



Circular No.169/01/2022-GST

F. No. CBIC-20016/2/2022-GST
Government of India
Ministry of Finance (Department of Revenue)
Central Board of Indirect Taxes & Customs,
GST Policy Wing

New Delhi, dated the 12th March, 2022

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /
Commissioners of Central Tax and Central Tax (Audit) (All)
The Principal Directors General / Directors General (All)

Madam/Sir,

Subject: Amendment to Circular No. 31/05/2018-GST, dated 9th February, 2018 on 'Proper officer under sections 73 and 74 of the Central Goods and Services Tax Act, 2017 and under the Integrated Goods and Services Tax Act, 2017'-reg.

Vide Notification No. 02/2022-Central Tax dated 11th March, 2022, para 3A has been inserted in the Notification No. 2/2017-Central Tax dated 19th June, 2017, to empower Additional Commissioners of Central Tax/ Joint Commissioners of Central Tax of some of the specified Central Tax Commissionerates, with All India Jurisdiction for the purpose of adjudication of the show cause notices issued by the officers of the Directorate General of Goods and Services Tax Intelligence. Consequently, para 6 and 7 of the Circular No. 31/05/2018-GST, dated 9th February, 2018 are hereby amended as below:

“6. The Central Tax officers of Audit Commissionerates and Directorate General of Goods and Services Tax Intelligence (hereinafter referred to as “DGGI”) shall exercise the powers only to



issue show cause notices. A show cause notice issued by them shall be adjudicated by the competent Central Tax officer of the executive Commissionerate in whose jurisdiction the noticee is registered when such cases pertain to jurisdiction of one executive Commissionerate of Central Tax only.

7.1 In respect of show cause notices issued by officers of DGGI, there may be cases where the principal place of business of noticees fall under the jurisdiction of multiple Central Tax Commissionerates or where multiple show cause notices are issued on the same issue to different noticees, including the persons having the same PAN but different GSTINs, having principal place of business falling under jurisdiction of multiple Central Tax Commissionerates. For the purpose of adjudication of such show cause notices, Additional/Joint Commissioners of Central Tax of specified Commissionerates have been empowered with All India jurisdiction vide Notification No. 02/2022-Central Tax dated 11th March, 2022. Such show cause notices may be adjudicated, irrespective of the amount involved in the show cause notice(s), by one of the Additional/Joint Commissioners of Central Tax empowered with All India jurisdiction vide Notification No. 02/2022-Central Tax dated 11th March, 2022. Principal Commissioners/ Commissioners of the Central Tax Commissionerates specified in the said notification will allocate charge of Adjudication (DGGI cases) to one of the Additional Commissioners/ Joint Commissioners posted in their Commissionerates. Where the location of principal place of business of the noticee, having the highest amount of demand of tax in the said show cause notice(s), falls under the jurisdiction of a Central Tax Zone mentioned in column 2 of the table below, the show cause notice(s) may be adjudicated by the Additional Commissioner/ Joint Commissioner of Central Tax, holding the charge of Adjudication (DGGI cases), of the Central Tax Commissionerate mentioned in column 3 of the said table corresponding to the said Central Tax Zone. Such show cause notice(s) may, accordingly, be made answerable by the officers of DGGI to the concerned Additional/ Joint Commissioners of Central Tax.

TABLE

<i>Sl. No.</i>	<i>Central Tax Zone in whose jurisdiction the location of the principal place of business of the noticee having highest amount of demand of tax involved falls</i>	<i>Central Tax Commissionerate whose Additional Commissioner or Joint Commissioner shall adjudicate show cause notices issued by officers of DGGI</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
1.	Ahmedabad	Ahmedabad South
2.	Vadodara	
3.	Bhopal	Bhopal
4.	Nagpur	
5.	Chandigarh	Chandigarh
6.	Panchkula	
7.	Chennai	Chennai South
8.	Bengaluru	
9.	Thiruvananthapuram	
10.	Delhi	Delhi North
11.	Jaipur	
12.	Guwahati	Guwahati
13.	Hyderabad	Rangareddy
14.	Visakhapatnam (Amaravathi)	
15.	Bhubaneshwar	
16.	Kolkata	Kolkata North
17.	Ranchi	



18.	<i>Lucknow</i>	<i>Lucknow</i>
19.	<i>Meerut</i>	
20.	<i>Mumbai</i>	<i>Thane</i>
21.	<i>Pune</i>	

7.2 *In respect of a show cause notice issued by the Central Tax officers of Audit Commissionerate, where the principal place of business of noticees fall under the jurisdiction of multiple Central Tax Commissionerates, a proposal for appointment of common adjudicating authority may be sent to the Board.*

7.3 *In respect of show cause notices issued by the officers of DGGI prior to issuance of Notification No. 02/2022-Central Tax dated 11th March, 2022, involving cases mentioned in para 7.1 above and where no adjudication order has been issued till date, the same may be made answerable to the Additional/Joint Commissioners of Central Tax, having All India jurisdiction, in accordance with the criteria mentioned in para 7.1 above, by issuing corrigendum to such show cause notices.”*

2. It is requested that suitable trade notices may be issued to publicize the contents of this circular.
3. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)

Principal Commissioner (GST)



F.No. CBIC-20001/2/2022-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 6th July, 2022

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/
Commissioners of Central Tax (All)
The Principal Directors General/Directors General (All)

Madam/Sir,

Subject: Mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B and statement in FORM GSTR-1 –reg.

The process of return filing has been simplified over a period of time. With effect from December 2020, **FORM GSTR-3B** is getting auto-generated on the portal by way of auto-population of input tax credit (ITC) from **FORM GSTR-2B** (auto-generated inward supply statement) and auto-population of liabilities from **FORM GSTR-1** (Outward supply statement), with an editing facility to the registered person. However, it has been observed that there still are some infirmities in information being furnished by the registered person in relation to inter-State supplies effected to unregistered person, registered person paying tax under section 10 of the Central Goods and Services Tax Act, 2017 (composition taxable persons) and UIN holders. Also, there appears to be lack of clarity regarding reporting of information about reversal of Input Tax Credit (hereinafter referred to as the “ITC”) as well as ineligible ITC in Table 4 of **FORM GSTR-3B**.

2. It is desirable that correct reporting of information is done by the registered person in **FORM GSTR-3B** and **FORM GSTR-1** so as to ensure correct accountal and accurate settlement of funds between the Central and State Governments. Accordingly, in order to ensure uniformity in return filing, the Board, in exercise of its powers conferred under sub-section (1) of section 168 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”), hereby clarifies various issues in succeeding paragraphs.

3. Furnishing of information regarding inter-State supplies made to unregistered persons, composition taxable persons and UIN holders:

3.1 It has been noticed that a number of registered persons are not reporting the correct details of inter-State supplies made to unregistered persons, to registered person paying tax



under section 10 of the CGST Act (composition taxable persons) and to UIN holders, as required to be declared in Table 3.2 of **FORM GSTR-3B**, under the notion that the taxable value of the same along with tax payable has already been reported in Table 3.1 of the said **FORM**. In certain cases, it has also been noticed that the address of unregistered person are captured incorrectly by the supplier, especially those belonging to banking, insurance, finance, stock broking, telecom, digital payment facilitators, OTT platform services providers and E-commerce operators, leading to wrong declaration of Place of Supply (PoS) in both the invoices issued under section 31 of the CGST Act, as well as in Table 3.2 of **FORM GSTR-3B**.

3.2 In this context, it may be noted that the information sought in Table 3.2 of **FORM GSTR-3B** is required to be furnished, **place of supply-wise**, even though the details of said supplies are already part of the supplies declared in Table 3.1 of the said **FORM**. For assisting the registered persons, Table 3.2 of **FORM GSTR-3B** is being auto-populated on the portal based on the details furnished by them in their **FORM GSTR-1**.

3.3 Accordingly, it is hereby advised that the registered persons making inter-State supplies –

- (i) to the unregistered persons, shall also report the details of such supplies, **place of supply-wise**, in Table 3.2 of **FORM GSTR-3B** and Table 7B or Table 5 **or Table 9/10** of **FORM GSTR-1**, as the case may be;
- (ii) to the registered persons paying tax under section 10 of the SGST/CGST Act (composition taxable persons) and to UIN holders, shall also report the details of such supplies, **place of supply-wise**, in Table 3.2 of **FORM GSTR-3B** and Table 4A or 4C **or 9** of **FORM GSTR-1**, as the case may be, as mandated by the law.
- (iii) shall update their customer database properly with correct State name and ensure that correct PoS is declared in the tax invoice and in Table 3.2 of **FORM GSTR-3B** while filing their return, so that tax reaches the Consumption State as per the principles of destination-based taxation system.

3.4 It is further advised that any amendment carried out in Table 9 or Table 10 of **FORM GSTR-1** or any entry in Table 11 of **FORM GSTR-1** relating to such supplies should also be given effect to while reporting the figures in Table 3.2 of **FORM GSTR-3B**.

4. Furnishing of information regarding ITC availed, reversal thereof and ineligible ITC in Table 4 of GSTR-3B

4.1 Table 4(A) of the **FORM GSTR-3B** is getting auto-populated from various entries of **FORM GSTR-2B**. However, various reversals of ITC on account of rule 42 and 43 of the CGST Rules or for any other reasons are required to be made by the registered person, on his own ascertainment, in Table 4(B) of the said **FORM**. It has been observed that different practices are being followed to report ineligible ITC as well as various reversals of ITC in **FORM GSTR-3B**.



4.2 It may be noted that the amount of Net ITC Available as per Table 4(C) of **FORM GSTR-3B** gets credited into the electronic credit ledger (ECL) of the registered person. **Therefore, it is important that any reversal of ITC or any ITC which is ineligible under any provision of the CGST Act should not be part of Net ITC Available in Table 4(C) and accordingly, should not get credited into the ECL of the registered person.**

4.3 In this context, it is pertinent to mention that the facility of static month-wise auto-drafted statement in **FORM GSTR-2B** for all registered persons has been introduced from August, 2020. The statement provides invoice-wise total details of ITC available to the registered person including the details of the ITC on account of import of goods. Further, details of the said statement are auto-populated in Table 4 of return in **FORM GSTR-3B** which are editable in the hands of registered person. **It may be noted that the entire set of data that is available in FORM GSTR-2B is carried to the table 4 in FORM GSTR-3B, except for the details regarding ITC that is not available to the registered person either on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act or where the recipient of an intra-State supply is located in a different State / UT than that of place of supply.** It is pertinent to mention that the ineligible ITC, which was earlier not part of calculation of eligible/available ITC, is now part of calculation of eligible/available ITC in view of auto-population of Table 4(A) of **FORM GSTR-3B** from various tables of **FORM GSTR-2B**. Thereafter, the registered person is required to identify ineligible ITC as well as the reversal of ITC to arrive at the Net ITC available, which is to be credited to the ECL. In light of the above, the procedure to be followed by registered person is being detailed hereunder for correct reporting of information in the return:

- A. Total ITC (eligible as well as ineligible) is being auto-populated from statement in **FORM GSTR-2B** in different fields of Table 4A of **FORM GSTR-3B** *(except for the ineligible ITC on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act or where the recipient of an intra-State supply is located in a different State / UT than that of place of supply)*.
- B. Registered person will report reversal of ITC, which are absolute in nature and are not reclaimable, such as on account of rule 38 (reversal of credit by a banking company or a financial institution), rule 42 (reversal on input and input services on account of supply of exempted goods or services), rule 43 (reversal on capital goods on account of supply of exempted goods or services) of the CGST Rules and for reporting ineligible ITC under section 17(5) of the CGST Act in **Table 4 (B) (1)**.
- C. Registered person will report reversal of ITC, which are not permanent in nature and can be reclaimed in future subject to fulfilment of specific conditions, such as on account of rule 37 of CGST Rules (non-payment of consideration to supplier within 180 days), section 16(2)(b) and section 16(2)(c) of the CGST Act in **Table 4 (B) (2)**. Such ITC may be reclaimed in **Table 4(A)(5)** on fulfilment of necessary conditions. Further, all such reclaimed ITC shall also be shown in **Table 4(D)(1)**. **Table 4 (B) (2)** may also be used by registered person for reversal of any ITC availed in **Table 4(A)** in previous tax periods because of some inadvertent mistake.



- D. Therefore, the net ITC Available will be calculated in Table 4 (C) which is as per the formula $(4A - [4B (1) + 4B (2)])$ and same will be credited to the ECL of the registered person.
- E. **As the details of ineligible ITC under section 17(5) are being provided in Table 4(B), no further details of such ineligible ITC will be required to be provided in Table 4(D)(1).**
- F. **ITC not available, on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act or where the recipient of an intra-State supply is located in a different State / UT than that of place of supply, may be reported by the registered person in Table 4D (2). Such details are available in Table 4 of FORM GSTR-2B.**

4.4 Accordingly, it is clarified that the reversal of ITC of ineligible credit under section 17(5) or any other provisions of the CGST Act and rules thereunder is required to be made under Table 4(B) and not under Table 4(D) of FORM GSTR-3B.

4.5 For ease of understanding, the manner of reversals is being elucidated in the illustrations enclosed as **Annexure** to this Circular.

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

6. Difficulty if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Annexure

Illustration:

1. A Registered person M/s ABC is a manufacturer (supplier) of goods. He supplies both taxable as well as exempted goods. In a specific month, say April, 2022, he has received input and input services as detailed in Table 1 below. The details of auto-population of Input Tax Credit on all Inward Supplies in various rows of Table 4 (A) of FORM GSTR-3B are shown in column (7) of the Table 1 below:

Table 1

S. No.	Details	IGST	CGST	SGST	Total	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	ITC on Import of goods	1,00,000	-	-	1,00,000	Auto-populated in Table 4(A)(1)
2	ITC on Import of Services	50,000	-	-	50,000	
3	ITC on Inward Supplies under RCM	-	25,000	25,000	50,000	Auto-populated in Table 4(A)(3)
4	ITC on Inward Supplies from ISD	50,000	-	-	50,000	Auto-populated in Table 4(A)(4)
5	ITC on other inward supplies	2,00,000	1,50,000	1,50,000	5,00,000	Auto-populated in Table 4(A)(5)
6	Total	4,00,000	1,75,000	1,75,000	7,50,000	
Other relevant facts: Note 1: Of the other inward supplies mentioned in row (5), M/s ABC has received goods on which ITC is barred under section 17(5) of the CGST Act having integrated tax of Rs. 50,000/- Note 2: In terms of rule 42 and 43 of the CGST Rules, M/s ABC is required to reverse ITC of Rs. 75,500/- integrated tax, Rs. 52,000/- central tax and Rs. 52,000/- state tax.						

Note 3: M/s ABC had not received the supply during April, 2022 in respect of an invoice for an inwards supply auto-populated in row (5) having integrated tax of Rs. 10,000/-.

Note 4: M/s ABC has reversed ITC of Rs. 500/- central tax and Rs. 500/- state tax on account of Rule 37 i.e. where consideration was not paid to the supplier within 180 days.

Note 5: An amount of ITC of Rs 10,000/ central Tax and Rs 10,000/- state tax, ineligible on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act, has not been auto-populated in Table 4(A) of FORM GSTR-3B from GSTR-2B.

2. Based on the facts mentioned in Table 1 above, M/s ABC is required to avail ITC after making necessary reversals in Table 4 of FORM GSTR-3B as detailed in Table 2 below:

Table 2

4. Eligible ITC				
Details	IGST	CGST	SGST/ UTGST	Explanation
1	2	3	4	
(A) ITC Available (whether in full or part)	----	----	----	
1. Import of Goods	1,00,000	----	----	
2. Import of Services	50,000	----	----	
3. Inward Supplies liable to Reverse Charge (other than 1 & 2 above)	----	25,000	25,000	
4. Inward Supplies from ISD	50,000	----	----	
5. All other ITC	2,00,000	1,50,000	1,50,000	
(B) ITC Reversed / Reduced	----	----	----	

1. Reversal of ITC as per rule 42 and 43 of CGST Rules	125,500	52,000	52,000	1. Refer para 4.3 (B) of circular 2. Reversal of Rs. 75,500/- integrated tax, Rs. 52,000/- central tax and Rs. 52,000/- state tax under rule 42 and 43 [Note 2] 3. Ineligible ITC of Integrated tax of Rs. 50,000/- under section 17(5) [Note 1]
2. Others	10,000	500	500	1. Refer para 4.3 (C) of circular 2. Reversal of integrated tax of Rs. 10,000/-, where supply is not received [Note 3] 3. Reversal of ITC of Rs 500/- central tax and Rs 500/- state tax on account of Rule 37 [Note 4]
(C) Net ITC Available (A)-(B)	2,64,500	122500	122500	C=A1+A2+A3+A4+A5-B1-B2
(D) Ineligible ITC				
1. As per section 17(5)	-	-	-	1. Refer para 4.3 (E) of circular 2. Reversals under section 17(5) are not required to be shown in this row. The same are to be shown under 4(B)(1)
2. Others		10,000	10,000	1. Refer para 4.3(F) of circular 2. Ineligible ITC on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act, which has not been auto-populated in Table 4(A) of GSTR-3B



F.No. CBIC-20001/2/2022-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 6th July, 2022

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/
 Commissioners of Central Tax (All)/
 The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices–Reg

A number of cases have come to notice where the registered persons are found to be involved in issuing tax invoice, without actual supply of goods or services or both (hereinafter referred to as “fake invoices”), in order to enable the recipients of such invoices to avail and utilize input tax credit (hereinafter referred to as “ITC”) fraudulently. Representations are being received from the trade as well as the field formations seeking clarification on the issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), in respect of such transactions involving fake invoices. In order to clarify these issues 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 detailed hereunder.

