee transport recovery

Issue: Is GST applicable on part recovery of charges for 'renting of motor vehicles services' / 'cab services' from employees in respect of the

transport facility provided to them would be treated as supply?

Judgement: Hon'ble Advance Ruling Authority of Maharashtra has delivered a very important ruling. AAR held that part recovery of charges for 'renting of motor vehicles services' / 'cab services' from employees in respect of the transport facility provided to them would not be treated as 'supply' as per provision of GST and therefore, GST is not applicable. The applicant is engaged in providing software development and support services to its holding company located outside India. As a welfare, security and safety measure, the applicant is providing transport facility to its employees for which they are availing 'renting of motor vehicles service', 'cab services' from their vendors.

The applicant initially pays the entire amount to concerned service providers who provide them with cab services and subsequently recovers partial amount from the respective employees who avail of the said facility.

Further, the third-party vendor issues bill in the name of the applicant and charges GST therein. As regard to the payment to the third-party vendor, towards transport charges, the applicant recovers partial amount from the employees and bear the balance cost themselves.

Applicant does not avail Input Tax Credit of tax paid on such input services received.

Observations of the AAR

In terms of Section 7 of the CGST Act, 2017, for a transaction to qualify as supply, it should essentially be made in the course or furtherance of business. AAR finds that, the applicant is engaged in providing software development and support services to its holding company located outside India. The provision of transport facility to the employees is a welfare, security and safety measure and is not at all connected to the functioning of their business. Further, the said activity is not a factor which will take the applicant's business activity forward. AAR also finds that the applicant is not supplying any transport or lease/rental of vehicle service to its employees in the instant case. Further the transport or lease/rental of vehicle service is also not the output service of the applicant since they are not in the business of providing transport service. Rather, this transport facility is provided to employees by the third-party vendors and not by the applicant. AAR further observes that the GST is discharged on the gross value of bills raised on the applicant by the third-party vendors. We also observe that the partial amounts recovered by the applicant from its employees in respect of use of such transport facility are a part of the amount paid to the third-party vendors which has already suffered GST. Therefore, in the subject case, the applicant is not providing transportation facility to its employees, in fact the applicant is a receiver of such services. AAR further observes that in the case of an application filed by M/s Tata Motors Limited, a similar question was raised as to whether GST was applicable on nominal amounts recovered by Applicants from employees for usage of employee bus transportation facility. It was held that GST is not applicable on such nominal amounts recovered from its employees.

Accordingly, AAR of the view that for applicant, arranging the transport facility for their employees is definitely not an activity which is incidental or ancillary to the activity of software development, nor can it be called an activity done in the course of or in furtherance of development of software as it is not integrally connected to the business in such a way that without this the business will not function. Thus, when the activity is not a “supply”, as per section 7 of the CGST Act, 2017, GST is not applicable.

Source: *ARA of M/s Integrated Decisions Systems India Pvt Ltd ARA-116/2019-20/B-113 Dated 16-12-2021*

Renting/Leasing of immovable property reimbursement of electricity expenses are Part of Taxable Value:

Issue: The applicant had entered in a rent agreement with its tenant (Lessee) and had given 6 & 7th floor of its building at premises “Shanti One”, Jodhpur-342003 on lease to lessee. Applicant is supplier of Renting & Leasing of Immovable Property (SAC codes-997212). The applicant has not provided separate electric meter to the lessee in the instant case and as such the lessee cannot make the payment of electric charges directly to the electric company. In such circumstances the applicant makes the payment to the electric company and in-turn collects such charges from the lessee. To make the system work, the applicant has installed sub-meters and they collect the charges of the electric power used by the lessee as per the usage of power ascertained from such sub-meter.

Judgement: The Hon’ble Advance Ruling of Rajasthan in the case of Harish Chandra Modi Vs State GST Department that Principal supply of

services by the lessor is “renting of immovable property” Electricity charges or incidental charges, maintenance charges are in relation to composite supply of principal service of renting of immovable property, any incidental charges or expenses in respect of supply of service shall form part of value of taxable supply in terms of clear provisions of S.15, CGST Act, 2017. We find that the electricity expenses/charges related clause is mentioned in para 8(g) of the agreement. It reads that, this is a prepaid meter, hence a computer generated invoice will be provided by the lessor to the Lessee as per actual unit cost with the other electrical related expenses and taxes. From this it is clear that the payment regarding the electricity expenses is collected by the Lessor by issuing invoice for the same. Hence, there is a established fact that supply of service has been made to the lessee for consideration by issuing invoice(s).

The facts submitted by the applicant (here Lessor) also state that the Lessor is also providing Services of DG set on Fixed rate of Rs.10000/- p.m. and Rs.18/- per unit for each unit consumed. This service is also an ancillary service of principal supply of services ‘renting of immovable property’ (SAC Codes-997212) and covers any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or ‘supply of services’ as per S.15(2)(c), CGST Act, 2017.

