



GARV & AFFILIATES



CLARIFICATIONS ISSUED BY CBIC

CBIC has issued certain clarifications on certain aspects by way of Circulars issued on 20th September 2021. Please find mentioned below a summary of such clarifications. Hope you find the same useful and informative.

- **EXPORT OF SERVICES – SUPPLY OF SERVICE BY SUBSIDIARY/SISTER CONCERN/GROUP CONCERN TO ITS FOREIGN PARENT COMPANY**

Supply of services by a subsidiary/ sister concern/ group concern, etc. of a foreign company, which is incorporated in India, to the establishments of the said foreign company located outside India, would not be treated as supply between merely establishments of distinct persons, and hence would qualify as Export of Services. Similarly, the supply from a company incorporated in India to its related establishments outside India, would also qualify as export of services, subject to fulfilment of other conditions as provided under sub-section (6) of section 2 of IGST Act.

Refer Circular no. 161/14/2021-GST dated 20-09-2021

- **INTERMEDIARY SERVICES**

Intermediary has been defined in section 2(13) of the IGST Act 2017 to mean a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account

Basic Pre-requisites for Intermediary services:

Minimum of Three parties - The arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply.

Two distinct supplies – (a) Main supply, between the two principals, which can be a supply of goods or services or securities;

(b) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals.

A person involved in supply of main supply on principal to principal basis to another person cannot be considered as supplier of intermediary service.

Intermediary service provider to have the character of an agent, broker or any other similar person - The use of the expression “arranges or facilitates” in the definition of “intermediary” suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediary is only supportive.

Does not include a person who supplies such goods or services or both or securities on his own account - In cases wherein the person supplies the main supply, either fully or partly, on principal to principal basis, the said supply cannot be covered under the scope of intermediary.

Sub-contracting is not an intermediary service: An important exclusion from intermediary is sub-contracting. The supplier of main service may decide to outsource the supply of the main service, either fully or partly, to one or more sub-contractors. Such sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary.

FOR MORE INFORMATION

Write to us at
info@garvca.com

Illustrations

- 'A' is a software company which develops software for the clients as per their requirement. 'A' has a contract with 'B' for providing some customized software for its business operations. 'A' outsources the task of design and development of a particular module of the software to 'C', for which "C" may have to interact with 'B', to know their specific requirements. In this case, 'C' is providing main supply of service of design and development of software to 'A', and thus, 'C' is not an intermediary in this case.
-
- 'A' is a manufacturer and supplier of a machine. 'C' helps 'A' in selling the machine by identifying client 'B' who wants to purchase this machine and helps in finalizing the contract of supply of machine by 'A' to 'B'. 'C' charges 'A' for his services of locating 'B' and helping in finalizing the sale of machine between 'A' and 'B', for which 'C' invoices 'A' and is paid by 'A' for the same. While 'A' and 'B' are involved in the main supply of the machinery, 'C', is facilitating the supply of machine between 'A' and 'B'. In this arrangement, 'C' is providing the ancillary supply of arranging or facilitating the 'main supply' of machinery between 'A' and 'B' and therefore, 'C' is an intermediary and is providing intermediary service to 'A'.
-
- 'A' is a manufacturer and supplier of computers based in USA and supplies its goods all over the world. As a part of this supply, 'A' is also required to provide customer care service to its customers to address their queries and complains related to the said supply of computers. 'A' decides to outsource the task of providing customer care services to a BPO firm, 'B'. 'B' provides customer care service to 'A' by interacting with the customers of 'A' and addressing / processing their queries / complains. 'B' charges 'A' for this service. 'B' is involved in supply of main service 'customer care service' to 'A', and therefore, 'B' is not an intermediary.

- **TIME LIMIT FOR AVAILING CREDIT U/S 16(4)**

With effect from 01.01.2021, section 16(4) of the CGST Act, 2017 was amended, so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit.

*A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or **debit note** pertains or furnishing of the relevant annual return, whichever is earlier.*

It is clarified that:

W.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of the CGST Act.

Accordingly, for availment of ITC on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, the eligibility for availment of ITC will be governed by the amended provision of section 16(4) i.e. based on the date of debit note, whereas any ITC availed prior to 01.01.2021, in respect of debit notes, shall be governed under the provisions of section 16(4), as it existed before the said amendment on 01.01.2021 i.e. based on the date of underlying invoice related to such debit note.

- **CARRYING PHYSICAL INVOICE DURING MOVEMENT OF GOODS**

Rule 138A of the CGST Rules, 2017 provides that *the person in charge of a conveyance shall carry— (a) the **invoice or bill of supply or delivery challan**, as the case may be; and (b) a copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance.*

In case, invoice is issued in the manner prescribed under sub-rule (4) of rule 48, the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice.

Hence there is no requirement to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier. **Accordingly, it is clarified that there is no need to carry the physical copy of tax invoice in cases where e-invoice has been generated and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.**

- **REFUND OF UNUTILISED ITC IN CASE OF EXPORTS OF GOODS HAVING NIL RATE OF EXPORT DUTY**

It is clarified that only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) from availment of refund of accumulated ITC.

Hence Goods, which are not subject to any export duty and in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, would not be covered by the restriction imposed under the first proviso to section 54(3) of the CGST Act and refund of unutilised ITC on Exports can be availed subject to fulfilment of prescribed conditions.

FOR MORE INFORMATION

Write to us at
info@garvca.com

GARV & ASSOCIATES
(NETWORK PARTNER:GARV & AFFILIATES)

Unit No. 403, 4th Floor, Shantiniketan Building
8 Camac Street, Kolkata – 700017

19, R. N. Mukherjee Road, Eastern Building, 1st Floor
Kolkata - 700001

Email: info@garvca.com

Website: www.garvca.com

Call us:

+91 33 40404743 / 44



Kolkata – Bangalore – Chennai – Guwahati – Sambalpur