

# RECENT GST UPDATES



## TRIGGER FOR RECENT CIRCULARS AND NOTIFICATIONS

- Recently, 50<sup>th</sup> Council Meeting was held on **11<sup>th</sup> July 2023**
- Various contentious positions were addressed during the Council meeting
- Circulars and Notifications have been issued in line with the GST Council decisions
- **Major Issues addressed are :**
  - Cross Charge of services v/s ISD
  - Treatment of Warranty Transactions
  - Calculation of Interest for IGST utilization for ITC wrongly availed
  - Mismatch between GSTR 3B/2A - points for other years
  - Taxability of holding of shares by Parent in subsidiary



## CROSS CHARGE – CLARIFICATIONS (1/2)

**Requirement of ISD/Cross Charge for services – Open area of litigation. Circular issued**

**Issue (1) : Third party input services procured for benefit of another registration**

- Input Service Distributor Mechanism-Not Mandatory and optional. Cross charge can be chosen as a manner of distribution of ITC.
- Services attributable to a branch to either be distributed through Cross charge or ISD
- If ISD chosen – Requirements of registration and apportionment based on Section 20 to be followed.
- For Cross charge or ISD – Service attributable to a particular registration is to be apportioned to such registration only



Many assessee have got SCN's where Department has alleged the ISD is compulsory. The circular provides a welcome relief to that extent. However, it is still mandatory for companies to apportion the third-party cost either based on cross charge or ISD. Further, the GST Council minutes agenda also highlighted that ISD may become mandatory in the future. Hence, this clarification may only be short lived

**M2K Comments**

## CROSS CHARGE – CLARIFICATIONS (2/2)

### Issue 2 – Internally Generated services – Cross charge to other registration

- For *internally generated services*, it is clarified there is no mandate to cross charge services when **full ITC is available to the recipient**
- For past transactions, where no invoice has been raised – it will be deemed that the value of service is NIL and such NIL value will qualify as open market value.
- For *internally generated services*, cross charge under a tax invoice is mandatory when **full ITC is not available to the recipient**
- While valuing such services, salary cost of employees of the service provider registration need not be factored.



The contentious issues of valuation of cross charge has been put at rest by this clarification, especially in all cases where full ITC is eligible. For cases where full ITC is not eligible, though the circular categorically provides non-inclusion of salary cost, the Valuation Rules still require determination of what will qualify as Open Market value (OMV).

While arriving at OMV, it may still require that the value of service for independent services must be arrived which will in any case also include all direct and indirect costs (including salary). Hence, the issues on valuation is still far from settled. Further, the ruling is only restricted for distinct persons and not for related parties/ establishment of distinct persons outside India.

## TAXABILITY AND ITC IN RESPECT OF WARRANTY REPLACEMENT OF PARTS AND REPAIR SERVICES (1/3)

Free supplies during warranty period by manufacturer or by distributor

No GST and No requirement to reverse the input tax credit *w.r.t.* the replacement parts or repair services.

If any additional consideration charged by manufacturer or by distributor

Liable to GST

Supply involved when distributor replaces parts on behalf of the manufacturer for consideration

- GST payable by distributor as it will be a supply
- Manufacturer entitled to avail ITC

Supply involved when manufacturer provides such parts to the distributor for replacement, without consideration.

- No GST payable by manufacturer
- No requirement of reversal of ITC by the manufacturer



## TAXABILITY AND ITC IN RESPECT OF WARRANTY REPLACEMENT OF PARTS AND REPAIR SERVICES (2/3)

When distributor had already received replacement parts from the manufacturer and credit note is issued.

The manufacturer may adjust the tax liability if distributor reverses the proportionate ITC.

When the distributor provides free service but charges the manufacturer

Distributor liable to pay GST on the amount charged. Manufacturer, being the recipient – entitled to avail ITC.

Offers of extended warranty to customers availed at the time of original supply

GST payable (Consideration being part of the value of the composite supply) by the person who sells the warranty

Offers of extended warranty to customers availed before expiry of warranty period

GST payable by whoever is the service provider



## TAXABILITY AND ITC IN RESPECT OF WARRANTY REPLACEMENT OF PARTS AND REPAIR SERVICES (3/3)

### *M2K Comments*

- The clarifications provide a welcome relief to the trade.
- The circular has reiterated the principles which have been laid out by the Larger Bench of the SC in the recent ruling of Tata Motors (SC).
- The various clarifications issued both to the OEM and the customer will facilitate trade to take a clear position on each leg of the transaction



## DETERMINATION OF 'IGST ITC WRONGLY UTILIZED' FOR THE PURPOSE OF CALCULATING INTEREST PAYABLE U/S 50(3)

- IGST Credit is always utilized prior to CGST and SGST. Under the GST rules, interest is payable only where the entire ITC gets utilized.
- While interpreting this rule, question arose whether utilization must be at IGST level or consolidated level (IGST+ CGST +SGST).
- Board clarified that ITC utilization must be construed at a consolidated level.



