

W.P(MD)No.20109 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.10.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.20109 of 2025

and

W.M.P(MD)Nos.15509, 15510 & 18212 of 2025

M/s.Amman Try Trading Company
Private Limited,
Represented by its Vice President
V.Muruganantham,
46, Usman Ali Street,
TVS Tollgate,
Tiruchirapalli – 620 020.

... Petitioner

Vs.

The State Tax Officer – V (RS),
O/o.The Joint Commissioner (ST),
Intelligence, Trichy Division,
Trichy – 620 018.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent of the relating to the Impugned Order in Form GST DRC-07 bearing Reference No. ZD3304252058978/Case ID No. AD331224004477F dated 28.04.2025 and quash the same being

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violative of principles of natural justice and to direct the respondent to pass fresh order after hearing the petitioner.

For Petitioner : Mr.M.Karthikeyan
for Mr.S.Jai Kumar

For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

Heard both sides.

2.The writ petitioner furnished corporate guarantee in favour of a related party, namely, M/s.Amman Try Trading Company Private Limited.

3.The specific stand of the writ petitioner is that they did not receive any consideration for furnishing such corporate guarantee. However, the assessing officer held that supply of such service of corporate guarantee by the petitioner to their related entity attracts the levy of GST and tax was levied at 1% of the corporate guarantee amount. Challenging the said order, this writ petition has been filed.

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4.It is true that the respondent had issued show cause notice to the writ petitioner before passing the impugned order.

5.The writ petitioner submitted their reply. In their reply, the petitioner placed reliance on 2 circulars i.e., Circular No.199/11/2023-GST dated 17.07.2023 and Circular No.210/4/2024-GST dated 26.06.2024. Rule 28 of CGST Rules, 2017 reads as follows:

“28.Value of supply of goods or services or both between distinct or related persons, other than through an agent.

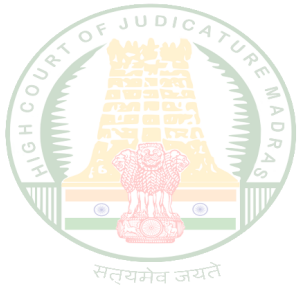
(1) The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

(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 like kind 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,



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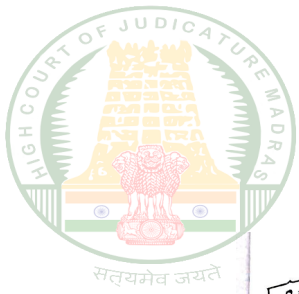
be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person.

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.

[(2) Notwithstanding anything contained in sub-rule (1), the value of supply of services by a supplier to a recipient who is a related person [located in India], by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be one per cent of the amount of such guarantee offered [per annum], or the actual consideration, whichever is higher.]

[Provided that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the value of said supply of services.”

Circular No.199/11/2023-GST dated 17.07.2023 reads as follows:



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CIRCULAR NO. 199/11/2023-GST [E. NO. CBIC-20001/5/2023-GST]

CLARIFICATION REGARDING TAXABILITY OF SERVICES PROVIDED BY AN OFFICE OF AN ORGANISATION IN ONE STATE TO OFFICE OF THAT ORGANISATION IN ANOTHER STATE, BOTH BEING DISTINCT PERSONS

CIRCULAR NO. 199/11/2023-GST [E. NO. CBIC-20001/5/2023-GST], DATED 17-7-2023

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 Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST 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 Board, in exercise of its powers conferred under section 168(1) of the CGST 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 a 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 CGST 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 '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?	It is clarified that in respect of common input services procured by the HO from a 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 CGST Act read with rule 39 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules'). However, as per the present provisions of the CGST Act and CGST 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 CGST 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 sections 16 and 17 of CGST Act. 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 CGST Act read with rule 39 of the CGST Rules, HO is required to get itself registered mandatorily as an ISD in accordance with Section 24(viii) of the CGST Act. Further, such distribution of the ITC in respect a common input services procured from a third party can be made by the HO to a BO through ISD mechanism only if the said input services are



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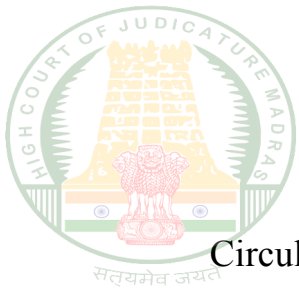
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		attributable to the said BO or have actually been provided to the said BO. Similarly, the HO can issue tax invoices under section 31 of CGST Act to the concerned BOs, in respect of any input services, procured by HO from a third party for on or behalf of a BO, only if the said services have actually been provided to the concerned BOs.
2.	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 CGST Act for such internally generated services, and/ or whether the cost of all components including salary cost of HO employees involved in 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.	The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 of CGST Rules, read with sub-section (4) of section 15 of CGST 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 CGST 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. Accordingly, in cases where full input tax 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. 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 CGST Rules.
3.	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.	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.

4. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

5. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

Sanjay Mangal
Principal Commissioner (GST)



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Circular No.210 dated 26.06.2024 reads as follows:

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CIRCULAR NO. 210/4/2024-GST [F. NO. CBIC- 20001/4/2024-GST],

**SECTION 7, READ WITH SECTION 16 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 -
SUPPLY - SCOPE OF - CLARIFICATION ON VALUATION OF SUPPLY OF IMPORT OF SERVICES BY
A RELATED PERSON WHERE RECIPIENT IS ELIGIBLE TO FULL INPUT TAX CREDIT**

CIRCULAR NO. 210/4/2024-GST [F. NO. CBIC- 20001/4/2024-GST], DATED 26-6-2024

As per S.No. 4 of Schedule I of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST 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 CGST 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 Circular No. 199/11/2023-GST, dated 17-7-2023, 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 Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby clarifies the issues as under:

3.2 Rule 28 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the 'CGST 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-sections (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-

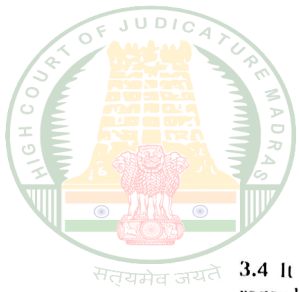
- (a) be the open market value of such supply;*
- (b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;*
- (c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, 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 CGST 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.



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3.4 It may be noted that *vide Circular No. 199/11/2023-GST*, dated 17-7-2023, 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 CGST 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 CGST Rules.

3.5 The second proviso to Rule 28(1) of CGST 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 Circular No. 199/11/2023-GST*, dated 17-7-2023 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 CGST 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 CGST 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 CGST Rules.

4. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

5. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board.

Sanjay Mangal
Principal Commissioner (GST)

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6. The assessee / writ petitioner herein had contended that since the recipient is eligible for full ITC and the writ petitioner did not issue any invoice, and value of transaction has been taken as zero, the aforesaid circulars are applicable to the transactions in question. However, the assessing officer did not consider the applicability of these 2 circulars at all. It is a well settled principle of administrative law that when a



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defense raised by the noticee is not considered in the final order, the order is vulnerable on that ground. On the ground of non-consideration of the contentions raised by the assessee, the impugned order is set aside. The matter is remitted to the respondent. The respondent is directed to consider all the contentions raised by the assessee in the reply and pass order afresh on merits and in accordance with law. I have not gone into the merits of the matter.

7.This Writ Petition is allowed on these terms. No costs.
Consequently, connected miscellaneous petitions are closed.

06.10.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To
The State Tax Officer – V (RS),
O/o.The Joint Commissioner (ST),
Intelligence, Trichy Division,
Trichy – 620 018.



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G.R.SWAMINATHAN, J.

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