Sl. No.	Issues	Clarification
1.	In case where a registered person “A” has issued tax invoice to another registered person “B” without any underlying supply of goods or services or both, whether such transaction will be covered as “supply” under section 7 of CGST Act and whether any demand and recovery can be made from ‘A’ in respect of the said transaction under	Since there is only been an issuance of tax invoice by the registered person ‘A’ to registered person ‘B’ without the underlying supply of goods or services or both, therefore, such an activity does not satisfy the criteria of “supply”, as defined under section 7 of the CGST Act. As there is no supply by ‘A’ to ‘B’ in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, no tax liability



	<p>the provisions of section 73 or section 74 of CGST Act.</p> <p>Also, whether any penal action can be taken against registered person 'A' in such cases.</p>	<p>arises against 'A' for the said transaction, and accordingly, no demand and recovery is required to be made against 'A' under the provisions of section 73 or section 74 of CGST Act in respect of the same. Besides, no penal action under the provisions of section 73 or section 74 is required to be taken against 'A' in respect of the said transaction.</p> <p>The registered person 'A' shall, however, be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.</p>
2.	<p>A registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both. 'B' avails input tax credit on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above mentioned invoices issued by 'A', for payment of his tax liability in respect of his said outward supplies. Whether 'B' will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.</p>	<p>Since the registered person 'B' has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act.</p> <p>Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken against 'B' under section 74 of CGST Act, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on 'B' under any other provisions of CGST Act, including under section 122.</p>
3.	<p>A registered person 'A' has issued tax invoice to another registered person 'B' without any underlying supply of goods or services or both. 'B' avails input tax credit on the basis of the said tax invoice and further passes on the said input tax credit to</p>	<p>In this case, the input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, has been utilized by 'B' for passing on of input tax credit by issuing tax invoice to 'C' without any underlying supply of</p>



	<p>another registered person 'C' by issuing invoices without underlying supply of goods or services or both. Whether 'B' will be liable for the demand and recovery and penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.</p>	<p>goods or services or both. As there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction, no tax was required to be paid by 'B' in respect of the same. The input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, is ineligible in terms of section 16 (2)(b) of the CGST Act. In this case, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/ fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' under the provisions of section 73 or section 74 of CGST Act.</p> <p>However, in such cases, 'B' shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services.</p>
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2. The fundamental principles that have been delineated in the above scenarios may be adopted to decide the nature of demand and penal action to be taken against a person for such unscrupulous activity. Actual action to be taken against a person will depend upon the specific facts and circumstances of the case which may involve complex mixture of above scenarios or even may not be covered by any of the above scenarios. Any person who has retained the benefit of transactions specified under sub-section (1A) of section 122 of CGST Act, and at whose instance such transactions are conducted, shall also be liable for penal action under the provisions of the said sub-section. It may also be noted that in such cases of wrongful/ fraudulent availment or utilization of input tax credit, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of input tax credit or refund of tax, provisions of section 132 of the CGST Act may also be invocable, subject to conditions specified therein, based on facts and circumstances of each case.



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

4. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)



F. No. CBIC-20001/2/2022-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 6th July, 2022

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/
 Commissioners of Central Tax (All)
 The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on various issue pertaining to GST- reg.

Various representations have been received from the field formations seeking clarification on certain issues with respect to –

- i. refund claimed by the recipients of supplies regarded as deemed export;
- ii. interpretation of section 17(5) of the CGST Act;
- iii. perquisites provided by employer to the employees as per contractual agreement; and
- iv. utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities.

2. 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 Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarify the issues as under:

S. No.	Issue	Clarification
Refund claimed by the recipients of supplies regarded as deemed export		
1.	Whether the Input Tax Credit (ITC) availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports would be subjected to provisions of Section 17 of the CGST Act, 2017.	The refund in respect of deemed export supplies is the refund of tax paid on such supplies. However, the recipients of deemed export supplies were facing difficulties on the portal to claim refund of tax paid due to requirement of the portal to debit the amount so claimed from their electronic credit ledger. Considering this difficulty, the tax paid on such supplies, has been made available as ITC to the recipients



		vide Circular No. 147/03/2021-GST dated 12.03.2021 only for enabling them to claim such refunds on the portal. The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, the ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017.
2.	Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the “Net ITC” for computation of refund of unutilised ITC under rule 89(4) & rule 89 (5) of the CGST Rules, 2017.	The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the “Net ITC” for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.
Clarification on various issues of section 17(5) of the CGST Act		
3.	Whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?	<p>1. Vide the Central Goods and Service Tax (Amendment Act) 2018, clause (b) of sub-section (5) of section 17 of the CGST Act was substituted with effect from 01.02.2019. After the said substitution, the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act provides as under: <i>“Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.”</i></p> <p>2. The said amendment in sub-section (5) of section 17 of the CGST Act was</p>



		<p>made based on the recommendations of GST Council in its 28th meeting. The intent of the said amendment in sub-section (5) of section 17, as recommended by the GST Council in its 28th meeting, was made known to the trade and industry through the Press Note on Recommendations made during the 28th meeting of the GST Council, dated 21.07.2018. It had been clarified <i>“that scope of input tax credit is being widened, and it would now be made available in respect of Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force.”</i></p> <p>3. Accordingly, it is clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act.</p>
4.	Whether the provisions of sub-clause (i) of clause (b) of sub-section (5) of section 17 of the CGST Act bar availment of ITC on input services by way of “leasing of motor vehicles, vessels or aircraft” or ITC on input services by way of any type of leasing is barred under the said provisions?	<p>1. Sub-clause (i) of clause (b) of sub-section (5) of section 17 of the CGST Act provides that ITC shall not be available in respect of following supply of goods or services or both—</p> <p><i>“(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:</i></p> <p><i>Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an</i></p>



		<p><i>outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply”</i></p> <p>2. It is clarified that “leasing” referred in sub-clause (i) of clause (b) of sub-section (5) of section 17 refers to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items. Accordingly, availment of ITC is not barred under sub-clause (i) of clause (b) of sub-section (5) of section 17 of the CGST Act in case of leasing, other than leasing of motor vehicles, vessels and aircrafts.</p>
Perquisites provided by employer to the employees as per contractual agreement		
5.	Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?	<p>1. Schedule III to the CGST Act provides that “services by employee to the employer in the course of or in relation to his employment” will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.</p> <p>2. Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.</p>



Utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities		
6.	Whether the amount available in the electronic credit ledger can be used for making payment of any tax under the GST Laws?	<ol style="list-style-type: none"> 1. In terms of sub – section (4) of section 49 of CGST Act, the amount available in the electronic credit ledger may be used for making any payment towards output tax under the CGST Act or the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST Act”), subject to the provisions relating to the order of utilisation of input tax credit as laid down in section 49B of the CGST Act read with rule 88A of the CGST Rules. 2. Sub-rule (2) of rule 86 of the CGST Rules provides for debiting of the electronic credit ledger to the extent of discharge of any liability in accordance with the provisions of section 49 or section 49A or section 49B of the CGST Act. 3. Further, output tax in relation to a taxable person (i.e. a person who is registered or liable to be registered under section 22 or section 24 of the CGST Act) is defined in clause (82) of section 2 of the CGST Act as the <u>tax chargeable on taxable supply of goods or services or both but excludes tax payable on reverse charge mechanism</u>. 4. Accordingly, it is clarified that any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person. 5. It is further reiterated that as output tax does not include tax payable under reverse charge mechanism, implying thereby that the electronic credit ledger cannot be used for making payment of



		any tax which is payable under reverse charge mechanism.
7.	Whether the amount available in the electronic credit ledger can be used for making payment of any liability other than tax under the GST Laws?	As per sub-section (4) of section 49, the electronic credit ledger can be used for making payment of output tax only under the CGST Act or the IGST Act. It cannot be used for making payment of any interest, penalty, fees or any other amount payable under the said acts. Similarly, electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.
8.	Whether the amount available in the electronic cash ledger can be used for making payment of any liability under the GST Laws?	As per sub – section (3) of section 49 of the CGST Act, the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the GST Laws.

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

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)



F.No. CBIC-20001/2/2022-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 6th July, 2022

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/
Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification – reg.

Various representations have been received seeking clarification with regard to applicability of para 3.2 of the Circular No. 135/05/2020-GST dated 31.03.2020 in cases where the supplier is required to supply goods at a lower rate under Concessional Notification issued by the Government. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law in this regard across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issue as under:

2. Vide para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020, it was clarified that refund on account of inverted duty structure would not be admissible in cases where the input and output supply are same. Para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020 is reproduced, as under:

“Refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the CGST Act. It is hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same.”

3. The matter has been examined. The intent of para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020 was not to cover those cases where the supplier is making supply of goods under a concessional notification and the rate of tax of output supply is less than the rate of tax



on input supply (of the same goods) at the same point of time due to supply of goods by the supplier under such concessional notification.

4. Therefore, it is clarified that in such cases, refund of accumulated input tax credit on account of inverted structure as per clause (ii) of sub-section (3) of section 54 of the CGST Act, 2017 would be allowed in cases where accumulation of input tax credit is on account of rate of tax on outward supply being less than the rate of tax on inputs (same goods) at the same point of time, as per some concessional notification issued by the Government providing for lower rate of tax for some specified supplies subject to fulfilment of other conditions. **Accordingly, para 3.2 of the Circular No. 135/05/2020-GST dated 31.03.2020 stands substituted as under:**

“3.2 It may be noted that refund of accumulated ITC in terms of clause (ii) of first proviso to sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act.

3.3 There may however, be cases where though inputs and output goods are same but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs. In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund under the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act, other than the cases where output supply is either Nil rated or fully exempted, and also provided that supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC under the said clause.”

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

6. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)



F. No. CBIC-20001/2/2022-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 6th July, 2022

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /
Commissioners of Central Tax (All)
The Principal Directors General / Directors General (All)

Madam/Sir,

Subject: Prescribing manner of re-credit in electronic credit ledger using FORM GST PMT-03A – regarding

Difficulties were being faced by the taxpayers in taking re-credit of the amount in the electronic credit ledger in cases where any excess or erroneous refund sanctioned to them had been paid back by them either on their own or on being pointed by the tax officer. In order to resolve this issue, GSTN has recently developed a new functionality of **FORM GST PMT-03A** which allows proper officer to re-credit the amount in the electronic credit ledger of the taxpayer. Further, sub-rule (4B) in rule 86 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “CGST Rules”) has been inserted vide Notification No. 14/2022-CT dated 05.07.2022 to provide for re-credit in the electronic credit ledger where the taxpayer deposits the erroneous refund sanctioned to him.

2. In order to ensure uniformity in the implementation of the above provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the following:

3. Categories of refunds where re-credit can be done using FORM GST PMT-03 A:

3.1 Reference is invited to sub-rule (4B) of rule 86 of the CGST Rules, which is reproduced as under:

(4B) Where a registered person deposits the amount of erroneous refund sanctioned to him –

- a. under sub-section (3) of section 54 of the Act, or*
- b. under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96,*



*along with interest and penalty, wherever applicable, through **FORM GST DRC-03**, in cash, on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in **FORM GST PMT-03A**.*

3.2 From the above, it can be stated that in respect of the following categories of refund sanctioned erroneously, re-credit of amount in the electronic credit ledger can be done through **FORM GST PMT-03A**, on deposit of such erroneous refund along with interest and penalty, wherever applicable, by the taxpayer:

- a. Refund of IGST obtained in contravention of sub-rule (10) of rule 96.
- b. Refund of unutilised ITC on account of export of goods/services without payment of tax.
- c. Refund of unutilised ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without payment of tax.
- d. Refund of unutilised ITC due to inverted tax structure.

4. Procedure for re-credit of amount in electronic credit ledger:

4.1 The taxpayer shall deposit the amount of erroneous refund along with applicable interest and penalty, wherever applicable, through **FORM GST DRC-03** by debit of amount from electronic cash ledger. While making the payment through **FORM GST DRC-03**, the taxpayer shall clearly mention the reason for making payment in the text box as the deposit of erroneous refund of unutilised ITC, or the deposit of erroneous refund of IGST obtained in contravention of sub-rule (10) of rule 96 of the CGST Rules.

4.2 Till the time an automated functionality for handling such cases is developed on the portal, the taxpayer shall make a written request, in format enclosed as **Annexure-A**, to jurisdictional proper officer to re-credit the amount equivalent to the amount of refund thus paid back through **FORM GST DRC-03**, to electronic credit ledger.

4.3 The proper officer, on being satisfied that the full amount of erroneous refund along with applicable interest, as per the provisions of section 50 of the CGST Act, and penalty, wherever applicable, has been paid by the said registered person in **FORM GST DRC-03** by way of debit in electronic cash ledger, he shall re-credit an amount in electronic credit ledger, equivalent to the amount of erroneous refund so deposited by the registered person, by passing an order in **FORM GST PMT-03A**, preferably within a period of 30 days from the date of receipt of request for re-credit of erroneous refund amount so deposited or from the date of payment of full amount of erroneous refund along with applicable interest, and penalty, wherever applicable, whichever is later.

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



6. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)
Principal Commissioner (GST)



From,

GSTIN - _____

Legal Name- _____

Trade Name- _____

To,

Jurisdictional Proper officer,

Address _____

Subject: Request for re-credit of amount in Electronic Credit Ledger

I/We have been granted refund under the following category (please tick the relevant category):

- a. Refund of IGST, obtained in contravention of sub-rule (10) of rule 96 of the CGST Rules, 2017.
- b. Refund of unutilised ITC on account of export of goods/services without payment of tax.
- c. Refund of unutilised ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without payment of tax.
- d. Refund of unutilised ITC due to inverted tax structure.

2. The details of refund sanction order are as under:

(a) In case of refund of IGST, obtained in contravention of sub-rule (10) of rule 96 of the CGST Rules, 2017:

1. Shipping Bill/ Bill of Export No. & Date _____
2. Amount of IGST paid on export of goods _____
3. Details of Exemption/Concessional Rate Notification used for procuring inputs

4. Amount of refund sanctioned _____
5. Date of credit of refund in Bank Account _____

(b) In other cases of refund:

1. Category of refund & relevant period of refund _____
2. GST RFD-01/01A ARN & Date _____
3. GST RFD-06 Order No. & Date _____
4. Amount of refund claimed _____
5. Amount of refund sanctioned _____



6. Date of credit of refund in Bank Account _____

3. I/We have deposited the erroneous refund amount of Rs. _____ along with interest of Rs. _____ and penalty of Rs. _____ (wherever applicable) vide FORM GST DRC -03 Ref/ARN _____ dated _____ voluntarily on my own ascertainment/ against a notice/order/letter No. _____ dated _____ issued by (details of the tax authority). It is now requested to re-credit an amount equivalent to the amount of erroneous refund, so deposited, in the Electronic Credit Ledger.

4. I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Date:

Signature of Authorized Signatory

Name

Designation / Status



F.No. CBIC-20001/2/2022-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 6th July, 2022

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /
Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Manner of filing refund of unutilized ITC on account of export of electricity-reg.

Reference has been received from Ministry of Power regarding the problem being faced by power generating units in filing of refund of unutilised Input Tax Credit (ITC) on account of export of electricity. It has been represented that though electricity is classified as “goods” in GST, there is no requirement for filing of Shipping Bill/ Bill of Export in respect of export of electricity. However, the extant provisions under Rule 89 of CGST Rules, 2017 provided for requirement of furnishing the details of shipping bill/ bill of export in respect of such refund of unutilised ITC in respect of export of goods. Accordingly, a clause (ba) has been inserted in sub-rule (2) of rule 89 and a Statement 3B has been inserted in **FORM GST RFD-01** of the CGST Rules, 2017 vide notification No. 14/2022-CT dated 5th July, 2022. In order to clarify various issues and procedure for filing of refund claim pertaining to export of electricity, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby prescribes the following procedure for filing and processing of refund of unutilised ITC on account of export of electricity:

2. Filing of refund claim:

2.1 Till the time necessary changes are carried out on the portal, the applicant would be required to file the application for refund under “**Any Other**” category electronically in **FORM GST RFD-01**, on the portal. In remark column of the application, the taxpayer would enter “Export of electricity- without payment of tax (accumulated ITC)”. At this stage, the applicant is not required to make any debit from the electronic credit ledger.

2.2 The applicant would be required to furnish/upload the details contained in Statement 3B (and not in statement 3) of **FORM GST RFD-01** (in pdf format), containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement.



2.3 The applicant will also be required to upload the copy of **statement of scheduled energy for electricity exported by the Generation Plants** (in format attached as **Annexure-I**) issued as part of Regional Energy Account by Regional Power Committee Secretariat (“RPC”) under regulation 2 (1)(nnn) of the CERC (Indian Electricity Grid Code) Regulations, 2010, for the period for which refund has been claimed and the copy of the relevant agreement(s) detailing the tariff per unit for the electricity exported. The applicant will also give details of calculation of the refund amount in Statement -3A of **FORM GST RFD-01** by uploading the same in pdf format along with refund application in **FORM GST RFD-01**.

3. Relevant date for filing of refund:

As per sub-section (1) of section 54 of the CGST Act, 2017, time period of two years from the relevant date has been specified for filing an application of refund. Electrical energy is in nature of “goods” under GST and is exported on a continuous basis through the transmission lines attached to the land. Therefore, it is not possible to determine the specific date on which a specific unit of electricity passes through the frontier. However, a statement of scheduled energy for export of electricity by a Generation Plant is issued by Regional Power Committee RPC Secretariat, as a part of Regional Energy Account (hereinafter referred to as “REA”) under Regulation 2(1)(nnn) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010. Accordingly, it is hereby clarified that in case of export of electricity, the relevant date shall be the last date of the month, in which the electricity has been exported as per monthly Regional Energy Account (REA) issued by the Regional Power Committee Secretariat under regulation 2(1)(nnn) of the CERC (Indian Electricity Grid Code) Regulations, 2010.

4. Processing of refund claim by proper officer

4.1 Rule 89(4) provides for the formula for calculation of refund of unutilised ITC on account of zero-rated supplies which is reproduced as under:

$$\text{Refund Amount} = (\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero rated supply of services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}$$

Export of electricity being zero-rated supply, refund of unutilised ITC on account of export of electricity would also be calculated using the same formula.

4.2 The turnover of export of electricity would be calculated by multiplying the energy exported during the period of refund with the tariff per unit of electricity, specified in the agreement. It is clarified that **quantum of Scheduled Energy exported, as reflected in the Regional Energy Account (REA) issued by Regional Power Committee (RPC) Secretariat for a particular month, will be deemed to be the quantity of electricity exported during the said month and will be used for calculating the value of zero-rated supply in case of export of electricity. Such monthly Regional Energy Account (REA) issued by Regional Power Committee (RPC) Secretariat, as uploaded on the websites of RPC Secretariat,**



can be downloaded by GST officers as well as the concerned electricity generator for the purpose of refund under Rule 89(4) of CGST Rules 2019. The **calculation of the value of the exports of electricity** during the month, can be done based on the quantity of scheduled electricity exported during the month by the exporter (as detailed in the REA for the month) and the tariff rate per unit (details of which will have to be provided by the concerned exporter based on agreed contracted rates).

4.3 It is also mentioned that usually, the quantum of electricity exported as specified in the statement of scheduled energy exported and on invoice should be same. However, in certain cases, it might happen that the quantum of electricity exported as mentioned on invoice is different from the quantum of electricity exported mentioned on the statement of scheduled energy uploaded with REA on Regional Power Committee website. In such cases, turnover of export of electricity shall be calculated using the lower of the quantum of electricity exported mentioned on the statement of scheduled energy exported and that mentioned on the invoice issued on account of export of electricity.

4.4 Adjusted Total Turnover shall be calculated as per the clause (E) of sub-rule (4) of rule 89. However, as electricity has been wholly exempted from the levy of GST, therefore, as per the definition of adjusted total turnover provided at clause (E) of the sub-rule (4) of rule 89, the turnover of electricity supplied domestically would be excluded while calculating the adjusted total turnover. The proper officer shall invariably verify that no ITC has been availed on the inputs and inputs services utilised in making domestic supply of electricity.

4.5 The proper officer shall calculate the admissible refund amount as per the formula provided under rule 89(4) and as per the clarification furnished above. Further, upon scrutiny of the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the applicant, in writing, if required, to debit the said amount from the electronic credit ledger through **FORM GST DRC-03**. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in **FORM GST RFD-06** and the payment order in **FORM GST RFD-05**.