Particulars	ITC	
CGST Balance	300	For calculating interest, if liability is less than total ITC (1200 in this case), it will be deemed that ITC balance has not been exhausted and no interest will be leviable. If liability is 1400, Interest will be applicable on excess amount payable i.e. 200
SGST Balance	300	
IGST Balance	600	
Total Liability	1000	

### M2K Comments

The circular provides for beneficial clarification to the Assessee as interest will be applicable only on the liability after comparing it with the consolidated balance of ITC



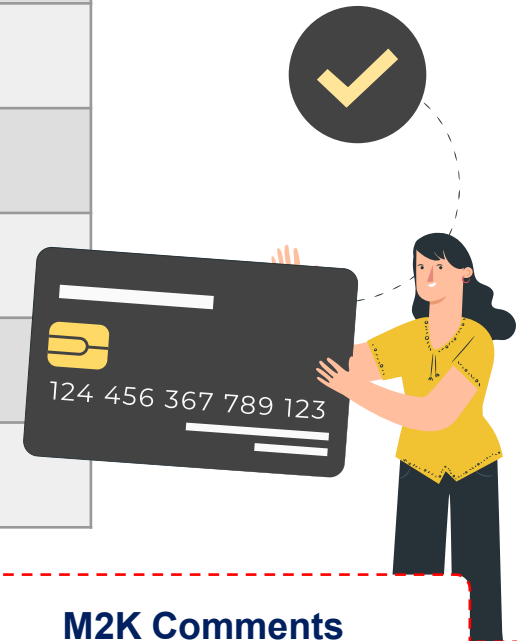
## MISMATCH BETWEEN GSTR-3B AND GSTR-2A – ACTION POINT FOR SUBSEQUENT FYS

- 2A v 3B mismatch has seen various litigation.
- Circular 183/15/2022-GST issued for 2017-18 – For cases involving ITC < 5 lakh – Obtain Vendor Declaration and ITC > 5 lakh – Obtain CA certificate.
- Circular now issued for subsequent period and therefore, Benefit of Declaration/CA Certificate – Extended to 2018-19 and 2019 for Partial period.
- Subsequent to introduction of 36(4) (introduction of 2A facility) – Benefit restricted to the excess permissible limit provided under the rule.
- For example - From 09th October 2019- 31 December 2019, Declaration/ Certificate can be furnished only for differential 20%. Excess ITC to lapse



## MISMATCH BETWEEN GSTR-3B AND GSTR-2A – ACTION POINT FOR SUBSEQUENT FYS

Period	ITC availability
01.07.2017 to 31.03.2019	Full ITC – Subject to satisfaction of other conditions
1.04.2019 to 8.10.2019	Full ITC – Subject to satisfaction of other conditions
9.10.2019 to 31.12.2019	ITC in 2A + 20% safe harbour- Balance ITC to lapse
01.01.2020 to 31.12.2020	ITC in 2A + 10% safe harbour- Balance ITC to lapse
01.01.2021 to 31.12.2021	ITC in 2A + 5% safe harbour- Balance ITC to lapse
From 1.01.2022 and onwards	ITC in 2B - Balance ITC to lapse



### M2K Comments

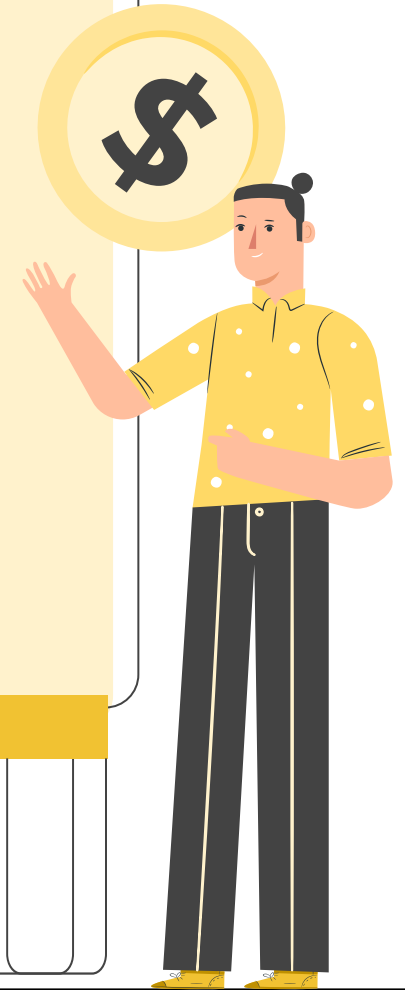
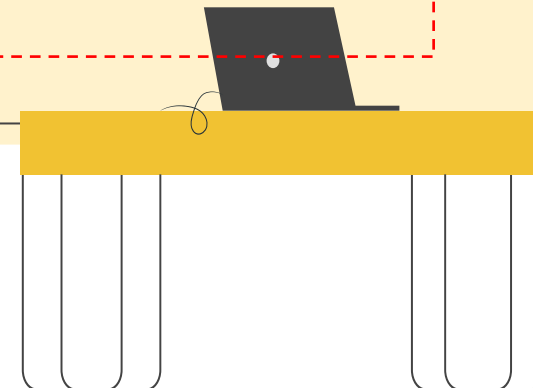
The circular provides much needed relief for subsequent years transactions which was sought by the Industry and allowed by High Courts. However, the position post 2019 will depend on the outcome of the writ cases where the vires of the Rule are under challenge.



## OTHER CLARIFICATIONS

- Share capital held in subsidiary company by the parent company is NOT a 'supply of service' under GST
- Refund of ITC is allowed only up to the credit reflected in GSTR-2B for claims from 01<sup>st</sup> Jan 2022. Refunds already sanctioned to remain undisturbed

**M2K Comments:** The first clarification addresses an issue which was raised in few audit memos and rightfully concludes that no GST is applicable for investing into shares of a subsidiary. Refunds have also now been linked to GSTR 2B and issue of whether to follow 2A or 2B for filing of refund claim are now put to rest



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