

TAX INFO

Dated 09/07/2022

Latest update on GST Law: **Summary of Circular No. 170/02/2022-GST till 176/08/2022-GST dated 6th July, 2022.**

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Summary of Circular No. 170/02/2022-GST dated 6th July, 2022

Mandatory furnishing of correct and proper information of:

- inter-State supplies FORM GSTR-1 and
 - amount of ineligible/blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B
1. The registered persons making inter-State supplies – 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.
 2. The registered persons making inter-State supplies 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.
 3. Taxpayers 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.
 4. **Reversal of ITC** which are absolute and not reclaimable and are permanent in nature like **under Rule 38, Rule 42, Rule 43 i.e. reversal of ITC on account of exempt supply and as per S.17(5) on account of blocked or ineligible credit to be made in Table 4(B)(1).**
 5. **Reversal of ITC** which can be reclaimed later and are not permanent in nature such as under **Rule 37 for reversal of credit due to non-payment within 180 days and under S.16(2)(b) & S.16(2)(c) for reversal due to invoice received earlier but goods and service received later to be made in Table 4(B)(2).**
 6. Such temporarily reversed 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).**
 7. 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.
 8. **ITC not available**, on account of limitation of time period as delineated in section 16(4) 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).**

Summary of Circular No. 171/03/2022-GST dated 6th July, 2022

Clarification relating to applicability of demand and penalty provisions under the CGST Act, 2017 in respect of transactions involving fake invoices is given by way of 3 scenarios:

Clarification No.1

When the registered person 'A' issues a tax invoice 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 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 can be taken against 'A' in respect of the said transaction. **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 which means he shall be liable for penalty under section 122(1)(ii) i.e amount of tax involved and 10,000 whichever is higher.**

Clarification No.2

In case such registered person 'B' has availed and utilized fraudulent ITC on the basis of the above mentioned fake 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 i.e., @24%.

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, can be imposed on 'B' under any other provisions of CGST Act, including under section 122.

Clarification No.3

In 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 supply of goods or services 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, 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. 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 i.e amount of tax involved and 10,000 whichever is higher for issuing invoices without any actual supply of goods as also for taking/ utilizing input tax credit without actual receipt of goods

Summary of Circular No. 172/04/2022-GSTdated 6^h July, 2022

Refund claimed by the recipients of supplies regarded as deemed export

1. The ITC availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017.
2. 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.

Interpretation of section 17(5) of the CGST Act.

1. 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 **which means that the availment of ITC is not barred on:**
 - i. Food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery;
 - ii. Membership of a club, health and fitness centre;
 - iii. Travel benefits extended to employees on vacation such as leave or home travel concession**where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.**
2. The word "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.**

Perquisites provided by employer to the employees as per contractual agreement.

1. The 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.

Utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities.

1. 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.
2. The output tax does not include tax payable under reverse charge mechanism, implying thereby that the electronic credit ledger cannot be used for making payment any tax which is payable under reverse charge mechanism.
3. As per Section 49(4), 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.
4. As per Section 49(3) 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.

Summary of Circular No. 173/05/2022-GST dated 6^h July, 2022

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. However, 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.

Therefore, it is clarified that in such cases, refund of accumulated input tax credit on account of inverted structure as per Section 54(3)(ii) 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.

Summary of Circular No. 174/06/2022-GST dated 6^h July, 2022

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 where the taxpayer deposits the erroneous refund sanctioned to him.

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**:

- 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.

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

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.
2. 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.

3. The proper officer, on being satisfied that the full amount of erroneous refund has been paid by the said registered person in FORM GST DRC-03, he shall re-credit an amount in electronic credit ledger, equivalent to the amount of erroneous refund so deposited by registered person, by passing an order in FORM GST PMT-03A, **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, **whichever is later**.

Till the time an automated functionality for handling such cases is developed on the portal, the taxpayer shall make a written request, in format **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.

Summary of Circular No. 175/07/2022-GST dated 6th July, 2022

A clause (ba) has been inserted in Rule 89(2) 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.

Manner of filing refund of unutilized ITC on account of export of electricity has been prescribed.

Filing of refund claim:

1. 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)”.
2. The applicant would be required to 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.
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”) 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.
4. The applicant will also give details of calculation of the refund amount in Statement-3A by uploading the same in pdf format along with refund application in FORM GST RFD-01.

Relevant date for filing 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.

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.

Processing of refund claim by proper officer:

1. 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.**
2. 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).
3. **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. As electricity has been wholly exempted from the levy of GST, therefore, 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.

5. Further, upon scrutiny of the application for completeness and eligibility, if the proper officer is satisfied then 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.

Summary of Circular No. 176/08/2022-GST dated 6^h July, 2022

Circular No. 106/25/2019-GST dated 29.06.2019 wherein certain clarifications were given in relation to rule 95A, inserted in the CGST 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 is withdrawn as 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.

Supplies from Duty Free Shops (DFS) at international terminal to outgoing international passengers to be treated as exports by DFS and consequential refund benefit to be available to DFS on such supplies, now such DFS can file RFD-01 for claiming Refunds under GST.

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