5. Difficulties, if any, in implementation of these instructions may be informed to the Board (gst-cbec@gov.in).

(Sanjay Mangal)
Principal Commissioner (GST)

**Annexure-I****Statement of Scheduled Energy for exported electricity by Generation Plants (Using Fuel except nuclear, gas, domestic linkage coal, mix fuel) for claiming Input Tax Credit**

1. Month in which electricity was exported : (mmm/yyyy)
2. Name of Generating Station and Location : (insert name of Generating station, District, State)
3. Name of Company : (insert name of Company)
4. GSTIN of Company : (insert GSTIN of Company)
5. Installed capacity of Generating Station : (insert Installed capacity in MW)
6. Connection point, State and region : (specify "STU/ISTS" – insert name of sub-station), state, region

7. Details of the Scheduled Energy during the month:

Domestic	
Name of Domestic Entity	Scheduled Energy in (MU)
(buyer entity 1)	de1
(buyer entity 2)	de2
(PX)	de3
--	--
(buyerentityN)	deN
Subtotal Domestic Sale (A)	Sum of (de1+de2+.....+deN)
Cross Border	
Country 1_entity1	ee1
Country 2_entity2	ee2
--	--
CountryN_entity3	eeN
Subtotal Export (B)	Sum of (ee1+ee2+....+eeN)
Total Scheduled Energy of Generating Station (C=A+B)	(insert sum of subtotal-A and subtotal-B)

Note: As per Complementary Commercial Mechanism under Section 6.1 (d) of CERC (Indian Electricity Grid Code) Regulations, 2010; beneficiaries shall pay energy charges for the scheduled dispatch, in accordance with the relevant contracts/ orders of CERC.



F.No. CBIC-20001/2/2022-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 6th July, 2022

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /
Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Withdrawal of Circular No. 106/25/2019-GST dated 29.06.2019 – Reg.

Kind attention is invited to Circular No. 106/25/2019-GST dated 29.06.2019 wherein certain clarifications were given in relation to rule 95A, inserted in the Central Goods and Services Tax Rules, 2017 w.e.f. 01.07.2019, for refund of taxes paid on inward supply of indigenous goods by retail outlets established at departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange.

2. The said rule 95A has been omitted, retrospectively w.e.f. 01.07.2019, vide notification No. 14/2022-Central Tax, dated 05.07.2022. Accordingly, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017, hereby withdraws, *ab-initio*, Circular No 106/25/2019-GST dated 29th June, 2019.

3. It is requested that suitable trade notices may be issued to publicize the contents of this circular. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)



Circular No. 177/09/2022-TRU

CBIC-190354/176/2022-TRU

Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)

**Room No. 146G, North Block,
New Delhi, the 3rd August, 2022**

To,
The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/
Commissioner of Central Tax (All),
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

**Subject: Clarifications regarding applicable GST rates & exemptions on certain services—
reg.**

Representations have been received seeking clarification on the following issues:

1. Rate of GST applicable on supply of ice-cream by ice-cream parlors during the period from 01.07.2017 to 05.10.2021;
2. Applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions;
3. Whether storage or warehousing of cotton in baled or ginned form is covered under entry 24B of Notification No. 12/2017-Central Tax (Rate) which exempted services by way of storage and warehousing of raw vegetable fibres such as cotton before 18.07.2022;
4. Whether exemption under Sl. No. 9B of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 covers services associated with transit cargo both to and from Nepal and Bhutan;
5. Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government departments;
6. Whether the activity of selling of space for advertisement in souvenirs is eligible for concessional rate of 5%;
7. Taxability and applicable rate of GST on transport of minerals from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time;
8. Whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or upfront amount charged for long term lease of land and are eligible for the same tax treatment;



9. Applicability of GST on payment of honorarium to the Guest Anchors;
10. Whether the additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST;
11. Applicability of GST on services in the form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF);
12. Whether sale of land after levelling, laying down of drainage lines etc., is taxable under GST;
13. Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers;
14. Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt under Sr. No. 15(b) of Notification No. 12/2017-Central Tax (Rate) transport of passengers by non-air conditioned contract carriage;
15. Whether supply of service of construction, supply, installation and commissioning of dairy plant on turn-key basis constitutes a composite supply of works contract service and is eligible for concessional rate of GST prior to 18.07.2022;
16. Applicability of GST on tickets of private ferry used for passenger transportation.

2. The issues have been examined by GST Council in the 47th meeting held on 28th and 29th June, 2022. The issue-wise clarifications as recommended by the GST Council are below:

3. Rate of GST applicable on supply of ice-cream by ice-cream parlors during the period from 01.07.2017 to 05.10.2021

3.1 On the recommendation of the GST Council in its 45th meeting, it was clarified vide circular 164/20/2021-GST dated 06.10.2021 that ice cream parlours sell already manufactured ice-cream and they do not have a character of a restaurant and hence, ice cream sold by a parlour or any similar outlet attracts standard rate of GST @ 18% with ITC.

3.2 Representations have been received requesting that GST at 18% may be levied on supply of ice-cream by ice-cream parlors with effect from 06.10.2021.

3.3 It has been represented that ice cream parlors which paid GST @ 5% without ITC in view of prevailing doubt before the issuance of the Circular dated 6.10.2021 did not avail ITC and paid 5% in cash. Such ice-cream parlors have thus foregone significant ITC benefit.

3.4 Considering the overall circumstances of the case, it is clarified that past cases of payment of GST on supply of ice-cream by ice-cream parlors @ 5% without ITC shall be treated as fully GST paid to avoid unnecessary litigation. Since the decision is only to regularize the past practice, no refund of GST shall be allowed, if already paid at 18%. With effect from 6.10.2021, the ice cream parlors are required to pay GST on supply of ice-cream at the rate of 18% with ITC.

4. Applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions



4.1 Representations have been received regarding applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions.

4.2 In this regard, it is stated that educational services supplied by educational institutions to its students are exempt from GST vide entry 66 of the notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 relevant portion of which reads as under, -

“Services provided –

a. *by an educational institution to its students, faculty and staff;*

[(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;]...”

4.3 Therefore, it can be seen that all services supplied by an ‘educational institution’ to its students are exempt from GST. Consideration charged by the educational institutes by way of entrance fee for conduct of entrance examination is also exempt. The exemption is wide enough to cover the amount or fee charged for admission or entrance, or amount charged for application fee for entrance, or the fee charged from prospective students for issuance of eligibility certificate to them in the process of their entrance/admission to the educational institution. Services supplied by an educational institution by way of issuance of migration certificate to the leaving or ex-students are also covered by the exemption. Accordingly, such activities of educational institution are also exempt.

4.4 Accordingly, it is clarified that the amount or fee charged from prospective students for entrance or admission, or for issuance of eligibility certificate to them in the process of their entrance/admission as well as the fee charged for issuance of migration certificates by educational institutions to the leaving or ex-students is covered by exemption under Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

5. Whether storage or warehousing of cotton in baled or ginned form is covered under entry 24B of Notification No. 12/2017-Central Tax (Rate) which exempted services by way of storage and warehousing of raw vegetable fibres such as cotton before 18.07.2022.

5.1 Representations have been received regarding applicability of GST exemption on the service of storage or warehousing of cotton in baled or ginned form.

5.2 Prior to 18.07.2022, entry 24 B of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 exempted services by way of storage and warehousing of, inter alia, raw vegetable fibers such as cotton, flax, jute etc. Cotton Fiber glossary by **barnhardt cotton.net** defines ‘cotton staple, virgin cotton or raw cotton’ as cotton fibers that are removed from the cotton seed by the gin. Further, CESTAT Chandigarh in the case of R.K.& Sons vs CCE, Rohtak dated 14th July 2016 has observed as under:

“Cotton (with seeds) as plucked from cotton plants can hardly be called cotton fibre in which case cotton fibre would come into existence only after the seeds are ginned away



from cotton plucked from cotton plants. Cotton fibre obtained by ginning cotton plucked cotton plants is nothing but raw cotton fibre because there cannot be rawer form of cotton fibre obtained from cotton-with-seeds plucked from cotton plants.”

5.3 Accordingly, it is clarified that service by way of storage or warehousing of cotton in ginned and or baled form was covered under entry 24B of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 in the category of raw vegetable fibres such as cotton. It may however be noted that this exemption has been withdrawn w.e.f 18.07.2022

6. Whether exemption under Sl. No. 9B of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 covers services associated with transit cargo both to and from Nepal and Bhutan

6.1 Representations have been received regarding applicability of GST on transportation of empty containers returning from Nepal and Bhutan after delivery of transit cargo, to India.

6.2 GST on supply of services associated with transit cargo to Nepal and Bhutan was exempted w.e.f 29.09.2017 based on recommendations of the 20th GST Council Meeting. The opening sentence of the Agenda Item 7(ix) placed before the GST Council on this issue, makes it clear that the proposal was to exempt supply of services associated with transit cargo both to and from Nepal and Bhutan.

6.3 Accordingly, as recommended by the GST Council, it is clarified that exemption under Sl. No. 9B of Notification 12/2017- Central Tax (Rate) covers services associated with transit cargo both **to and from** Nepal and Bhutan.

6.4 It is also clarified that movement of empty containers from Nepal and Bhutan, after delivery of goods there, is a service associated with the transit cargo to Nepal and Bhutan and is therefore covered by the exemption.

6.5 Needless to say that the cargo has to be transshipped / transited to Nepal and Bhutan, as per Regulations under the Customs Act read with the Treaties for Trade & Transit with Nepal & Bhutan. Under the regulations/procedures, the container number, which is a unique alpha numeric identifier for the container, is declared. Further, the Customs broker / shipping line / carrier is responsible for making available a track and trace facility for locating goods brought for transshipment.

6.6 With respect to transit or transshipment of cargo to Nepal, specific regulations namely Transshipment of Cargo to Nepal under Electronic Cargo Tracking System Regulations, 2019 have been notified. It is relevant to mention here that as per these regulations also, the authorized carrier has to execute a general bond for an amount as directed by the proper officer. The authorized carrier also has to procure ECTS (Electronic Cargo Tracking System) from a bi-laterally appointed managed service provider. In order to discharge the bond, the proper officer of customs has to



extract trip reports from the ECTS web application as proof of completion of transshipment. The reconciliation of transshipment of consignments shall be carried out on the basis of trip report, by the proper officer at the Ports of Kolkata, Haldia or Visakhapatnam, as the case may be, and then only the general bond submitted by the authorised carrier will be re-credited or discharged.

6.7 As can be seen from the above, the regulations governing transit / transshipment have to be followed in addition to the ensuring that an electronic track and trace facility is in place. This facility uses container numbers to locate the cargo. Thus, it is verifiable that the empty container returning from Nepal or Bhutan is the same container which was used to deliver goods to Nepal or Bhutan.

7. Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government departments

7.1 Representations have been received regarding taxability of sanitation and conservancy services supplied to Army and other Central and State Government departments.

7.2 Municipalities and Panchayats and other local authorities such as Cantonment Boards listed in Section 2(69) of the Central Goods and Services Tax act, 2017 carry out functions entrusted to them under articles 243W & 243G of the Constitution respectively. Functions that may be entrusted to panchayats and municipalities are listed in Schedule 11 & 12 of the Constitution. Central Government, State Governments & Union Territories also perform functions listed in Schedule 11 & 12 such as irrigation, public health etc.

7.3 Services by Central Government, State Government, Union Territory or any local authority by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the constitution or to a municipality under article 243W of the constitution have been declared as 'neither a supply of goods nor a supply of service' vide notification no. 14/2017- Central Tax (Rate) dated 28.06.2017.

7.4 The exemption under entry 3& 3A of notification 12/2017- Central Tax (Rate) dated 28.06.2017 has been given on pure services & composite supplies procured by Central Government, State Government, Union Territories or local authorities for performing functions listed in the 11th and 12th schedule of the constitution.

7.5 It is clarified that if such services are procured by Indian Army or any other Government Ministry/Department which does not perform any functions listed in the 11th and 12th Schedule, in the manner as a local authority does for the general public, the same are not eligible for exemption under Sl. No. 3 and 3A of Notification 12/2017- Central Tax (Rate).

8. Whether the activity of selling of space for advertisement in souvenirs is eligible for concessional rate of 5%.



8.1 Representation has been received regarding the GST rate applicable on selling of space for advertisement in souvenirs published in the form of books by different institutions/organizations like educational institutions, social, cultural and religious organizations including clubs etc.

8.2 As per serial number (i) of entry 21 of notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 selling of space for advertisement in print media attracts GST @ 5%. The term 'print media' has been defined in clause (zt) of notification No.12/2017-Central Tax (Rate) dated 28.06.2017 as under:

"print media" means, —

- i. *'book' as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867), but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes;*
- ii.

8.3 Further, sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 defines 'book' as follows:

"Book" includes every volume, part or division of a volume, and pamphlet, in any language and every sheet of music, map, chart or plan separately printed.

8.4 It therefore appears that 'book' has been defined in the Press and Registration of Books Act, 1867 in an inclusive manner with a wide ambit which would cover souvenir book also.

8.5 Accordingly, as recommended by the GST Council, it is clarified sale of space for advertisement in souvenir book is covered under serial number (i) of entry 21 of Notification No. 11/2017-Central Tax (Rate) and attracts GST @ 5%.

9. Taxability and applicable rate of GST on transport of minerals from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time.

9.1 Representations have been received to clarify the taxability of transport of minerals within a mining area, say from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time and whether the same would be covered under Sr. No. 18 of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 which exempts transport of goods by road except by a GTA.

9.2 Usually in such cases the vehicles such as tippers, dumpers, loader, trucks etc., are given on hire to the mining lease operator. Expenses for fuel are generally borne by the recipient of service. The vehicles with driver are at the disposal of the mining lease operator for transport of minerals within the mine area (mining pit to railway siding, beneficiation plant etc.) as per his requirement during the period of contract.



9.3 Such services are nothing but “rental services of transport vehicles with operator” which fall under heading 9966 and attract GST @ 18% under Sr. No. 10 part (iii) of notification No. 11/2017- Central Tax (Rate) dated 28.06.2017. The person who takes the vehicle on rent defines how and when the vehicles will be operated, determines schedules, routes and other operational considerations. The person who gives the vehicles on rent with operator can not be said to be supplying the service by way of transport of goods.

9.4 Accordingly, as recommended by the GST Council, it is clarified that such renting of trucks and other freight vehicles with driver for a period of time is a service of renting of transport vehicles with operator falling under Heading 9966 and not service of transportation of goods by road. This being so, it is not eligible for exemption under Sl. No. 18 of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017. On such rental services of goods carriages where the cost of fuel is included in the consideration charged from the recipient of service, GST rate has been reduced from 18% to 12% with effect from 18.07.2022. Prior to 18.07.2022, it attracted GST at the rate of 18%.

10. Whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or of upfront amount charged for long term lease of land and are eligible for the same tax treatment;

10.1 Representation has been received seeking clarification whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or upfront amount charged for long term lease of land and are eligible for the same tax treatment.

10.2 As per entry 41 of the notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 upfront amount, which is defined as “*upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease (of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20 per cent or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area*”, is exempt from GST

10.3 Allowing choice of location of plot is integral part of supply of long-term lease of plot and therefore, location charge is nothing but part of consideration charged for long term lease of plot. Being charged upfront along with the upfront amount for the lease, the same is exempt.

10.4 Accordingly, as per recommendation of the GST Council, it is clarified that location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land and are eligible for the same tax treatment, and thus eligible for exemption under Sl. No. 41 of notification no. 12/2017- Central Tax (Rate) dated 28.06.2017.

11. Applicability of GST on payment of honorarium to the Guest Anchors



11.1 Representation has been received regarding applicability of GST on honorarium paid to Guest Anchors. Sansad TV and other TV channels invite guest anchors for participating in their shows and pays remuneration to them in the form of honorarium. Some of the guest anchors have requested payment of GST @ 18% on the honorarium paid to them for such appearances.

11.2 It is clarified that supply of all goods & services are taxable unless exempt or declared as 'neither a supply of goods nor a supply of service'. Services provided by the guest anchors in lieu of honorarium attract GST liability. However, guest anchors whose aggregate turnover in a financial year does not exceed Rs 20 lakhs (Rs 10 lakhs in case of special category states) shall not be liable to take registration and pay GST.

12. Whether the additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST

12.1 Representation has been received regarding taxability of additional toll fees collected by the Concessionaires from the vehicles which is not having Fastag.

12.2 Entry 23 of notification No.12/2017- Central Tax (Rate) dated 28th June, 2017 exempts service by way of access to a road or a bridge on payment of toll charges.

12.3 Ministry of Road Transport & Highways (MORTH) vide circular dated 16.02.2021 has directed to collect additional amount from the users of the road to the extent of two times of the fees applicable to that category of vehicle which is not having a valid functional Fastag.

12.4 Essentially, the additional amount collected from the users of the road not having a functional Fastag, is in the nature of Toll Charges and should be treated as additional toll charges.

12.5 On a similar issue of collection of overloading charges in the form of a higher toll (2/4/6/7 times of the base rate of toll), it has already been clarified vide circular number 164/20/2021-GST dated 06.10.2021, which was issued on the basis of recommendation of GST Council that overloading charges at toll plazas would get the same treatment as given to toll charges.

12.6 Therefore, it is clarified that additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and may be given the same treatment as given to toll charges.

13. Applicability of GST on services in form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF)

13.1 Representations have been received to clarify whether GST is applicable on services by way of Assisted Reproductive Technology (ART) procedures such as In vitro fertilization (IVF).

13.2 Health care services provided by a clinical establishment, an authorized medical practitioner or para-medics are exempt. [Sl. No. 74 of notification No. 12/2017- Central Tax (Rate) dated 28.06. 2017].



13.3 Health care services is defined vide 2(zg) of the notification No. 12/2017- Central Tax (Rate) dated 28.06. 2017 as –

“health care services” means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.”

13.4 The abnormality/disease/ailment of infertility is treated using ART procedure such as IVF. It is clarified that services by way of IVF are also covered under the definition of health care services for the purpose of above exemption notification.

14. Whether sale of land after levelling, laying down of drainage lines etc., is taxable under GST

14.1 Representation has been received requesting for clarification regarding applicability of GST on sale of land after levelling, laying down of drainage lines etc.

14.2 As per Sl no. (5) of Schedule III of the Central Goods and Services Tax Act, 2017, ‘sale of land’ is neither a supply of goods nor a supply of services, therefore, sale of land does not attract GST.

14.3 Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered by Sr. No. 5 of Schedule III of the Central Goods and Services Tax Act, 2017 and accordingly does not attract GST.

14.4 However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.

15. Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers

15.1 In case of services provided by a non-body corporate to a body corporate by way of renting of any motor vehicle for transport of passengers, tax is required to be paid by the body corporate under RCM.

15.2 Representations have been received to clarify whether RCM is applicable on service of transportation of passengers (Heading 9964) or on renting of motor vehicle designed to carry passengers (Heading 9966).