As far as expression “Pure Agent” is concerned, in the instant case there is no clear authorisation made by the lessee on which the supplier (lessor) acts as a pure agent of the recipient of the supply, when he makes the payment to the third party. The rent agreement itself not become an authorisation as nowhere in the said agreement has the

'reimbursement' term been mentioned. Further applicant (Lessor) does not enter into a contractual agreement with the recipient (Lessee) of supply to act as pure agent to incur expenditure or costs in the course of supply services. Hence, the act of working as an 'pure agent' has not been phrased out. Thus, reimbursement of electricity expenses had not been made on actual basis, by the lessee to lessor as it had been collected in advance with rent and further adjusted by raising the invoice/bill/memo/document by the lessor

Therefore, in the instant case, the so called reimbursement of electricity expenses would form part of taxable value in term of S.15(2)(c), CGST Act, 2017

Source: AAR in case of Harish Chandra Modi Vs State GST Department, Dated: 15th December 2021

ITC cannot be availed on second hand car if applicant opted for concessional rate

Issue: Is ITC allowed on concessional rate

Judgement: The Hon'ble Advance Ruling Authority of Maharashtra in the case of Deccan Wheels Vs Division-III Commissionerate Pune-II has held that Input Tax Credit cannot be claimed on Indirect Expenses like rent, commission, professional fees, telephone incurred for purpose of business.

Factually, the Deccan Wheels (the Applicant) purchases second-hand cars (goods) and after minor processing on it such as change of tires, change of battery, painting, denting, repairs, servicing, internal cleaning, polishing, etc, which does not change the nature of the goods, the said goods are sold. The Applicant does not claim the Input tax credit ("ITC") on the purchase of second-hand goods and has opted for Margin

Scheme and applies GST rate as per Notification No 8/2018- Central Tax (Rate) dated January 25, 2018 ("Goods Rate Notification")

The Applicant has sought the advance ruling on whether ITC can be claimed on other indirect expenses incurred for the purpose of business such as rent, commission, professional fees, telephone etc

The Hon'ble Mah AAR observed that the concessional rate under the Goods Rate Notification shall not apply if the supplier of such goods has availed ITC as defined in Section 2(63) of the Central Goods and Services Tax Act, 2017("the CGST Act"), CENVAT as defined in CENVAT Credit Rules, 2004 or the ITC of Value Added Tax or any other taxes paid on such goods.

Further, held that since the Applicant has been availing the benefit of the Goods Rate Notification and paying GST at a concessional rate they shall not avail ITC.

Source: Deccan Wheels Vs Division-III Commissionerate Pune-II, Advance Ruling No. GST-ARA-103/2019-20/B-81, 25 October 2021

CUSTOMS



CBIC issued instructions for retention of ISO containers for meet future requirements

The CBIC vide Instruction No. 01/2022-Custom issued instructions Retention of ISO Containers to meet future requirements. Board has received representations through the Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, for providing relaxations in the re-export of ISO Containers imported temporarily for combating the COVID Pandemic. Such containers have been used for efficient transportation of Liquid Medical Oxygen due to the inherent advantage related to multi-modal transportation (by Road/Rail/Waterways/Airways) and has acquired tremendous domestic and international reputation. The issue has been

examined. Board hereby guides all the field formations to allow extension of time period for re-exports of ISO containers meant for transportation of Liquid Medical Oxygen grade, if imported under Notification No. 104/1994-Customs dated 16.03.1994, till 30.09.2022, upon receipt of requests from the importers.

Further, in respect of ISO Containers imported on lease by availing IGST exemption under serial number 557B of Notification No.50/2017-Customs dated 30.06.2017, it is hereby clarified that as long as ISO containers are in India under a valid lease and the IGST amount is paid on such lease amount under CGST law, the IGST is not required to be paid on the value of the ISO containers, and in such a situation the need for re-export would not arise of the Tea (Distribution & Export) Control Order, 2005, any importer importing tea from Nepal needs to have a license, as mandated under this order, and should also have a clearance certificate issued by the Tea Council.

Source: Circular No.01/2022-Customs Dated 18th January 2022

GST REVENUE COLLECTION

The gross GST revenue collected in the month of December 2021 is Rs 1,29,780 crore of which CGST is Rs 22,578 crore, SGST is Rs 28,658 crore, IGST is Rs 69,155 crore (including Rs 37,527 crore collected on import of goods) and cess is Rs 9,389 crore (including Rs 614 crore collected on import of goods) **Source: pib.gov.in**

LET'S TALK

For a deeper discussion of how these issues might affect your business, please contact our Indirect Taxation Team.

CONTACT DETAILS:

Head Office

3rd floor, MJ Tower, 55 Rajpur Road, Dehradun

T +91.135.2743283, 2747084, 2742026

E info@vkalra.com

W www.vkalra.com

Branch Office

80/28 Malviya Nagar, New Delhi

E info@vkalra.com

W www.vkalra.com

For any further assistance contact our team at
kmt@vkalra.com

© 2022 Verendra Kalra & Co. All rights reserved.

This publication contains information in summary form and is therefore intended for general guidance only. It is not a substitute for detailed research or the exercise of professional judgment. Neither VKC nor any member can accept any responsibility for loss occasioned to any person acting or refraining from actions as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.

