

**GOVERNMENT OF WEST BENGAL
DIRECTORATE OF COMMERCIAL TAXES
14, BELIAGHATA ROAD, KOLKATA-700015**

TRADE CIRCULAR No. 12/2023

(Corresponding Central Circular No. 199/11/2023-GST)

DATED: 11.09.2023

Subject: Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons.

Various representations have been received seeking clarification on the taxability of activities performed by an office of an organisation in one State to the office of that organisation in another State, which are regarded as distinct persons under section 25 of West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as ‘the WBGST Act’). The issues raised in the said representations have been examined and to ensure uniformity in the implementation of the law across the field formations, the Commissioner, in exercise of his powers conferred under section 168 of the WBGST Act hereby clarifies the issue in succeeding paras.

2. Let us consider a business entity which has Head Office (HO) located in State-1 and branch offices (BOs) located in other States. The HO procures some input services e.g. security service for the entire organisation from a security agency (third party). HO also provides some other services on their own to branch offices (internally generated services).

3. The issues that may arise with regard to taxability of supply of services between distinct persons in terms of sub-section (4) of section 25 of the WBGST Act are being clarified in the Table below: -

S. No	Issues	Clarification
1.	Whether HO can avail the input tax credit (hereinafter referred to as	It is clarified that in respect of common input services procured by the HO from a

<p>‘ITC’) in respect of common input services procured from a third party but attributable to both HO and BOs or exclusively to one or more BOs, issue tax invoices under section 31 to the said BOs for the said input services and the BOs can then avail the ITC for the same or whether is it mandatory for the HO to follow the Input Service Distributor (hereinafter referred to as ‘ISD’) mechanism for distribution of ITC in respect of common input services procured by them from a third party but attributable to both HO and BOs or exclusively to one or more BOs?</p>	<p>third party but attributable to both HO and BOs or exclusively to one or more BOs, HO has an option to distribute ITC in respect of such common input services by following ISD mechanism laid down in Section 20 of WBGST Act read with rule 39 of the West Bengal Goods and Services Tax Rules, 2017 (hereinafter referred to as ‘the WBGST Rules’). However, as per the present provisions of the WBGST Act and WBGST Rules, it is not mandatory for the HO to distribute such input tax credit by ISD mechanism. HO can also issue tax invoices under section 31 of WBGST Act to the concerned BOs in respect of common input services procured from a third party by HO but attributable to the said BOs and the BOs can then avail ITC on the same subject to the provisions of section 16 and 17 of WBGST Act.</p> <p>In case, the HO distributes or wishes to distribute ITC to BOs in respect of such common input services through the ISD mechanism as per the provisions of section 20 of WBGST Act read with rule 39 of the WBGST Rules, HO is required to get itself registered mandatorily as an ISD in accordance with Section 24(viii) of the WBGST Act.</p> <p>Further, such distribution of the ITC in respect a common input services procured</p>
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		<p>from a third party can be made by the HO to a BO through ISD mechanism only if the said input services are attributable to the said BO or have actually been provided to the said BO. Similarly, the HO can issue tax invoices under section 31 of WBGST Act to the concerned BOs, in respect of any input services, procured by HO from a third party for on or behalf of a BO, only if the said services have actually been provided to the concerned BOs.</p>
2.	<p>In respect of internally generated services, there may be cases where HO is providing certain services to the BOs for which full input tax credit is available to the concerned BOs. However, HO may not be issuing tax invoice to the concerned BOs with respect to such services, or the HO may not be including the cost of a particular component such as salary cost of employees involved in providing said services while issuing tax invoice to BOs for the services provided by HO to BOs. Whether the HO is mandatorily required to issue invoice to BOs under section 31 of WBGST Act for such internally generated services, and/ or whether the cost of all components including salary cost of HO employees involved in</p>	<p>The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 of WBGST Rules, read with sub-section (4) of section 15 of WBGST Act. As per clause (a) of rule 28, the value of supply of goods or services or both between distinct persons shall be the open market value of such supply. The second proviso to rule 28 of WBGST Rules provides 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. Accordingly, in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is eligible for full input tax credit.</p> <p>Accordingly, in cases where full input tax</p>

	<p>providing the said services has to be included in the computation of value of services provided by HO to BOs when full input tax credit is available to the concerned BOs.</p>	<p>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.</p> <p>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 WBGST Rules.</p>
3.	<p>In respect of internally generated services provided by the HO to BOs, in cases where full input tax credit is not available to the concerned BOs, whether the cost of salary of employees of the HO involved in providing said services to the BOs, is mandatorily required to be included while computing the taxable value of the said supply of services provided by HO to BOs.</p>	<p>In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases where full input tax credit is not available to the concerned BO.</p>

4. Difficulty, if any, in the implementation of this Trade Circular may be brought to the notice of the Commissioner.

Sd/-
(Khalid Aizaz Anwar)
Commissioner, State Tax,
West Bengal

Memo. No.- 202 /CT/PRO
3C/PRO/2023

Date: 11.09.2023

Copy forwarded to the Special Commissioner, State tax /ISD for information and for uploading it on the official website of the Directorate for information of all concerned.

Sd/-
(Nabanita Pal)
Special Commissioner,
State Tax & PRO