15.2 Renting of motor vehicle with operator for transport of passengers falls under Heading 9966. According to the explanatory notes to heading 9966, the service covered here is renting of motor vehicle for transport of passengers for a period of time where the renter defines how and



when the vehicles will be operated, determining schedules, routes and other operational considerations.

15.4 'Passenger transport services' on the other hand fall under Heading 9964. According to the explanatory notes Heading 9964 covers passenger transport services over pre-determined routes on pre-determined schedules.

15.5 Therefore, a clear distinction exists in service of transport of passengers and renting of a vehicle that is used for transport.

15.6 Accordingly, as recommended by the GST Council, it is clarified that where the body corporate hires the motor vehicle (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the service would fall under Heading 9966, and the body corporate shall be liable to pay GST on the same under RCM. It may be seen that reverse charge thus would apply on act of renting of vehicles by body corporate and in such a case, it is for the body corporate to use in the manner as it likes subject to agreement with the person providing vehicle on rent.

15.7 However, where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under Heading 9964 and the body corporate shall not be liable to pay GST on the same under RCM.

16. Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt under Sr. No. 15(b) of Notification No. 12/2017-Central Tax (Rate) transport of passengers by non-air conditioned contract carriage

16.1 Representations have been received to clarify whether the engagement of non-air conditioned contract carriages by firms for transportation of their employees to and from work is exempt under entry at Sr. No. 15(b) of notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

16.2 Sr. No. 15 (b) of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 exempts *"transport of passengers, with or without accompanied belongings, by non-air conditioned contract carriage, other than radio taxi, for transport of passengers, excluding tourism, conducted tour, charter or hire."*

16.3 It is clarified that 'charter or hire' excluded from the above exemption entry is charter or hire of a motor vehicle for a period of time, where the renter defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations.

16.4 In other words, the said exemption would apply to passenger transportation services by non-air conditioned contract carriages falling under Heading 9964 where according to explanatory notes, transportation takes place over pre-determined route on a pre-determined schedule. The exemption shall not be applicable where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free



to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider.

17. Whether supply of service of construction, supply, installation and commissioning of dairy plant on turn-key basis constitutes a composite supply of works contract service and is eligible for concessional rate of GST prior to 18.07.2022.

17.1 Representation has been received seeking clarification regarding the applicable GST rate on service of construction, supply, installation and commissioning of a 2.00 LLPD dairy plant on turn-key basis.

17.2 In case of a turn key project for construction, supply, installation and commissioning of a 2.00 LLPD dairy plant, it has been held by Advance Ruling Authorities of Bihar and Gujarat that the same does not result into an immovable property and is therefore not a supply of works contract. This being so, such supply is not eligible for concessional rate of 12% applicable on works contract supplied by way of construction, erection, commissioning, or installation of original works pertaining to mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.

17.3 In this regard, it may be seen that prior to 18.07.2022, serial number 3(v)(f) of notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 prescribes GST rate of 12 % on the composite supply of works contract by way of construction, erection, commissioning, or installation of original works pertaining to *mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages*.

17.4 It is clarified that a contract of the nature described here for construction, installation and commissioning of a dairy plant constitutes supply of works contract. There is no doubt that dairy plant which comes into existence as a result of such contracts is an immovable property.

17.5 It is also clarified that such works contract services were eligible for concessional rate of 12% GST under serial number 3(v)(f) of notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 prior to 18.07.2022. With effect from 18.07.2022, such works contract services would attract GST at the rate of 18% in view of amendment carried out in notification No. 11/2017- Central Tax (Rate) vide notification No. 03/2022- Central Tax (Rate).

18. Applicability of GST on tickets of private ferry used for passenger transportation.

18.1 Representations have been received seeking clarification on applicability of GST on private ferry tickets. It has been stated that these private ferries are used as means of transport from one island to another in Andaman and Nicobar Islands.

18.2 As per Sl. No 17 (d) of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 “*transportation of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India*” is exempted.



18.3 It is clarified that this exemption would apply to tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government.

18.4 It is further clarified that, the expression 'public transport' used in the exemption notification only means that the transport should be open to public. It can be privately or publicly owned. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc.

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

Yours faithfully,

(Smita Roy)
Technical Officer, TRU
Email: smita.roy@gov.in



F. No. 190354/176/2022-TRU
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)

Room No. 146G, North Block,
New Delhi, the 3rd August, 2022

To,
The Principal Chief Commissioners/Chief Commissioners/ Principal Commissioners/
Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law – reg.

In certain cases/instances, questions have been raised regarding taxability of an activity or transaction as the supply of service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act. Applicability of GST on payments in the nature of liquidated damage, compensation, penalty, cancellation charges, late payment surcharge etc. arising out of breach of contract or otherwise and scope of the entry at para 5 (e) of Schedule II of Central Goods and Services Tax Act, 2017 (hereinafter referred to as, “CGST Act”) in this context has been examined in the following paragraphs.

2. “Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” has been specifically declared to be a supply of service in para 5 (e) of Schedule II of CGST Act if the same constitutes a “supply” within the meaning of the Act. The said expression has following three limbs: -

a. **Agreeing to the obligation to refrain from an act-**

Example of activities that would be covered by this part of the expression would include non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.

Another example of such activities would be a builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight, or an industrial unit refraining from manufacturing activity during



certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.

b. **Agreeing to the obligation to tolerate an act or a situation-**

This would include activities such a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker, or an RWA tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.

c. **Agreeing to the obligation to do an act-**

This would include the case where an industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.

3. The description “*agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act*” was intended to cover services such as described above. However, over the years doubts have persisted regarding various transactions being classified under the said description.

3.1. Some of the important examples of such cases are Service Tax/GST demands on –

- i. Liquidated damages paid for breach of contract;
- ii. Compensation given to previous allottees of coal blocks for cancellation of their licenses pursuant to Supreme Court Order;
- iii. Cheque dishonour fine/penalty charged by a power distribution company from the customers;
- iv. Penalty paid by a mining company to State Government for unaccounted stock of river bed material;
- v. Bond amount recovered from an employee leaving the employment before the agreed period;
- vi. Late payment charges collected by any service provider for late payment of bills;
- vii. Fixed charges collected by a power generating company from State Electricity Boards (SEBs) or by SEBs/DISCOMs from individual customer for supply of electricity;
- viii. Cancellation charges recovered by railways for cancellation of tickets, etc.



In some of these cases, tax authorities have initiated investigation and in some advance ruling authorities have upheld taxability.

4. In Service Tax law, 'Service' was defined as any activity carried out by a person for another for consideration. As discussed in service tax education guide, the concept 'activity for a consideration' involves an element of contractual relationship wherein the person doing an activity does so at the desire of the person for whom the activity is done in exchange for a consideration. An activity done without such a relationship i.e., without the express or implied contractual reciprocity of a consideration would not be an 'activity for consideration'. The element of contractual relationship, where one supplies goods or services at the desire of another, is an essential element of supply.

5. The description of the declared service in question, namely, agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act in para 5 (e) of Schedule II of CGST Act is strikingly similar to the definition of contract in the Contract Act, 1872. The Contract Act defines 'Contract' as a set of promises, forming consideration for each other. 'Promise' has been defined as willingness of the 'promisor' to do or to abstain from doing anything. 'Consideration' has been defined in the Contract Act as what the 'promisee' does or abstains from doing for the promises made to him.

6. This goes to show that the service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act is nothing but a contractual agreement. A contract to do something or to abstain from doing something cannot be said to have taken place unless there are two parties, one of which expressly or impliedly agrees to do or abstain from doing something and the other agrees to pay consideration to the first party for doing or abstaining from such an act. There must be a necessary and sufficient nexus between the supply (i.e. agreement to do or to abstain from doing something) and the consideration.

6.1 A perusal of the entry at serial 5(e) of Schedule II would reveal that it comprises the aforementioned three different sets of activities viz. (a) the obligation to refrain from an act, (b) obligation to tolerate an act or a situation and (c) obligation to do an act. All the three activities must be under an "agreement" or a "contract" (whether express or implied) to fall within the ambit of the said entry. In other words, one of the parties to such agreement/contract (the first party) must be under a contractual obligation to either (a) refrain from an act, or (b) to tolerate an act or a situation or (c) to do an act. Further some "consideration" must flow in return from the other party to this contract/agreement (the second party) to the first party for such (a) refraining or (b) tolerating or (c) doing. Such contractual arrangement must be an independent arrangement in its own right. Such arrangement or agreement can take the form of an independent stand-alone contract or may form part of another contract. Thus, a person (the first person) can be said to be making a supply by way of refraining from doing something or tolerating some act or situation to



another person (the second person) if the first person was under an obligation to do so and then performed accordingly.

Agreement to do or refrain from an act should not be presumed to exist

7. There has to be an express or implied agreement; oral or written, to do or abstain from doing something against payment of consideration for doing or abstaining from such act, for a taxable supply to exist. An agreement to do an act or abstain from doing an act or to tolerate an act or a situation cannot be imagined or presumed to exist just because there is a flow of money from one party to another. Unless there is an express or implied promise by the recipient of money to agree to do or abstain from doing something in return for the money paid to him, it cannot be assumed that such payment was for doing an act or for refraining from an act or for tolerating an act or situation. Payments such as liquidated damages for breach of contract, penalties under the mining act for excess stock found with the mining company, forfeiture of salary or payment of amount as per the employment bond for leaving the employment before the minimum agreed period, penalty for cheque dishonour etc. are not a consideration for tolerating an act or situation. They are rather amounts recovered for not tolerating an act or situation and to deter such acts; such amounts are for preventing breach of contract or non-performance and are thus mere 'events' in a contract. Further, such amounts do not constitute payment (or consideration) for tolerating an act, because there cannot be any contract: (a) for breach thereof, or (b) for holding more stock than permitted under the mining contract, or (c) for leaving the employment before the agreed minimum period or (d) for doing something leading to the dishonour of a cheque. As has already been stated, unless payment has been made for an independent activity of tolerating an act under an independent arrangement entered into for such activity of tolerating an act, such payments will not constitute 'consideration' and hence such activities will not constitute "supply" within the meaning of the Act. Taxability of these transactions is discussed in greater detail in the following paragraphs.

Liquidated Damages

7.1 Breach or non-performance of contract by one party results in loss and damages to the other party. Therefore, the law provides in Section 73 of the Contract Act, 1972 that when a contract has been broken, the party which suffers by such breach is entitled to receive from the other party compensation for any loss or damage caused to him by such breach. The compensation is not by way of consideration for any other independent activity; it is just an event in the course of performance of that contract.

7.1.1 It is common for the parties entering into a contract, to specify in the contract itself, the compensation that would be payable in the event of the breach of the contract. Such compensation specified in a written contract for breach of non-performance of the contract or parties of the



contract is referred to as liquidated damages. Black's Law Dictionary defines 'Liquidated Damages' as *cash compensation agreed to by a signed, written contract for breach of contract, payable to the aggrieved party.*

7.1.2 Section 74 of the Contract Act, 1972 provides that when a contract is broken, if a sum has been named or a penalty stipulated in the contract as the amount or penalty to be paid in case of breach, the aggrieved party shall be entitled to receive reasonable compensation not exceeding the amount so named or the penalty so stipulated.

7.1.3 It is argued that performance is the essence of a contract. Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract. Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance. Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. They do not act as a remedy for the breach of contract. They do not restitute the aggrieved person. It is further argued that a contract is entered into for execution and not for its breach. The liquidated damages or penalty are not the desired outcome of the contract. By accepting the liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party.

7.1.4 In this background a reasonable view that can be taken with regard to taxability of liquidated damages is that where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.

7.1.5 Examples of such cases are damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright, etc. Other examples that may be covered here are the penalty stipulated in a contract for delayed construction of houses. It is a penalty paid by the builder to the buyers to compensate them for the loss that they suffer due to such delayed construction and not for getting anything in return from the buyers. Similarly, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or by Government or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of Earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as



a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable. The key in such cases is to consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a 'supply' within the meaning of the Act, otherwise it is not a "supply".

7.1.6 If a payment constitutes a consideration for a supply, then it is taxable irrespective of by what name it is called; it must be remembered that a "consideration" cannot be considered *de hors* an agreement/contract between two persons wherein one person does something for another and that other pays the first in return. If the payment is merely an event in the course of the performance of the agreement and it does not represent the 'object', as such, of the contract then it cannot be considered 'consideration'. For example, a contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty. A contract for transport of passengers may stipulate that the ticket amount shall be partly or wholly forfeited if the passenger does not show up. A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer. Similarly, a contract for lease of movable or immovable property may stipulate that the lessee shall not terminate the lease before a certain period and if he does so he will have to pay certain amount as early termination fee or penalty. Some banks similarly charge pre- payment penalty if the borrower wishes to repay the loan before the maturity of the loan period. Such amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of pre-payment of loan and of making arrangements for the intended supply by the tour operator respectively. Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable. Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply, as discussed in detail in the later paragraphs. Naturally, such payments will not be taxable if the principal supply is exempt.

Compensation for cancellation of coal blocks

7.2 In the year 2014, coal block/mine allocations were cancelled by the Hon'ble Supreme Court vide order dated 24.09.2014. Subsequently, Coal Mines (Special Provisions) Act, 2015 was enacted to provide for allocation of coal mines and vesting of rights, title and interest in and over the land and mines infrastructure together with mining leases to successful bidders and allottees. In accordance with section 16 of the said Act, prior (old) allottee of mines were given



compensation in the year 2016 towards the transfer of their rights/ titles in the land, mine infrastructure, geological reports, consents, approvals etc. to the new entity (successful bidder) as per the directions of Hon'ble Supreme Court.

7.2.1 There was no agreement between the prior allottees of coal blocks and the Government that the previous allottees shall agree to or tolerate cancellation of the coal blocks allocated to them if the Government pays compensation to them. No such promise or offer was made by the prior allottees to the Government. The allottees had no option but to accept the cancellation. The compensation was given to them for such cancellation, not under a contract between the allottees and the Government, but under the provisions of the statute and in pursuance of the Supreme Court Order. Therefore, it would be incorrect to say that the prior allottees of the coal blocks supplied a service to the Government by way of agreeing to tolerate the cancellation of the allocations made to them by the Government or that the compensation paid by the Government for such cancellation in pursuance to the order of the Supreme Court was a consideration for such service. Therefore, the compensation paid for cancellation of coal blocks pursuant to the order of the Supreme Court in the above case was not taxable.

Cheque dishonor fine/ penalty

7.3 No supplier wants a cheque given to him to be dishonoured. It entails extra administrative cost to him and disruption of his routine activities and cash flow. The promise made by any supplier of goods or services is to make supply against payment within an agreed time (including the agreed permissible time with late payment) through a valid instrument. There is never an implied or express offer or willingness on part of the supplier that he would tolerate deposit of an invalid, fake or unworthy instrument of payment against consideration in the form of cheque dishonour fine or penalty. The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable.

Penalty imposed for violation of laws

7.4 Penalty imposed for violation of laws such as traffic violations, or for violation of pollution norms or other laws are also not consideration for any supply received and are not taxable, which are also not taxable. Same is the case with fines, penalties imposed by the mining Department of a Central or State Government or a local authority on discovering mining of excess mineral beyond the permissible limit or of mining activities in violation of the mining permit. Such penalties imposed for violation of laws cannot be regarded as consideration charged by Government or a Local Authority for tolerating violation of laws. Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring



such violations. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty. There cannot be such an agreement as violation of law is never a lawful object or consideration. The service tax education guide issued in 2012 on advent of negative list regime of services explained that fines and penalties paid for violation of provisions of law are not considerations as no service is received in lieu of payment of such fines and penalties.

7.4.1 It was also clarified vide Circular No. 192/02/2016-Service Tax, dated 13.04.2016 that fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to Service Tax. The same holds true for GST also.

Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period

7.5 An employer carries out an elaborate selection process and incurs expenditure in recruiting an employee, invests in his training and makes him a part of the organization, privy to its processes and business secrets in the expectation that the recruited employee would work for the organization for a certain minimum period. Premature leaving of the employment results in disruption of work and an undesirable situation. The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment. The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. Further, the employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.

Compensation for not collecting toll charges

8. In the wake of demonetization, NHAI directed the concessionaires (toll operators) to allow free access of toll roads to the users from 8.11.2016 to 1.12.2016 for which the loss of toll charge was paid as compensation by NHAI as per the instructions of Ministry of Road Transportation and Highways. The toll reimbursements were calculated based on the average monthly collection of toll. A question arose whether the compensation paid to the concessionaire by project authorities (NHAI) in lieu of suspension of toll collection during the demonetization period (from 8.11.2016 to 1.12.2016) was taxable as a service by way of agreeing to refrain from collection of toll from users.



8.1 It has been clarified vide Circular No. 212/2/2019-ST dated 21.05.2019 that the service that is provided by toll operators is that of access to a road or bridge, toll charges being merely a consideration for that service. During the period from 8.11.2016 to 1.12.2016, the service of access to a road or bridge continued to be provided without collection of toll from users. Consideration came from the project authority. The fact that for this period, for the same service, consideration came from a person other than the actual user of service does not mean that the service has changed.

Late payment surcharge or fee

9. The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. It is not uncommon or unnatural for customers to sometimes miss the last date of payment of electricity, water, telecommunication services etc. Almost all service providers across the world provide the facility of accepting late payments with late fine or penalty. Even if this service is described as a service of tolerating the act of late payment, it is an ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply. Since it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply. However, the same cannot be said of cheque dishonor fine or penalty as discussed in the preceding paragraphs.

Fixed Capacity charges for Power

10. The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/DISCOMS or by SEBs/DISCOMS from individual customers has two components, namely, a minimum fixed charge (or capacity charge) and variable per unit charge. The minimum fixed charges have to be paid by the SEBs/DISCOMS/individual customers irrespective of the quantity of electricity scheduled or purchased by them during a month. They take care of the fixed cost of generating/ supplying electricity. The variable charges are charged per unit of electricity purchased and increase or decrease every month depending on the quantity of electricity consumed.

10.1 The fact that the minimum fixed charges remain the same whether electricity is consumed or not or it is scheduled/consumed below the contracted or available capacity or a minimum threshold, does not mean that minimum fixed charge or part of it is a charge for tolerating the act of not scheduling or consuming the minimum the contracted or available capacity or a minimum threshold.

10.2 Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST. Power purchase agreements may have provisions that the power producer shall



not supply electricity to a third party without approval of buyer. Such agreements which ensure assured supply of power to State Electricity Boards/DISCOMS are ancillary arrangements; the contract is essentially for supply of electricity.

Cancellation charges

11. A supply contracted for, such as booking of hotel accommodation, an entertainment event or a journey, may be cancelled by a customer or may not proceed as intended due to his failure to show up for availing the same at the designated place and time. The supplier may allow cancellation of supply by the customer within a certain specified time period on payment of cancellation fee as per commercial terms of the contract. In case the customer does not show up for availing the service, the supplier may retain or forfeit part of the consideration or security deposit or earnest money paid by the customer for the intended supply.

