

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

TRADE CIRCULAR No. 04/2024
(Corresponding Central Circular No. 210/04/2024-GST)

DATED: 08.07.2024

Subject: Clarification on valuation of supply of import of services by a related person where recipient is eligible to full input tax credit.

As per S.No. 4 of Schedule I of the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the 'WBGST Act'), import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business, is to be treated as supply even if made without consideration.

2. Representations have been received from trade and industry stating that demands are being raised by some of the field formations against the registered persons seeking tax on reverse charge basis in respect of certain activities undertaken by their related persons based outside India, by considering the said activities as import of services by the registered person in India, based on an expansive interpretation of the deeming fiction in S.No. 4 of Schedule I of WBGST Act, though no consideration is involved in the said activities and the same are not considered as supplies by the said related person in India. It has been represented that the same treatment, which is being given to domestic related parties/ distinct persons as per clarification provided by Trade Circular No. 12/2023 dated 11.09.2023, may also be provided in cases where a foreign entity is providing service to its related party located in India, in cases where full ITC is available to the said recipient located in India.

3.1 In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Commissioner, in exercise of his powers conferred by section 168 of the WBGST Act, hereby clarifies the issues as under:

3.2 Rule 28 of the West Bengal Goods and Services Tax Rules, 2017 (hereinafter referred to as the 'WBGST Rules') is reproduced as below:

“Rule 28.Value of supply of goods or services or both between distinct or related persons,

other than through an agent. –

(1) The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of likekind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further 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.

...”

3.3 As per second proviso to rule 28(1) of WBGST Rules, in cases involving supply of goods or services or both between the **distinct or related persons** 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 said goods or services.

3.4 It may be noted that vide Trade Circular No. 12/2023 dated 11.09.2023, clarification has been issued 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. It has been clarified in the said circular that as per the second proviso to rule 28(1) of WBGST Rules, in respect of supply of services by Head Office (HO) to Branch Offices (BO) of an organisation, 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. It has also been clarified vide the said circular that in 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(1) of WBGST Rules.

3.5 The second proviso to Rule 28 (1) of WBGST Rules is applicable in all the cases involving supply of goods or services or both between the **distinct persons** as well as the **related persons, in cases where full ITC is available to the recipient**. Accordingly, it is evident that the clarification which has been issued vide Trade Circular No. 12/2023 dated 11.09.2023 in respect of supplies of services between distinct persons in cases where full ITC is available to the recipient, is equally applicable in respect of import of services between related persons.

3.6 In case of import of services by a registered person in India from a **related person located outside India, the tax is required to be paid by the registered person in India under reverse charge mechanism**. In such cases, the registered person in India is required to issue self-invoice under Section 31(3) (f) of WBGST Act and pay tax on reverse charge basis.

3.7 In view of the above, it is clarified that in cases where the foreign affiliate is providing certain services to the related domestic entity, and where full input tax credit is available to the said related domestic entity, the value of such supply of services declared in the invoice by the said related domestic entity may be deemed as open market value in terms of second proviso to rule 28(1) of WBGST Rules. Further, in cases where full input tax credit is available to the recipient, if the invoice is not issued by the related domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil, and may be deemed as open market value in terms of second proviso to rule 28(1) of WBGST Rules.

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

Sd/-

(DEVI PRASAD KARANAM, IAS)
Commissioner, State Tax
West Bengal

Memo. No.- 61/CT/PRO
3C/PRO/2024

Date: 08.07.2024

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/-
(Joyjit Banik)
Additional Commissioner, State Tax
&
PRO