11.1 It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation etc. to provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee. Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways.

11.2 Services such as transportation travel and tour constitute a bundle of services. The transportation service, for instance, starts with booking of the ticket for travel and lasts at least till exit of the passenger from the destination terminal. All services such as making available an online portal or convenient booking counters with basic facilities at the transportation terminal or in the city, to reserve the seats and issue tickets for reserved seats much in advance of the travel, giving preferred seats with or without extra cost, lounge and waiting room facilities at airports, railway stations and bus terminals, provision of basic necessities such as soap and other toiletries in the wash rooms, clean drinking water in the waiting area etc. form part and parcel of the transportation service; they constitute the various elements of passenger transportation service, a composite supply.. The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle. It is invariably supplied by all suppliers of passenger transportation service as naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business.

11.3 Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply. For example, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class



of travel (i.e., 5% GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.

11.4 Accordingly, the amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.

11.5 However, as discussed above, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable.

12. Field formations are advised that while the taxability in each case shall depend on facts of that case, the above guidelines may be followed in determining whether tax on an activity or transaction needs to be paid treating the same as service by way of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act.

13. Any difficulty in implementation of the circular may be brought to the notice of the Board.

Yours faithfully,

(Smita Roy)
Technical Officer, TRU
Email: smita.roy@gov.in



Circular No. 179/11/2022-GST

**F. No. CBIC-190354/172/2022-TRU
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)

**North Block, New Delhi
Date: 3rd August, 2022**

To,

**Principal Chief Commissioners/ Principal Directors General,
Chief Commissioners/ Directors General,
Principal Commissioners/ Commissioners of Central Excise & Central Tax**

Madam/ Sir,

Subject: Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 47th meeting held on 28th – 29th June, 2022 at Chandigarh –reg.

Based on the recommendations of the GST Council in its 47th meeting held on 28th-29th June at Chandigarh, clarifications, with reference to GST levy, related to the following are being issued through this circular:

2. Electric vehicles whether or not fitted with a battery pack, attract GST rate of 5%:

- 2.1. Representations have been received seeking clarification regarding the applicable rate of GST on electrically operated vehicle without any battery fitted to it.
- 2.2. The explanation of 'Electrically operated vehicles' in entry 242A of Schedule I of notification No. 1/2017-Central Tax (Rate) reads as: 'Electrically operated vehicles which run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include E-bicycles.'
- 2.3. As is evident from the explanation above, electrically operated vehicle including three wheeled electric vehicle means vehicle that runs **solely** on electrical energy derived from an external source or from electrical batteries. Therefore, the fitting of batteries cannot be considered as a concomitant factor for defining a vehicle as an electrically operated electric vehicle.
- 2.4. It is also pertinent to state that the WCO's HSN Explanatory notes have also not considered batteries to be a component, whose absence changes the essential character of an incomplete, unfinished or unassembled vehicle.
- 2.5. Also, the HSN explanatory notes for Chapter 87 have clearly stated that Motor Chassis fitted with cabs i.e. the chassis fitted with cabin body falls under 87.02 to 87.04 and not in heading 87.06.

- 2.6. In view of the above, it is clarified that electrically operated vehicle is to be classified under HSN 8703 even if the battery is not fitted to such vehicle at the time of supply and thereby attract GST at the rate of 5% in terms of entry 242A of Schedule I of notification No. 1/2017-Central Tax (Rate).

3. Stones otherwise covered in S. No. 123 of Schedule-I (such as Napa stones), which are not mirror polished, are eligible for concessional rate under said entry:

- 3.1. Representations have been received seeking clarification regarding the applicable GST rates on building stones, in particular Napa Stones, which are ready to use and polished in ways other than mirror-polished.
- 3.2. Napa Stone is a variety of dimensional limestone, which is a brittle stone and cannot be subject to extensive mirror polishing. Currently, S. No. 123 of Schedule-I prescribes GST rate of 5% for 'Ecaussine and other calcareous monumental or building stone; alabaster [other than marble and travertine], other than mirror polished stone which is ready to use.' However, being brittle in nature, stones like Napa Stone, even though ready for use, are not subject to extensive polishing. Therefore, such minor polished stones do not qualify as mirror polished stones.
- 3.3. Therefore, it is clarified that S. No. 123 in schedule-I to the notification No. 1/2017-Central Tax (rate) dated 28.06.2017 covers minor polished stones.

4. Mangoes under CTH 0804 including mango pulp, but other than fresh mangoes and sliced, dried mangoes, attract GST at 12% rate:

- 4.1. Representations have been received seeking clarification regarding the applicable GST rate on different forms of Mangoes including Mango Pulp.
- 4.2. On the basis of the recommendation of the GST Council in its 22nd Meeting, the GST rate on 'Mangoes sliced, dried', falling under heading 0804, was reduced from 12% to 5% [S. No. 30A of Schedule I of notification No. 1/2017-Central Tax (Rate) dated the 28th June, 2017]. However, the GST rate on all forms of dried mangoes (other than sliced and dried mangoes), falling under heading 0804, including mango pulp, was always meant to be at the rate of 12%.
- 4.3. Accordingly, it is hereby clarified that mangoes, fresh falling under heading 0804 are exempt; Mangoes, sliced and dried, falling under 0804 are chargeable to a concessional rate of 5%; while all other forms of dried mango, including Mango pulp, attract GST at the rate of 12%. To bring absolute clarity, the relevant entry at S. No. 16 of Schedule-II of notification no. 1/2017-Central Tax (Rate), dated 28th June, 2017, has been amended *vide* notification No. 6/2022-Central Tax (Rate), dated the 13th July, 2022.
- 4.4. Fresh mangoes, falling under heading 0804, continue to remain exempt from GST [S. No. 51 of notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017].

5. Treated sewage water attracts Nil rate of GST:

- 5.1. Representations have been received seeking clarification regarding the applicable GST rate on treated sewage water. Treated sewage water was not meant to be construed as falling under "purified" water for the purpose of levy of GST.

- 5.2. In general, Water, falling under heading 2201, with certain specified exclusions, is exempt from GST *vide* entry at S. No. 99 of notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017.
- 5.3. Accordingly, it is hereby clarified that supply of treated sewage water, falling under heading 2201, is exempt under GST. Further, to clarify the issue, the word 'purified' is being omitted from the above-mentioned entry *vide* notification No. 7/2022-Central Tax (Rate), dated the 13th July, 2022.

6. Nicotine Polacrilex Gum attracts a GST rate of 18%:

- 6.1. Representations have been received seeking clarification regarding the classification and applicable GST rate on Nicotine Polacrilex gum.
- 6.2. The WCO 2022 HS Codes has inter alia introduced a new entry 2404 91 00 comprising of products for oral application containing nicotine and intended to assist tobacco use cessation with effect from 01.01.2022. Accordingly, a technical change, without any consequential rate change, has been made *vide* notification No. 18/2021 – Central Tax (Rate), dated the 28th December, 2021, wherein S. No. 26B in Schedule III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017, has been inserted to include products for oral application containing nicotine and intended to assist in cessation of use of tobacco, and falling under tariff item 2404 91 00. The same is supplemented by the HS Explanatory notes 2022 which states that heading 2404 includes nicotine containing products for recreational use, as well as nicotine replacement therapy (NRT) products intended to assist tobacco use cessation, which are taken as part of a nicotine intake reduction programme in order to lessen the human body's dependence on this substance.
- 6.3. Accordingly, it is hereby clarified that the Nicotine Polacrilex gum which is commonly applied orally and is intended to assist tobacco use cessation is appropriately classifiable under tariff item 2404 91 00 with applicable GST rate of 18% [Sl. No. 26B in Schedule III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017].

7. Fly ash bricks and aggregate - condition of 90% fly ash content applied only to fly ash aggregate, and not fly ash bricks:

- 7.1. Representations have been received seeking clarification regarding the applicable rate on the fly ash bricks and fly ash aggregates.
- 7.2. Hitherto, as per entry at S. No. 176B of the Schedule II the items of description “Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks” attracts a GST rate of 12%. Confusion has arisen about the applicability of 90 per cent. condition on fly ash aggregates and fly ash bricks. As per the recommendations of the GST Council in the 23rd Meeting, the condition of 90% or more fly ash content was applicable only for fly ash aggregate.
- 7.3. Therefore, it is clarified that the condition of 90 per cent. or more fly ash content applied only to Fly Ash Aggregates and not to fly ash bricks and fly ash blocks. Further, with effect from 18th July, 2022 the condition is omitted from the description.

8. Applicability of GST on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi:

- 8.1. Representations have been received seeking clarification regarding the applicable GST rate on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi.
- 8.2. The by-products of milling of pulses/ dal such as Chilka, Khanda and Churi are appropriately classifiable under heading 2302 that consists of goods having description as bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants.
- 8.3. The applicable GST rate on goods falling under heading 2302 is detailed in the Table below:

Entry and notification No.	Description	GST Rate
S. No. 102 of notification No. 2/2017-Central Tax (Rate), dated the 28 th June, 2017	Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake[other than rice bran]	Nil
S. No. 103A of Schedule-I of notification No. 1/2017-Central Tax (Rate), dated 28 th June, 2017	Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants [other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake]	5%
S. No. 103B of Schedule-I of notification No. 1/2017-Central Tax (Rate), dated 28 th June, 2017	Rice bran (other than de-oiled rice bran)	5%

- 8.4. The dispute in applicable GST rate revolves around the central argument as to whether the above-mentioned by-products are meant for direct consumption as cattle feed and therefore attract exemption under S. No. 102 of notification No. 2/2017-Central Tax (Rate) dated 28th June, 2017 or are otherwise not meant for direct consumption and thus covered under S. No. 103A of notification No. 1/2017- Central Tax (Rate) dated 28th June, 2017 attracting a GST rate of 5%.
- 8.5. While milling of pulses/ dal, a wide range of by-products such as *chilka*, *khanda*, *churi*, among others, are obtained which are preferred as cattle feed by dairy industry for better palatability and higher nutritive value. The mentioned by-products are required to go

through varying degrees of processing in order to customize the color, size, aroma, nutrition, purity, etc., of the cattle feed so produced, depending upon the dietary and nutritional requirement of the cattle and the budget availability of the customer(s). Further, as per the Indian Standards 2052:2009 -Compound Feeds for Cattle — Specification, issued by the Bureau of Indian Standards, Ministry of Consumer Affairs, Food & Public Distribution, Government of India, grain by-products have been categorized as one of the ingredients of the compounded cattle feed.

- 8.6. The GST Council examined the issue and recommended that a clarification be issued in this regard. It also recommended that in view of the prevailing multiple interpretations and genuine doubts regarding the applicability of GST, the issue for past periods may be regularized on as is basis.
- 8.7. Accordingly, it is hereby clarified that the subject goods which inter alia is used as cattle feed ingredient are appropriately classifiable under heading 2302 and attract GST at the rate of 5% *vide* S. No. 103A of Schedule-I of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017 and that for the past, the matter would be regularized on as is basis as mentioned in para 8.6.
9. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

Yours faithfully,

(Nitish Karnatak)

Under Secretary to the Government of India



Circular No.180/12/2022-GST

CBEC-20010/3/2022-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, dated the 9th September, 2022

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/
Commissioners of Central Tax (All)

**Subject: Guidelines for filing/revising TRAN-1/TRAN-2 in terms of order dated 22.07.2022
& 02.09.2022 of Hon'ble Supreme Court in the case of Union of India vs. Filco
Trade Centre Pvt. Ltd. -reg.**

Madam/Sir,

Attention is invited to the directions issued by Hon'ble Supreme Court vide order dated 22.07.2022 in the matter of Union of India vs. Filco Trade Centre Pvt. Ltd. , SLP(C) No. 32709-32710/2018. The operative portion of the order reads as follows:

“1. Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.

2. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition



before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).

3. GSTN has to ensure that there are no technical glitch during the said time.

4. The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.

5. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.

6. If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims. The Special Leave Petitions are disposed of accordingly. Pending applications, if any, also stand disposed of.”

2. Subsequently, in Miscellaneous Application No.1545-1546/2022 in SLP(C) No. 32709-32710/2018, Hon’ble Supreme Court vide order dated 2nd September, 2022 has inter-alia ordered as follows:

“The time for opening the GST Common Portal is extended for a further period of four weeks from today.”

3. In accordance with the directions of Hon’ble Supreme Court, the facility for filing TRAN-1/ TRAN-2 or revising the earlier filed TRAN-1/TRAN-2 on the common portal by an aggrieved registered assessee (hereinafter referred to as the ‘applicant’) will be made available by GSTN during the period from 01.10.2022 to 30.11.2022. In order to ensure uniformity in implementation of the directions of Hon’ble Supreme Court, the Board in exercise of powers conferred under section 168(1) of the CGST Act, 2017 hereby clarifies the following:

4. **Guidelines for the applicant for filing TRAN-1/TRAN-2 or revising earlier filed TRAN-1/TRAN-2:**



4.1 The applicant may file declaration in FORM GST TRAN-1/TRAN-2 or revise earlier filed TRAN-1/TRAN-2 duly signed or verified through electronic verification code on the common portal. In cases where the applicant is filing a revised TRAN-1/TRAN-2, a facility for downloading the TRAN-1/TRAN-2 furnished earlier by him will be made available on the common portal.

4.2 The applicant shall at the time of filing or revising the declaration in FORM GST TRAN-1/TRAN-2, also upload on the common portal the pdf copy of a declaration in the format as given in **Annexure 'A'** of this circular. The applicant claiming credit in table 7A of FORM GST TRAN-1 on the basis of Credit Transfer Document (CTD) shall also upload on the common portal the pdf copy of TRANS-3, containing the details in terms of the Notification No. 21/2017-CE (NT) dated 30.06.2017.

4.3 No claim for transitional credit shall be filed in table 5(b) & 5(c) of FORM GST TRAN-1 in respect of such C-Forms, F-Forms and H/I-Forms which have been issued after the due date prescribed for submitting the declaration in FORM GST TRAN-1 i.e. after 27.12.2017.

4.4 Where the applicant files a claim in FORM GST TRAN-2, he shall file the entire claim in one consolidated FORM GST TRAN-2, instead of filing the claim tax period wise as referred to in sub-clause (iii) of clause (b) of sub-rule (4) of rule 117 of the Central Goods and Services Tax Rules, 2017. In such cases, in the column 'Tax Period' in FORM GST TRAN-2, the applicant shall mention the last month of the consolidated period for which the claim is being made.

4.5 The applicant shall download a copy of the TRAN-1/TRAN-2 filed on the common portal and submit a self-certified copy of the same, along with declaration in **Annexure 'A'** and copy of TRANS-3, where ever applicable, to the jurisdictional tax officer within 7 days of filing of declaration in FORM TRAN-1/TRAN-2 on the common portal. The applicant shall keep all the requisite documents/records/returns/invoices, in support of his claim of transitional credit, ready for making the same available to the concerned tax officers for verification.

4.6 It is pertinent to mention that the option of filing or revising TRAN-1/TRAN-2 on the common portal during the period from 01.10.2022 to 30.11.2022 is a one-time opportunity for the applicant to either file the said forms, if not filed earlier, or to revise the forms earlier filed.



The applicant is required to take utmost care and precaution while filing or revising TRAN-1/TRAN-2 and thoroughly check the details before filing his claim on the common portal.

4.6.1 In this regard, it is clarified that the applicant can edit the details in FORM TRAN-1/TRAN-2 on the common portal only before clicking the “Submit” button on the portal. The applicant is allowed to modify/edit, add or delete any record in any of the table of the said forms before clicking the ‘Submit’ button. Once “Submit” button is clicked, the form gets frozen, and no further editing of details is allowed. This frozen form would then be required to be filed on the portal using “File” button, with Digital signature certificate (DSC) or an EVC. The applicant shall, therefore, ensure the correctness of all the details in FORM TRAN-1/TRAN-2 before clicking the “Submit” button. GSTN will issue a detailed advisory in this regard and the applicant may keep the same in consideration while filing the said forms on the portal.

4.6.2 It is further clarified that pursuant to the order of the Hon’ble Apex Court, once the applicant files TRAN-1/TRAN-2 or revises the said forms filed earlier on the common portal, no further opportunity to again file or revise TRAN-1/TRAN-2, either during this period or subsequently, will be available to him.

4.7 It is clarified that those registered persons, who had successfully filed TRAN-1/TRAN-2 earlier, and who do not require to make any revision in the same, are not required to file/ revise TRAN-1/TRAN-2 during this period from 01.10.2022 to 30.11.2022. In this context, it may further be noted that in such cases where the credit availed by the registered person on the basis of FORM GST TRAN-1/TRAN-2 filed earlier, has either wholly or partly been rejected by the proper officer, the appropriate remedy in such cases is to prefer an appeal against the said order or to pursue alternative remedies available as per law. Where the adjudication/ appeal proceeding in such cases is pending, the appropriate course would be to pursue the said adjudication/ appeal. In such cases, filing a fresh declaration in FORM GST TRAN-1/TRAN-2, pursuant to the special dispensation being provided vide this circular, is not the appropriate course of action.

5. The declaration in FORM GST TRAN-1/TRAN-2 filed/revised by the applicant will be subjected to necessary verification by the concerned tax officers. The applicant may be required to produce the requisite documents/ records/ returns/ invoices in support of their claim of



transitional credit before the concerned tax officers for verification of their claim. After the verification of the claim, the jurisdictional tax officer will pass an appropriate order thereon on merits after granting appropriate reasonable opportunity of being heard to the applicant. The transitional credit allowed as per the order passed by the jurisdictional tax officer will be reflected in the Electronic Credit Ledger of the applicant on the common portal.

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

7. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)



Annexure-A to Circular 180/12/2022-GST

Declaration to be uploaded by the Applicant on the common portal along with TRAN-1/TRAN-2 (in accordance with para 4.2 of the Circular)

PART A

1. Name and Style of Business:
2. GSTIN:
3. Registration effective from: (specify Date)
4. Whether TRAN-1/TRAN-2 furnished earlier: YES NO

If reply to point 4 is 'Yes', then fill 4.1 to 4.9, else proceed to point 5 below:

4.1 Details of TRAN-1/TRAN-2 furnished earlier:

1. Date of furnishing TRAN-1:
2. Date(s) of furnishing TRAN-2:

4.2 Amount of credit claimed earlier through TRAN-1:

CGST-

SGST/UTGST-

4.3 Amount of credit claimed earlier through TRAN-2:

CGST-

SGST/UTGST-

4.4 Whether notice or order u/s 73/74 of CGST Act, 2017 issued in respect of the credit availed through TRAN-1/TRAN-2 filed earlier: YES NO

4.5 If reply to point 4.4 is 'Yes', then mention the reference number and date of notice/ order referred to in 4.4 above:

4.6 Amount of credit determined as in-eligible, if any, vide order referred to in 4.5 above:

CGST-



SGST/UTGST-

4.7 Whether Appeal preferred u/s 107 of CGST Act/ petition before Hon'ble High Court against order referred to in point 4.5 above----- YES NO

4.8 If reply to 4.7 is 'Yes', then whether Appeal/Petition referred to in point 4.7 above disposed off: YES NO

4.9 If reply to point 4.8 above is 'Yes', then amount of credit determined as in-eligible:
CGST-
SGST/UTGST-

5. Amount of credit claimed through TRAN-1/TRAN-2 being filed now:
CGST-
SGST/UTGST-

5.1 Whether any notice issued or order passed under existing law with regard to admissibility of the credit claimed as transitional credit: YES NO

5.2 If reply to point 5.1 above is 'Yes', then date of issuance of notice/ passing the order:

5.2.1 Amount of credit claimed in TRAN-1/TRAN-2 disputed/ held as in-admissible under existing law vide notice/ order referred to in 5.2 above:(*provide details under each of the existing law*)

PART B

I, ----- (*name and designation of person making this declaration on behalf of the registered person*) on behalf of (*Name of registered person*) bearing GSTIN-----, do hereby solemnly declare and affirm that:

- 1) I/We have submitted all returns for the period January, 2017 to June, 2017 required under the existing law;



- 2) I/We are in possession of all documents, evidences, invoices, accounts, statutory declarations and other records necessary for substantiation of claim of transitional credit being made in FORM GST TRAN-1/TRAN-2;
- 3) (a) *I/We have not claimed any credit, within the meaning of sections 140, 141 and 142 of the Central/ State/ UT Goods and Services Tax Act, 2017, in any return in FORM GSTR-3B filed by me/us;**OR**
- 4) (b) *I/We have claimed credit, within the meaning of sections 140, 141 and 142 of the Central/ State/ UT Goods and Services Tax Act, 2017, amounting to Rs.----- on account of central tax and Rs.----- on account of State/ union territory tax in my/ our return in FORM GSTR-3B filed by me/ us for the period -----and I/ we have reversed an amount of Rs.----- on account of central tax and Rs.----- on account of State/ union territory tax, along with an interest of Rs. vide <<details of such debit/ payment to be provided>>*/ have not** reversed the said amount, along with applicable interest. I/We have neither been refunded nor have claimed refund or would claim refund of the credit of tax carried forward in accordance with sub – section (1) of Section 140 of the Central/State/UT Goods and Services Tax Act, 2017, in the return relating to the period ending with the day immediately preceding the appointed day, furnished by me/us under the existing law, in respect of which this claim of transitional credit is made.
- 5) I/We have not utilized or adjusted any amount of credit under the existing law, in response to any demand/ liability arising out of self-determination or assessment or audit or investigation, out of the amount being claimed as transitional credit in FORM GST TRAN-1/ TRAN-2;
- 6) The information furnished in **Part A** hereinabove is based on the accounts, information, records, documents and other necessary evidences in my possession and is true and correct to the best of my knowledge and belief, and nothing has been concealed therefrom.

Place

Signature

Date

Name

Designation in relation to registered person

* Only (a) or (b) of Paragraph 3 of Part B to be filled up, as applicable

** Strike off, whichever is not applicable



F. No. CBIC-20021/4/2022
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 10th November, 2022

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/
Commissioners of Central Tax (All)

The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on refund related issues-reg.

Attention is invited to sub-section (3) of section 54 of CGST Act, 2017, which provides for the refund of unutilized input tax credit in cases where credit is accumulated on account of rate of tax of inputs being higher than the rate of tax on output supplies i.e. on account of inverted duty structure. Sub-rule (5) of rule 89 of CGST Rules, 2017 prescribes the formula for grant of refund in cases of inverted duty structure. Vide Notification No. 14/2022-Central Tax dated 05.07.2022, amendment has been made in the formula prescribed under sub-rule (5) of rule 89 of the CGST Rules, 2017. Further, vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, which has been made effective from 18.07.2022, the restriction has been placed on refund of unutilised input tax credit on account of inverted duty structure in case of supply of certain goods falling under chapter 15 and 27.

2. Representations have been received from the trade and the field formations seeking clarification on various issues pertaining to the implementation of the above notifications. In order to clarify the issues 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 Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues as under:

S. No.	Issue	Clarification
1.	Whether the formula prescribed under sub-rule (5) of rule 89 of the CGST Rules, 2017 for calculation of refund of unutilised input tax credit on account of inverted duty structure, as amended vide Notification No. 14/2022-Central Tax dated 05.07.2022, will apply only to the refund applications filed on or after	Vide Notification No. 14/2022-Central Tax dated 05.07.2022, amendment has been made in sub-rule (5) of rule 89 of CGST Rules, 2017, modifying the formula prescribed therein. The said amendment is not clarificatory in nature and is applicable prospectively with effect from 05.07.2022. Accordingly, it is clarified that the said amended formula under sub-rule (5) of rule



	05.07.2022, or whether the same will also apply in respect of the refund applications filed before 05.07.2022 and pending with the proper officer as on 05.07.2022?	89 of the CGST Rules, 2017 for calculation of refund of input tax credit on account of inverted duty structure would be applicable in respect of refund applications filed on or after 05.07.2022. The refund applications filed before 05.07.2022 will be dealt as per the formula as it existed before the amendment made vide Notification No. 14/2022-Central Tax dated 05.07.2022.
2.	Whether the restriction placed on refund of unutilised input tax credit on account of inverted duty structure in case of certain goods falling under chapter 15 and 27 vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, which has been made effective from 18.07.2022, would apply to the refund applications pending as on 18.07.2022 also or whether the same will apply only to the refund applications filed on or after 18.07.2022 or whether the same will be applicable only to refunds pertaining to prospective tax periods?	<p>Vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, under the powers conferred by clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act, 2017, certain goods falling under chapter 15 and 27 have been specified in respect of which no refund of unutilised input tax credit shall be allowed, where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such specified goods (other than nil rated or fully exempt supplies). The said notification has come into force with effect from 18.07.2022.</p> <p>The restriction imposed vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022 on refund of unutilised input tax credit on account of inverted duty structure in case of specified goods falling under chapter 15 and 27 would apply prospectively only. Accordingly, it is clarified that the restriction imposed by the said notification would be applicable in respect of all refund applications filed on or after 18.07.2022, and would not apply to the refund applications filed before 18.07.2022.</p>

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

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)



F. No. CBIC-20021/04/2021-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 10th of November, 2022

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners
/Commissioners of Central Tax (All)

Madam/Sir,

Subject: Guidelines for verifying the Transitional Credit in light of the order of the Hon'ble Supreme Court in the Union of India vs. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709-32710/2018, order dated 22.07.2022 & 02.09.2022-reg.

Attention is invited to the directions issued by the Hon'ble Supreme Court vide order dated 22.07.2022 in the matter of Union of India vs. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709-32710/2018. The operative portion of the judgment is as follows:

"1. Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.

2. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).

3. GSTN has to ensure that there are no technical glitch during the said time.

*4. The concerned officers are **given 90 days thereafter** to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.*

5. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.

6. If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims. The Special Leave Petitions are disposed of accordingly. Pending applications, if any, also stand disposed of."

1.2. Subsequently in Miscellaneous Application No. 1545-1546/2022 in SLP(C) No. 32709-32710/2018, Hon'ble Supreme Court vide order dated 2nd September, 2022 has inter-alia ordered as follows:



“The time for opening the GST Common Portal is extended for a further period of four weeks from today.

It is clarified that all questions of law decided by the respective High Courts concerning Section 140 of the Central Goods and Service Tax Act, 2017 read with the corresponding Rule/Notification or direction are kept open.”

2. As is clear from the above, the Hon’ble Court has directed that the common portal be opened for filing prescribed forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months from 01.10.2022 to 30.11.2022 for the aggrieved registered assessee (henceforth, referred as ‘applicant’). The Transitional Credit claimed by the applicant shall be credited in his electronic credit ledger to the extent allowed by the jurisdictional tax officer through an order after carrying out necessary verifications. As per the Hon’ble Court’s order, the said verification has to be carried out within 90 days after completion of the above window of two months, i.e. within 90 days from 01.12.2022 i.e. up to 28.02.2023.

2.1 It is to be noted that while allowing the applicant to file/revise TRAN-1/TRAN-2 during this window of 2 months, Hon’ble Supreme Court has kept all questions of law open.

2.2 It may be mentioned that Hon’ble Supreme Court has only allowed filing of TRAN 1/TRAN-2 or revising the TRAN-1/TRAN-2 already filed by the applicant and has not allowed the applicant to file revised returns under the existing laws.

3. Reference is also invited to the Board’s Circular No. 180/12/2022 dated 09.09.2022 vide which guidelines have been issued for the applicants for filing new TRAN-1/TRAN-2 or revising the already filed TRAN-1/TRAN-2 on the common portal.

4. To ensure uniformity in the implementation of the directions of the Hon’ble Supreme Court across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby issues the following guidelines for verifying the Transitional Credit:

5. Verification of the Transitional Credit

5.1 The jurisdictional tax officers can access the TRAN-1/TRAN-2 filed/revise by the applicant on their back office systems (which is the CBIC-AIO portal for the central tax officers, the respective State portal for MODEL-1 States and BO portal for MODEL 2 States). Further, a self-certified downloaded copy of TRAN-1/TRAN-2 filed/revise by the applicant shall also be made available to the jurisdictional tax officer by the said applicant as mentioned in Para 4.5 of Circular 180/12/2022 dated 09.09.2022.

5.2 The verification of the transitional credit shall be conducted by the jurisdictional tax officer who will pass an appropriate order regarding the veracity of the claim filed by the applicant, based on all the facts and the provisions of the law. In respect of TRAN-1/TRAN-2 filed/revise by the applicant under the administrative control of the central tax authorities, such verification and



issuance of order shall be done by the jurisdictional officer of central tax, whereas in respect of TRAN-1/TRAN-2 filed/revised by the applicant under the administrative control of the state tax authorities, the same shall be done by the jurisdictional officer of state tax. The jurisdictional tax officer shall start the verification process immediately on availability of TRAN-1/TRAN-2 filed/revised by the applicant on the back office system or on receipt of self-certified downloaded copy of the same from the applicant, whichever is earlier. It is needless to mention that principles of natural justice shall be followed in the process of passing the order relating to allowance or disallowance of the Transitional Credit.

5.3 The jurisdictional tax officer shall, on the basis of declaration made by the applicant in the format specified in **Annexure A** to Circular no. 180/12/2022 dated 09.09.2022, and on the basis of data available on the back office system, shall check whether the applicant had earlier filed TRAN-1/TRAN-2 or not. In cases where TRAN-1/TRAN-2 had already been filed by the applicant earlier, the tax officer shall check whether there is any change from the earlier filed TRAN-1/TRAN-2 or not. In case, there is no change from the earlier filed TRAN-1/TRAN-2, then such claim of transitional credit is liable for rejection by the tax officer, through a reasoned order, after providing due reasonable opportunity to the applicant.

5.3.1 In other cases, the jurisdictional tax officer shall proceed for verification of claim of transitional credit made by the applicant in FORM TRAN-1/TRAN-2. In this regard, in respect of transitional credit pertaining to central tax, he may refer to the guidelines detailed in **Annexure I** to this circular. In respect of verification of transitional credit pertaining to the State Tax/Union territory Tax, the tax officer may refer to the guidelines issued by the relevant state/UT, if any.

5.3.2 There may be cases where the transitional credit claim filed/revised by the applicant may have components of both central tax and state/UT tax. In such cases, where the applicant is under the jurisdiction of central tax officer and where the transitional credit claimed has component of state/Union Territory tax also, the jurisdictional central tax officer shall refer the said claim for verification of component of state/UT tax to his counterpart state/UT tax officer. For this purpose, he shall share the list of GSTINs/ARNs with the counterpart officer, in respect of which verification report is needed from him, on a weekly basis, along with an intimation of the same to the nodal officer of central tax as well as state/UT tax referred in **Para 6.1 below** through his official email ID or physically. Similar action, as above, shall also be taken by the jurisdictional state/UT tax officers in cases where the applicant is under the jurisdiction of state/UT tax officer and where the transitional credit claimed has component of central tax also.

5.3.3 The jurisdictional tax officer shall, in parallel, continue the verification of the remaining portion of the transitional credit at his end.

5.3.4 The jurisdictional tax officer and the counterpart tax officer shall verify the transitional credit claimed under the CGST or the SGST head, as the case may be, by referring to the guidelines detailed in **Annexure I** to this circular for transitional credit pertaining to central tax and the guidelines issued by the relevant state/UT for verification of transitional credit pertaining to the State Tax/Union territory Tax, as applicable. While conducting the verification, the officer must also check



whether any adjudication or appeal proceedings in TRAN-1/TRAN-2 related matter are pending concluded against the applicant. In such cases, where any adjudication or appellate proceedings have been initiated against the applicant in respect of TRAN-1/TRAN-2, the officer should take a note of the relevant facts in the notice/ order, and the grounds/reasons for inadmissibility of transitional credit, if any, in the said notice/ order.

5.3.5 In respect of verification done by the counterpart officer, after verification, he will prepare a verification report, in the format detailed in **Annexure-II** of this circular, specifying the amount of transitional credit which may be allowed to be credited to the electronic credit ledger of the applicant and the amount which is liable for rejection, along with detailed reasons/ grounds on which the said amount is liable to be rejected. Such duly signed verification report shall be sent by the counterpart officer to the jurisdictional tax officer at the earliest, though generally not later than ten days from the date of receipt of the request from the jurisdictional officer. In case, where the adjudication or appeal proceedings in respect of TRAN-1/TRAN-2 related matter are pending/ concluded against the applicant, the counterpart officer shall categorically bring out the relevant facts in his/her verification report along with his detailed findings, admissibility/ inadmissibility, reasons of inadmissibility thereof and the copy of the relevant notice and/or orders.

5.3.6 For the purpose of verification of the claim of the transitional credit, the jurisdictional tax officer as well as the counterpart tax officer, if required, may call for relevant records including requisite documents/returns/invoices, as the case may be, from the applicant.

5.3.7 After receiving the verification report from the counterpart officer, the jurisdictional tax officer shall decide upon the admissibility of the credit claimed by the applicant. In case the jurisdictional tax officer finds that the transitional credit claimed by the applicant is partly or wholly inadmissible as per the provisions of the Act and the rules thereof, then a notice shall be issued by the jurisdictional tax officer to the applicant preferably within a period of seven days from the receipt of report from the counterpart officer, seeking explanation of the applicant as to why the said credit claimed by him should not be denied wholly/partly, as the case may be. The applicant shall also be provided an opportunity of personal hearing by the jurisdictional tax officer in such cases. If required, the jurisdictional tax officer may seek comments of the counterpart officer on the submissions made by the applicant in so far as the said submission relates to the tax (central or State) being administered by such counterpart officer.

5.3.8 After considering the facts of the case, including verification report received from the counterpart officer, submissions made by the applicant and the comments, if any, of the counterpart officer on the same, the jurisdictional tax officer shall proceed to pass a reasoned order, preferably within a period of fifteen days from the date of personal hearing, specifying the amount of transitional credit allowed to be transferred to the electronic credit ledger of the applicant and upload a pdf copy of the said order, on the common portal for crediting the amount of allowed transitional credit to the electronic credit ledger of the applicant. In any case, such order shall be passed within a period of 90 days from 01.12.2022 i.e. up to 28.02.2023.



5.3.9 Where the amount credited to the electronic credit ledger pursuant to the originally filed TRAN-1/TRAN-2 exceeds the amount of credit admissible in terms of the revised TRAN-1/TRAN-2 filed by the applicant, such excess credit is liable to be demanded and recovered from the applicant, along with interest and penalty, in accordance with the provisions of Chapter XV of the Act and the rules made thereunder.

5.3.10 GSTN will also issue a separate advisory for entering the details on the portal by the tax officers.

5.3.11 It may be noted that consequent to reorganization of the state of Jammu & Kashmir and merger of the Union territories of Dadra and Nagar Haveli & Daman and Diu, the taxpayers of UT of Ladakh and the earlier UT of Daman and Diu have been allotted new GSTINs. Accordingly, the taxpayers of Ladakh and Daman and Diu can file/ revise TRAN-1/ TRAN-2 only through their newly allotted GSTINs. It is, therefore, advised that the concerned jurisdictional tax officers should take into consideration transitional credit, if any, claimed by such taxpayers under their previous GSTINs.

6. Modalities of coordination between central tax authorities and state tax authorities

6.1 It is to be noted that all the Zonal Principal Chief Commissioner/ Chief Commissioners (PCCs/CCs) of Central Tax and Chief Commissioners/ Commissioners of Commercial Taxes (CCCTs/CCTs) of various states/UTs shall appoint nodal officer(s) in their respective formations immediately for proper co-ordination between central and state/UT authorities for verification of transitional credit claims and shall make available the details of the said nodal officers, along with their phone numbers and email IDs, to the counterpart tax authority. The nodal officers shall ensure that the verification reports/comments sought by the jurisdictional tax officers are being sent in a timely manner by the counterpart officers in their formations.

6.2 It is the responsibility of the Zonal Principal Chief Commissioner/ Chief Commissioners (PCCs/CCs) of Central Tax and Chief Commissioners/ Commissioners of Commercial Taxes (CCCTs/CCTs) of various states/UTs to regularly monitor the progress made in this regard so that the timelines mentioned in the Hon'ble Supreme Court's order dated 22.07.2022 and 02.09.2022 are strictly adhered to by the field formations.

7. Where any communication is required to be made by the central tax officer with the applicant for the purpose of verification of TRAN-1/ TRAN-2, through a mode other than through the portal, the same should be made with the use of DIN, as per the guidelines mentioned in the CBIC Circular No. 122/41/2019-GST dated 5th November 2019.

8. Difficulties, if any, in implementation of these instructions may be informed to the Board (gst-cbec@gov.in). Hindi version shall follow.

(Sanjay Mangal)
Principal Commissioner (GST)



**GUIDANCE NOTE FOR VERIFICATION OF CGST TRANSITIONAL CREDIT
CLAIMED BY THE APPLICANT IN TRAN-1/TRAN-2**

1. Description of Entries in TRAN-1 Table

In the Form TRAN 1 there are only **six entries** which decide all the **CGST** credit which is posted in the electronic credit ledger. These entries are briefly described below. It is advised that the full text of law be referred for better understanding of the issue.

S. No.	Table No. in TRAN-1	Provision in CGST Act	Indicative list of nature of Credit
1.	Col. 6 in table 5(a)	140(1), 140(4)(a) and 140(9)	This table captures detail of the CENVAT credit carried forward in the return (ER-1/2/3 or ST-3) relating to the period ending with 30.06.2017, subject to conditions specified in section 140(1) of CGST Act, by the manufacturers/ service providers.
2.	Column 11 of table 6(a)	140(2)	This table captures details of un-availed credit of capital goods in the pre-GST era. Capital Goods credit was allowed to be availed in two installments of 50% each. This table is meant to be used by the taxpayers who have availed a portion of CENVAT credit on capital goods through ER or ST return and now intend to avail remaining credit in respect of capital goods which has not been availed through the ER or ST return. The said amount of credit should have been admissible as input tax credit under GST law as well as under existing law.



3.	Table 7(a)	Column (6) in Entry 7A in Table 7(a)	140(3), 140(4)(b), 140(6) and 140(7)	This table pertains to credit claim by new taxpayers or taxpayers who were either not registered or were not part of CENVAT Credit chain earlier. Here, Credit can be claimed in TRAN-1 in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day based on invoice/ document evidencing payment of duty (including CTD), subject to fulfillment of other conditions specified in section 140(3), 140(4)(b), 140(6) and 140(7) as the case may be.
		Column (6) in Entry 7B in Table 7(a)	Proviso to Section 140 (3) and Rule 117(4) of CGST Rules	This table pertains to credit claim by new taxpayers (e.g. traders) who were not manufacturers or service providers. Deemed credit @ 60% of Central Tax applicable where CGST is 9% or more, and 40% where CGST is less than 9% can be availed. The provision applies where the assessee is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs only . <i>[In this case the Electronic Credit Ledger gets populated through TRAN-2 and not through TRAN I]</i> .
4.	Column (8) in Table 7(b)		140(5), 140(7)	This table captures transitional credit taken on such inputs or input services which were received after 1st of July, 2017 but taxes on which were paid under the existing law (Goods/ Services in Transit). It does not apply to capital goods. This table also captures credit distributed by the Input Service Distributor.



5.	Column 9 in Table 8	140(8)	This table pertains to Centrally Registered unit , the CENVAT credit carried forward in their last return is captured in table 5(a) and a part or full of such credit can be distributed through table 8. The credit distributed through column 9 gets credited in the electronic credit ledger of the receivers and a corresponding debit entry is made in the ledger of the Centrally registered unit.
6.	Column (7) in Table 11	Section 142 (11)(c) read with Rule 118 of CGST Rules	Transition of credit in respect of supplies which attracted both VAT and Service Tax in pre-GST era and where VAT and Service Tax both were paid, before 1st July 2017 , on any supply but the supply is made after 1st July, 2017 . The taxable person is entitled to take as CGST credit, the service tax paid under the existing law to the extent of supplies made after 1st July, 2017 as he would be liable to pay CGST in respect of such supplies. (VAT credit cannot be taken as Service tax credit and vice versa).

2. CHECKS FOR VERIFICATION OF ENTRIES IN TRAN-1 TABLE:

As a matter of assistance, following checks are suggested in relation to the entries provided in various tables of TRAN 1. The list of checks is not exhaustive but is indicative only based on provisions of law, the likely error and the inputs received from the field formations.

Checks for Table 5(a):

3.1.1 Check 1: Verify that the credit has been taken against closing balance of CENVAT credit in ER-1/2/3 or ST-3. Credit can be taken only where the last return was filed and credit taken in Table 5(a) should not be more than closing balance of credit in ER-1/2/3 or ST-3 minus the education / secondary education cess / KKC/ SBC.

3.1.2 Check 2: Credit of taxes not covered in the definition of eligible duties in section 140 cannot be availed. Example: Krishi Kalyan Cess, Education Cess, clean energy cess etc.



Credit of VAT and PLA balance is not allowed as transitional credit.

3.1.3 Check 3: Check that returns have been filed for last 6 months. An assessee filing TRAN-1 and taking credit in table 5(a) should have -

- a) Filed ER-1 or ER-2 regularly between Jan, 2017 and June, 2017 or
- b) Filed ER-3 for period ending March, 2017 and June, 2017 or
- c) Filed ST-3 for period ending March, 2017 and June, 2017.

This check should be performed liberally where many units have merged into one registration or a single unit has been split into many (Centralized registration cases / LUT units) in GST. Compliance by any of the merging unit which was filing the returns in the pre-GST would entitle the new unit to avail credit in relation to that merging unit.

Checks for Table 6(a):

4.1 Check 4: Check that in table 6 only credit on capital goods not availed in any return is taken. If second installment of any capital goods credit is taken through return in table 5(a) and again the details are filled in table 6, it would lead to double credit getting taken. For example, the second installment of capital goods credit where first installment credit was availed in 2016-17 and second installment can be availed in the financial year 2017-18, provided the second installment was not availed in any of the returns filed in the first quarter of 2017-18 under Central Excise or Service Tax. If no credit was availed earlier, credit of entire amount cannot be availed through this Table. In respect of invoices involving large credit, due verification as deemed fit may be done.

Checks for Table 7(a), Entry 7A:

5.1 Check 5: In cases where the credit is being shown by an assessee who was **registered** in Central Excise or Service on account of inputs relating to exempted goods, carefully check whether the assessee has followed the provisions of rule 6 of CENVAT Credit Rules in the period prior to GST.

Case I: Only exempted goods/services were being manufactured or provided: Rule 6(2) of CENVAT Credit Rules did not allow any credit in the CENVAT register if only exempted goods were being manufactured. No credit can flow from return in relation to inputs in such cases. The entry in table 5(a) therefore should be NIL. The apportionment of credit on inputs and complete reversal thereof under rule 6 of CENVAT Credit Rules took place at the time of removal of goods. Therefore, in such cases only credit of inputs and inputs contained in semi-finished which existed in stock on the day of the transition and for which conditions prescribed in cl (i) to (v) of section 140(3) are satisfied would be available. Where the stock shown is very high, verification using VAT return or any other collateral document where stocks are declared can be done.



Case II: Exempted and non-exempted goods/services were being manufactured or provided: Rule 6(3) of the CENVAT Credit Rules provided the procedure for apportionment of credit relating to taxable goods/services and reversal of credit relating to exempted goods/services. Credit in table 5(a) would flow from the return in such cases. It should be checked that the return reflects credit after application of rule 6(3) of CENVAT Credit Rules. The reversal in terms of rule 6(3) was required to be done at the time of removal of finished goods. Therefore some credit in Table 7A can arise for such inputs which were in stock and which not attributed till the date of the transition to either exempted goods or non-exempted goods. To avail credit on such inputs, other conditions prescribed in cl (i) to (v) of section 140(3) are required to be satisfied. Where the stock shown is very high, verification using VAT return or any other collateral document, where stocks were declared, can be done.

5.2: Check 6: In cases where a new taxpayer has availed credit using Credit Transfer Document, check that CTD issued by the manufacturer exists and CTD has been issued in terms of rule 15(2) of CCR, 2017 read with notification no. 21/2017-CE (NT) dated 30.06.2017 (Capital Goods having value more than Rs. 25,000, goods to be identifiable by a distinct number etc.) e.g.: Dealers of new car.

Checks for Table 7(a), Entry 7B:

6.1 Check 7: Check that credits on stock declared on which credit can be claimed in terms of rule 117(4) of the CGST Rules, 2017 are reasonable. Where the stock declared in very high, stock declared in VAT return or any other collateral document, where stocks were declared, may be cross-checked. It may be noted that credit of this stock would be available on sale being made and TRAN 2 return being filed. It is reiterated that electronic credit ledger would get populated through TRAN-2 and not through TRAN-1.

6.2 Check 8: Check that the assessee has not declared this stock in any other table or has not availed this credit from any other table, say table 5(a). Where the person availing credit through TRAN 2, for which stock is declared in this table, is a trader, no credit can exist in any other table which pertains to credit to taxpayers who were registered earlier [e.g. Table 5(a)].

Checks for Table 7(b):

8.1 Check 9: Check that the duty paying document exist and take confirmation from the taxpayer that the duty or the tax paying document were recorded in the books of account of such person as per the conditions prescribed in law. Where goods under movement are shown in exorbitant quantity, transport verification may be considered. It should also be checked that the conditions for availing ISD credit as prescribed in law are satisfied.

**Checks for Table 8:**

9.1 Check 10: Centralized registered units have distributed their credit through table 8. The units receiving the credit were not required to file TRAN1 to receive this credit. The receiving units have got credit on the basis of credit distributed by the centrally registered unit. Check that receiving units have not filed TRAN 1 to avail this credit as this would lead to double credit to receiving unit. Also take confirmation from the centrally registered unit that resultant credit in the ledger of the distributing centrally registered unit was reduced by the amount of credit distributed through Table 8.

10. Check for Table 11:

10.1 Check 11: Check that the service tax claimed as credit was indeed paid under the existing law and supplies were indeed made after 1st July, 2017. Credit of VAT cannot be taken as CGST credit and vice-versa.

11. General check:

11.1 Check 12: Check that credit which is being claimed through TRAN 1/TRAN-2 is not taken through return in FORM GSTR-3B. This can lead to double credit being taken.

11.2 Clarifications issued vide circular no. 33/07/2018-GST dated 23.02.2018 regarding disputed credit and blocked credit may be followed during the verification process of the transitional credit.



ANNEXURE-I.

VERIFICATION REPORT FOR TRAN-1/TRAN-2 TO BE SUBMITTED BY THE COUNTERPART OFFICER TO THE JURISDICTIONAL TAX OFFICER

1. Basic information:

(a)	Name	
(b)	GSTIN	
(d)	Whether transition credit claimed earlier	Yes/ No

2. (a) Whether SCN/Adjudication order issued in respect of credit availed through TRAN-1/TRAN-2 filed earlier; if “Yes”, provide reference number and date:

(b) If answer to (a) above is “Yes”, then amount of transitional credit disallowed/proposed to be disallowed out of total claim filed by the applicant earlier:

	*Table of TRAN-1/TRAN-2	# Amount of credit disallowed/ proposed to be disallowed	@Grounds on which credit is disallowed/ proposed to be disallowed	\$ Whether recovered
(a)				
(b)				
(c)				

Notes:

- 1) Add additional rows if required
- 2) *Specify the serial number of the Table (of earlier filed TRAN-1/TRAN-2), the credit in respect of which has either been disallowed through an order or is proposed to be disallowed through an SCN
- 3) #Specify the amount which has been disallowed/proposed to be disallowed
- 4) @Specify the grounds for disallowance of the said credit
- 5) \$Specify whether amount has been recovered, either in cash or debit to credit ledger
- 6) Attach copies of the relevant notice/ adjudication order

3. (a) Whether appeal has been filed against the adjudication order, if any, specified in serial number 2 above; if “Yes”, provide appeal number and date of filing appeal.

(b) If appeal has been disposed of, then provide order number and date:



(c) Details relating to Appellate Order:

	* Table of TRAN- 1/TRAN-2	Findings of Appellate Authority	^{\$} Whether recovered
(a)			
(b)			
(c)			

Notes:

- 1) Add additional rows if required
 - 2) *Specify the serial number of the Table (as mentioned in Table at serial number 2 above) and the amount of tax the claim in respect of which has been adjudicated and the appeal has been decided.
 - 3) \$Specify whether amount has been recovered, either in cash or debit to credit ledger
 - 4) Attach copies of the order of the appellate authority
4. Amount of credit claimed afresh/revised (as per TRAN-1/ TRAN-2 filed/ revised during the present window of two months) by the applicant, the amount admissible, the amount inadmissible, if any, along with the grounds/ reasons for non-admissibility thereof:

	Table	Amount Claimed in newly filed/ revised TRAN-1 / TRAN-2		Amount Admissible		Amount inadmissible, if any		Grounds of inadmissibility, along with the relevant provisions of law/ rules
		CGST	SGST/ UTGST	CGST	SGST/ UTGST	CGST	SGST/ UTGST	
(a)	5(a) of TRAN -1							
(b)	5(c) of TRAN-1							
(c)	6(a) of TRAN-1							
(d)	6(b) of TRAN-1							
(e)	7(a)(7A) of TRAN- 1							



(f)	7(a)(7B) of TRAN-1							
(g)	7(b) of TRAN-1							
(h)	7(c) of TRAN-1							
(i)	8 of TRAN-1							
(j)	10(a) of TRAN-1							
(k)	10(b) of TRAN-1							
(l)	11 of TRAN-1							
(m)	Aggregate of Table 4 of TRAN-2							
(n)	Aggregate of Table 5 of TRAN-2							

5. Other relevant information, if any (Please give details):

Place:

Date:

Signature of counterpart officer

(Name and designation of counterpart officer)



F. No. CBIC-20001/2/2022 - GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 27th December, 2022

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/
Commissioners of Central Tax (All)/
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19 – reg.

Section 16 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”) provides for eligibility and conditions for availing Input Tax Credit (ITC). During the initial period of implementation of GST, during the **financial years 2017-18 and 2018-19**, in many cases, the suppliers have failed to furnish the correct details of outward supplies in their FORM GSTR-1, which has led to certain deficiencies or discrepancies in FORM GSTR-2A of their recipients. However, the concerned recipients may have availed input tax credit on the said supplies in their returns in FORM GSTR-3B. The discrepancies between the amount of ITC availed by the registered persons in their returns in FORM GSTR-3B and the amount as available in their FORM GSTR-2A are being noticed by the tax officers during proceedings such as scrutiny/ audit/ investigation etc. due to such credit not flowing to FORM GSTR-2A of the said registered persons. Such discrepancies are considered by the tax officers as representing ineligible ITC availed by the registered persons, and are being flagged seeking explanation from the registered persons for such discrepancies and/or for reversal of such ineligible ITC.

2. It is mentioned that FORM GSTR-2A could not be made available to the taxpayers on the common portal during the initial stages of implementation of GST. Further, restrictions regarding availment of ITC by the registered persons upto certain specified limit beyond the

ITC available as per FORM GSTR-2A were provided under rule 36(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “CGST Rules”) only with effect from 9th October 2019. However, the availability of ITC was subjected to restrictions and conditions specified in Section 16 of CGST Act from 1st July, 2017 itself. In view of this, various representations have been received from the trade as well as the tax authorities, seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during **FY 2017-18 and FY 2018-19**.

3. In order to ensure uniformity in the implementation of the provisions 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 as follows:

S. No.	Scenario	Clarification
a.	Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B for said tax period, due to which the supplies made in the said tax period do not get reflected in FORM GSTR-2A of the recipients.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
b.	Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the recipient.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
c.	Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, but supplier has wrongly reported the said supply as B2C	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.



S. No.	Scenario	Clarification
	supply, instead of B2B supply, in his FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the said registered person.	
d.	Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1.	<p>In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.</p> <p>In addition, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in their FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.</p>

4. The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfillment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:

i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;

ii) that he has received the goods or services or both;

iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier.



Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16 of CGST Act.

4.1 In order to verify the condition of clause (c) of sub-section (2) of Section 16 of CGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:

4.1.1 In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI website <https://udin.icaai.org/search-udin> and that issued by CMAs can be verified from ICAI website <https://eicmai.in/udin/VerifyUDIN.aspx>.

4.1.2 In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

4.2 However, it may be noted that for the period **FY 2017-18**, as per proviso to section 16(4) of CGST Act, the aforesaid relaxations shall not be applicable to the claim of ITC made in the **FORM GSTR-3B** return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his **FORM GSTR-1** till the due date of furnishing **FORM GSTR 1** for the month of March, 2019.

5. It may also be noted that the clarifications given hereunder are case specific and are applicable to the *bonafide* errors committed in reporting during **FY 2017-18 and 2018-19**. Further, these guidelines are clarificatory in nature and may be applied as per the actual

facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.



6. These instructions will apply only to the ongoing proceedings in scrutiny/audit/investigation, etc. for **FY 2017-18 and 2018-19** and not to the completed proceedings. However, these instructions will apply in those cases for **FY 2017-18 and 2018-19** where any adjudication or appeal proceedings are still pending.

7. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

Sanjay Mangal
Principal Commissioner (GST)



Circular No. 184/16/2022-GST

F. No. CBIC-20001/2/2022 - GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 27th December, 2022

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/
Commissioners of Central Tax (All)/
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on the entitlement of input tax credit where the place of supply is determined in terms of the proviso to sub-section (8) of section 12 of the Integrated Goods and Services Tax Act, 2017 – reg.

Attention is invited to sub-section (8) of section 12 of Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST Act”) which provides for the place of supply of services by way of transportation of goods, including by mail or courier, where location of the supplier as well as the recipient of services is in India. As per clause (a) of the aforesaid sub-section, the place of supply of services by way of transportation of goods, including by mail or courier, to a registered person shall be the location of such registered person. However, the proviso to the aforesaid sub-section which was inserted vide the Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019 provides that where the transportation of goods is to a place outside India, the place of supply of the said service shall be the place of destination of such goods. In such cases, as the place of supply of services, as per the proviso to sub-section (8) of section 12 of IGST Act, is the concerned foreign destination and not the State where the recipient is registered under GST, doubts are being raised regarding the availability of input tax credit of the said services to the recipient located in India.

2. In order to clarify this 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 Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues as under:

Sl. No.	Issue	Clarification
1.	In case of supply of services by way of transportation of goods, including by mail or courier, where the transportation of goods is to a place outside India, and where the supplier and recipient of the said supply of services are located in India, what would be the place of supply of the said services?	<p>The place of supply of services by way of transportation of goods, including by mail or courier, where both the supplier and the recipient are located in India, is determined in terms of sub-section (8) of section 12 of the IGST Act which reads as follows:</p> <p><i>“(8) The place of supply of services by way of transportation of goods, including by mail or courier to,—</i></p> <p><i>(a) a registered person, shall be the location of such person;</i></p> <p><i>(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation:</i></p> <p><i>Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods”</i></p> <p>Hence, in case of supply of services by way of transportation of goods, including by mail or courier, where the transportation of goods is to a place outside India, and where the supplier and recipient of the said supply of services are located in India, the place of supply is the concerned foreign destination where the goods are being transported, in accordance with the proviso to the sub-section (8) of section 12 of IGST Act, which was inserted vide the Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.</p> <p>Illustration:</p> <p><i>X is a person registered under GST in the state of West Bengal who intends to export goods to a person Y located in Singapore. X avails the services for transportation of goods by air to Singapore from an air cargo</i></p>

		<p><i>operator Z, who is also registered under GST in the state of West Bengal.</i></p> <p><i>In this case, the place of supply of the services provided by Z to X is the place of destination of goods i.e., Singapore, in terms of the proviso to sub-section (8) of section 12 of IGST Act.</i></p>
2.	In the case given in Sl. No. 1, whether the supply of services will be treated as inter-State supply or intra-State supply?	<p>The aforesaid supply of services would be considered as inter-State supply in terms of sub-section (5) of section 7 of the IGST Act since the location of the supplier is in India and the place of supply is outside India. Therefore, integrated tax (IGST) would be chargeable on the said supply of services.</p> <p>In respect of the illustration given in Sl. No. 1. above, Z would charge IGST from X in terms of sub-section (5) of section 7 of the IGST Act, for supply of services by way of transportation of goods.</p>
3.	In the case given in Sl. No. 1, whether the recipient of service of transportation of goods would be eligible to avail input tax credit in respect of the said input service of transportation of goods?	<p>Section 16 of the CGST Act lays down the eligibility and conditions for taking input tax credit whereas, section 17 of the CGST Act provides for apportionment of credit and blocked credits under circumstances specified therein. The said provisions of law do not restrict availment of input tax credit by the recipient located in India if the place of supply of the said input service is outside India. Thus, the recipient of service of transportation of goods shall be eligible to avail input tax credit in respect of the IGST so charged by the supplier, subject to the fulfilment of other conditions laid down in section 16 and 17 of the CGST Act.</p> <p>In the illustration given in Sl. No. 1 above, X would be eligible to take input tax credit of IGST in respect of supply of services received by him from Z, subject to the fulfilment of other conditions laid down in section 16 and 17 of the CGST Act.</p>
4.	In the case mentioned at Sl. No. 1,	The supplier of service shall report place of supply



	what state code has to be mentioned by the supplier of the said service of transportation of goods, where the transportation of goods is to a place outside India, while reporting the said supply in FORM GSTR-1 ?	of such service by selecting State code as '96- Foreign Country' from the list of codes in the drop-down menu available on the portal in FORM GSTR-1 .
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3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)



Circular No. 185/17/2022-GST

F. No. CBIC-20001/2/2022 - GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 27th December, 2022

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners
/Commissioners of Central Tax (All)

The Principal Directors General/ Directors General (All)

**Subject: Clarification with regard to applicability of provisions of section 75(2) of
Central Goods and Services Tax Act, 2017 and its effect on limitation -reg.**

Madam/Sir,

Attention is invited to sub-section (2) of section 75 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”) which provides that in cases where the appellate authority or appellate tribunal or court concludes that the notice issued by proper officer under sub-section (1) of section 74 is not sustainable for reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the person to whom such notice was issued (hereinafter called as “noticee”), then the proper officer shall determine the tax payable by the noticee, deeming as if the notice was issued under sub-section (1) of section 73.

2. Doubts have been raised by the field formations seeking clarification regarding the time limit within which the proper officer is required to re-determine the amount of tax payable considering notice to be issued under sub-section (1) of section 73, specially in cases where time limit for issuance of order as per sub-section (10) of section 73 has already been over. Further, doubts have also been expressed regarding the methodology for computation of such amount payable by the noticee, deeming the notice to be issued under sub-section (1) of section 73.

3. 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:

S.No.	Issue	Clarification
1.	In some of the cases where the show cause notice has been issued by the proper officer to a noticee under sub-section (1) of section 74 of CGST Act for demand of tax not paid/ short paid or erroneous refund or input tax credit wrongly availed or utilized, the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable under sub-section (1) of section 74 of CGST Act for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act, in accordance with the provisions of sub-section (2) of section 75 of CGST Act. What would be the time period for re-determination of the tax, interest and penalty payable by the noticee in such cases?	<ul style="list-style-type: none"> Sub-section (3) of section 75 of CGST Act provides that an order, required to be issued in pursuance of the directions of the appellate authority or appellate tribunal or the court, has to be issued within two years from the date of communication of the said direction. Accordingly, in cases where any direction is issued by the appellate authority or appellate tribunal or the court to re-determine the amount of tax payable by the noticee by deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act in accordance with the provisions of sub-section (2) of section 75 of the said Act, the proper officer is required to issue the order of redetermination of tax, interest and penalty payable within the time limit as specified in under sub-section (3) of section 75 of the said Act, i.e. within a period of two years from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be.
2.	How the amount payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73, shall be re-computed/ re-determined by the proper officer as per provisions of sub-section (2) of section 75?	<ul style="list-style-type: none"> In cases where the amount of tax, interest and penalty payable by the noticee is required to be re-determined by the proper officer in terms of sub-section (2) of section 75 of CGST Act, the demand would have to be re-determined keeping in consideration the provisions of sub-section (2) of section 73, read with sub-section (10) of section 73 of CGST Act. Sub-section (1) of section 73 of CGST Act provides for issuance of a show cause notice by the proper officer for tax not paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized,

		<p>in cases which do not involve fraud or wilful misstatement or suppression of facts to evade tax. Sub-section (2) of section 73 of CGST Act provides that such show cause notice shall be issued at least 3 months prior to the time limit specified in sub-section 10 of section 73 for issuance of order. As per sub-section (9) of section 73 of CGST Act, the proper officer is required to determine the tax, interest and penalty due from the noticee and issue an order. As per sub-section (10) of section 73 of CGST Act, an order under sub-section (9) of section 73 has to be issued by the proper officer within three years from the due date for furnishing of annual return for the financial year in respect of which tax has not been paid or short paid or input tax credit has been wrongly availed or utilized or from the date of erroneous refund.</p> <ul style="list-style-type: none"> • It transpires from a combined reading of these provisions that in cases which do not involve fraud or willful-misstatement or suppression of facts to evade payment of tax, the show cause notice in terms of sub-section (1) of section 73 of CGST Act has to be issued within 2 years and 9 months from the due date of furnishing of annual return for the financial year to which such tax not paid or short paid or input tax credit wrongly availed or utilized relates, or within 2 years and 9 months from the date of erroneous refund. • Therefore, in cases where the proper officer has to re-determine the amount of tax, interest and penalty payable deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act in terms of sub-section (2) of section 75 of the said Act, the same can be re-determined for so much amount of tax short paid or not paid, or input tax credit wrongly availed or utilized or that of erroneous refund, in respect of which show cause notice was issued within the time limit as specified under sub-section (2) of section
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		<p>73 read with sub-section (10) of section 7 of CGST Act. Thus, only the amount of tax short paid or not paid, or input tax credit wrongly availed or utilized, along with interest and penalty payable, in terms of section 73 of CGST Act relating to such financial years can be re-determined, where show cause notice was issued within 2 years and 9 months from the due date of furnishing of annual return for the respective financial year. Similarly, the amount of tax payable on account of erroneous refund along with interest and penalty payable can be re-determined only where show cause notice was issued within 2 years and 9 months from the date of erroneous refund.</p> <ul style="list-style-type: none"> • In case, where the show cause notice under sub-section (1) of section 74 was issued for tax short paid or tax not paid or wrongly availed or utilized input tax credit beyond a period of 2 years and 9 months from the due date of furnishing of the annual return for the financial year to which such demand relates to, and the appellate authority concludes that the notice is not sustainable under sub-section (1) of section 74 of CGST Act thereby deeming the notice to have been issued under sub-section (1) of section 73, the entire proceeding shall have to be dropped, being hit by the limitation of time as specified in section 73. Similarly, where show cause notice under sub-section (1) of section 74 of CGST Act was issued for erroneous refund beyond a period of 2 years and 9 months from the date of erroneous refund, the entire proceeding shall have to be dropped. • In cases, where the show cause in terms of sub-section (1) of section 74 of CGST Act was issued for tax short paid or not paid tax or wrongly availed or utilized input tax credit or on account of erroneous refund within 2 years and 9 months from the due date of furnishing of the annual return for the said financial year,
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		<p>to which such demand relates to, or from the date of erroneous refund, as the case may be, the entire amount of the said demand in the show cause notice would be covered under re-determined amount.</p> <ul style="list-style-type: none">• Where the show cause notice under sub-section (1) of section 74 was issued for multiple financial years, and where notice had been issued before the expiry of the time period as per sub-section (2) of section 73 for one financial year but after the expiry of the said due date for the other financial years, then the amount payable in terms of section 73 shall be re-determined only in respect of that financial year for which show cause notice was issued before the expiry of the time period as specified in sub-section (2) of section 73.
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4. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

5. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)



Circular No. 186/18/2022-GST

F. No. CBIC-20001/2/2022 - GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 27th December, 2022

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/
Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on various issue pertaining to GST-reg.

Representations have been received from the field formations seeking clarification on certain issues with respect to –

- i. taxability of No Claim Bonus offered by Insurance companies;
- ii. applicability of e-invoicing w.r.t an entity.

2. 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 Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues as under:

S. No.	Issue	Clarification
Taxability of No Claim Bonus offered by Insurance companies		
1.	Whether the deduction on account of No Claim Bonus allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to	As per practice prevailing in the insurance sector, the insurance companies deduct No Claim Bonus from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy, and is not under any contractual obligation not to claim insurance

	<p>refrain from the act of lodging insurance claim during the previous year(s)?</p>	<p>claim during any period covered under the policy, in lieu of No Claim Bonus.</p> <p>It is, therefore, clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and No Claim Bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company.</p>
2.	<p>Whether No Claim Bonus provided by the insurance company to the insured can be considered as an admissible discount for the purpose of determination of value of supply of insurance service provided by the insurance company to the insured?</p>	<p>As per clause (a) of sub-section (3) of section 15 of the CGST Act, value of supply shall not include any discount which is given before or at the time of supply if such discount has been duly recorded in the invoice issued in respect of such supply.</p> <p>The insurance companies make the disclosure of the fact of availability of discount in form of No Claim Bonus, subject to certain conditions, to the insured in the insurance policy document itself and also provide the details of the no claim Bonus in the invoices also. The pre-disclosure of NCB amount in the policy documents and specific mention of the discount in form of No Claim Bonus in the invoice is in consonance with the conditions laid down for deduction of discount from the value of supply under clause (a) of sub-section (3) of section 15 of the CGST Act.</p> <p>It is, therefore, clarified that No Claim Bonus (NCB) is a permissible deduction under clause (a) of sub-section (3) of section 15 of the CGST Act for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured. Accordingly, where the deduction on account of No claim bonus is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of No Claim Bonus mentioned on the invoice.</p>

Clarification on applicability of e-invoicing w.r.t an entity		
3.	Whether the exemption from mandatory generation of e-invoices in terms of Notification No. 13/2020-Central Tax, dated 21 st March, 2020, as amended, is available for the entity as whole, or whether the same is available only in respect of certain supplies made by the said entity?	<p>In terms of Notification No. 13/2020-Central Tax dated 21st March, 2020, as amended, certain entities/sectors have been exempted from mandatory generation of e-invoices as per sub-rule (4) of rule 48 of Central Goods and Services Tax Rules, 2017. It is hereby clarified that the said exemption from generation of e-invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity.</p> <p>Illustration: A Banking Company providing banking services, may also be involved in making supply of some goods, including bullion. The said banking company is exempted from mandatory issuance of e-invoice in terms of Notification No. 13/2020-Central Tax, dated 21st March, 2020, as amended, for all supplies of goods and services and thus, will not be required to issue e-invoice with respect to any supply made by it.</p>

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

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)



Circular No. 187/19/2022-GST

F. No. CBIC-20001/2/2022 - GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 27th December, 2022

To,
The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /
Commissioners of Central Tax (All)
The Principal Directors General / Directors General (All)

Madam/Sir,

Subject: Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016- reg.

Attention is invited to Circular No.134/04/2020-GST dated 23rd March, 2020, wherein it was clarified that no coercive action can be taken against the corporate debtor with respect to the dues of the period prior to the commencement of Corporate Insolvency Resolution Process (CIRP). Such dues will be treated as 'operational debt' and the claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC.

2. Representations have been received from the trade as well as tax authorities, seeking clarification regarding the modalities for implementation of the order of the adjudicating authority under Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC") with respect to demand for recovery against such corporate debtor under Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") as well under the existing laws and the treatment of such statutory dues under CGST Act and existing laws, after finalization of the proceedings under IBC.

3. In order to ensure uniformity in the implementation of the provisions 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 as follows.

4.1 Section 84 of CGST Act reads as follows:

"Section 84 - Continuation and validation of certain recovery proceedings.-

Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this section referred to as "Government dues"), is served upon any taxable person or any other person and any appeal or revision

application is filed or any other proceedings is initiated in respect of such Government dues, then-

..

*(b) where such Government dues are reduced in such appeal, revision or **in other proceedings-***

(i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;

*(ii) the Commissioner shall give **intimation** of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;*

(iii) any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.”

4.2 As per Section 84 of CGST Act, if the government dues against any person under CGST Act are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues.

4.3 The word ‘other proceedings’ is not defined in CGST Act. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy. For instance, under IBC, NCLT serves as an adjudicating authority for insolvency proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees etc. and passes an order approving the resolution plan. As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term ‘other proceedings’ in Section 84 of CGST Act.

5. Rule 161 of Central Goods and Services Tax Rules, 2017 prescribes **FORM GST DRC-25** for issuing intimation for such reduction of demand specified under section 84 of CGST Act. Accordingly, in cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in **FORM GST DRC-07/DRC 07A** against the corporate debtor, and where the proceedings have been **finalised** against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the government under CGST Act or under existing laws, the jurisdictional Commissioner shall issue an intimation in **FORM GST DRC-25** reducing such demand, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.

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



7. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)

Principal Commissioner (GST)



Circular No. 188/20/2022-GST

F. No. CBIC-20001/2/2022 - GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 27th December, 2022

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /
Commissioners of Central Tax (All)
The Principal Directors General / Directors General (All)

Madam/Sir,

Subject: Prescribing manner of filing an application for refund by unregistered persons -reg.

Instances have been brought to the notice where the unregistered buyers, who had entered into an agreement/ contract with a builder for supply of services of construction of flats/ building, etc. and had paid the amount towards consideration for such service, either fully or partially, along with applicable tax, had to get the said contract/ agreement cancelled subsequently due to non-completion or delay in construction activity in time or any other reasons. In a number of such cases, the period for issuance of credit note on account of such cancellation of service under the provisions of section 34 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'CGST Act') may already have got expired by that time. In such cases, the supplier may refund the amount to the buyer, after deducting the amount of tax collected by him from the buyer.

1.2 Similar situation may arise in cases of long-term insurance policies where premium for the entire period of term of policy is paid upfront along with applicable GST and the policy is subsequently required to be terminated prematurely due to some reasons. In some cases, the time period for issuing credit note under the provisions of section 34 of the CGST Act may have already expired and therefore, the insurance companies may refund only the proportionate premium net off GST.

1.3 Representations have been received requesting for providing a facility to such unregistered buyers/ recipients for claiming refund of amount of tax borne by them in the event of cancellation of the contract/agreement for supply of services of construction of flat/ building or on termination of long-term insurance policy.

2. It would be pertinent to mention that sub-section (1) of section 54 of the CGST Act already provides that any person can claim refund of any tax and interest, if any, paid on such



tax or any other amount paid by him, by making an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. Further, in terms of clause (e) of sub-section (8) of section 54 of the CGST Act, in cases where the unregistered person has borne the incidence of tax and not passed on the same to any other person, the said refund shall be paid to him instead of being credited to Consumer Welfare Fund (CWF).

2.1 In order to enable such unregistered person to file application for refund under sub-section (1) of section 54, in cases where the contract/agreement for supply of services of construction of flat/ building has been cancelled or where long-term insurance policy has been terminated, a new functionality has been made available on the common portal which allows unregistered persons to take a temporary registration and apply for refund under the category '**Refund for Unregistered person**'. Further, sub-rule (2) of rule 89 of Central Goods and Service Tax Rules, 2017 (hereinafter referred to as 'CGST Rules') has been amended and statement 8 has been inserted in FORM GST RFD-01 vide Notification No. 26/2022-Central Tax dated 26.12.2022 to provide for the documents required to be furnished along with the application of refund by the unregistered persons and the statement to be uploaded along with the said refund application.

3. In order to ensure uniformity in the implementation of the above provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby clarifies the following:

4. **Filing of refund application**

4.1 The unregistered person, who wants to file an application for refund under sub-section (1) of section 54 of CGST Act, in cases where the contract/agreement for supply of services of construction of flat/ building has been cancelled or where long-term insurance policy has been terminated, shall obtain a temporary registration on the common portal using his Permanent Account Number (PAN). While doing so, the unregistered person shall select the same state/UT where his/her supplier, in respect of whose invoice refund is to be claimed, is registered. Thereafter, the unregistered person would be required to undergo Aadhaar authentication in terms of provisions of rule 10B of the CGST Rules. Further, the unregistered person would be required to enter his bank account details in which he seeks to obtain the refund of the amount claimed. The applicant shall provide the details of the bank account which is in his name and has been obtained on his PAN.

4.2 The application for refund shall be filed in **FORM GST RFD-01** on the common portal under the category '**Refund for unregistered person**'. The applicant shall upload **statement 8** (in pdf format) and all the requisite documents as per the provisions of sub-rule (2) of rule 89 of the CGST Rules. The refund amount claimed shall not exceed the total amount of tax declared on the invoices in respect of which refund is being claimed. Further, the applicant shall also upload the certificate issued by the supplier in terms of clause (kb) of sub-rule (2) of rule 89 of the CGST Rules along with the refund application. The applicant shall also upload any other document(s) to support his claim that he has paid and borne the incidence of tax and that the said amount is refundable to him.

4.3 Separate applications for refund have to be filed in respect of invoices issued by different suppliers. Further, where the suppliers, in respect of whose invoices refund is to be claimed, are registered in different States/UTs, the applicant shall obtain temporary registration in the each of the concerned States/UTs where the said supplier are registered.

4.4 Where the time period for issuance of credit note under section 34 of the CGST Act has not expired at the time of cancellation/termination of agreement/contract for supply of services, the concerned suppliers can issue credit note to the unregistered person. In such cases, the supplier would be in a position to also pay back the amount of tax collected by him from the unregistered person and therefore, there will be no need for filing refund claim by the unregistered persons in these cases. Accordingly, the refund claim can be filed by the unregistered persons only in those cases where at the time of cancellation/termination of agreement/contract for supply of services, the time period for issuance of credit note under section 34 of the CGST Act has already expired.

5. **Relevant date for filing of refund:**

As per sub-section (1) of section 54 of the CGST Act, time period of two years from the relevant date has been specified for filing an application of refund. Further, the relevant date in respect of cases of refund by a person other than supplier is the date of receipt of goods or services or both by such person in terms of provisions of clause (g) in Explanation (2) under section 54 of the CGST Act. However, in respect of cases where the supplier and the unregistered person (recipient) have entered into a long-term contract/ agreement for the supply, with the provision of making payment in advance or in instalments, for example- construction of flats or long-term insurance policies, if the contract is cancelled/ terminated before completion of service for any reason, there may be no date of receipt of service, to the extent supply has not been made/ rendered. Therefore, in such type of cases, it has been decided that for the purpose of determining relevant date in terms of clause (g) of Explanation (2) under section 54 of the CGST Act, **date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier** will be considered as the date of receipt of the services by the applicant.

6. **Minimum refund amount**

Sub-section (14) of section 54 of the CGST Act provides that no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if amount is less than one thousand rupees. Therefore, no refund shall be claimed if the amount is less than one thousand rupees.

7. The proper officer shall process the refund claim filed by the unregistered person in a manner similar to other RFD-01 claims. The proper officer shall scrutinize the application with respect to completeness and eligibility of the refund claim to his satisfaction and issue the refund sanction order in FORM GST RFD-06 accordingly. The proper officer shall also upload a detailed speaking order along with the refund sanction order in FORM GST RFD-06.



7.1 In cases where the amount paid back by the supplier to the unregistered person on cancellation/termination of agreement/contract for supply of services is less than amount paid by such unregistered person to the supplier, only the proportionate amount of tax involved in such amount paid back shall be refunded to the unregistered person.

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

9. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)
Principal Commissioner (GST)