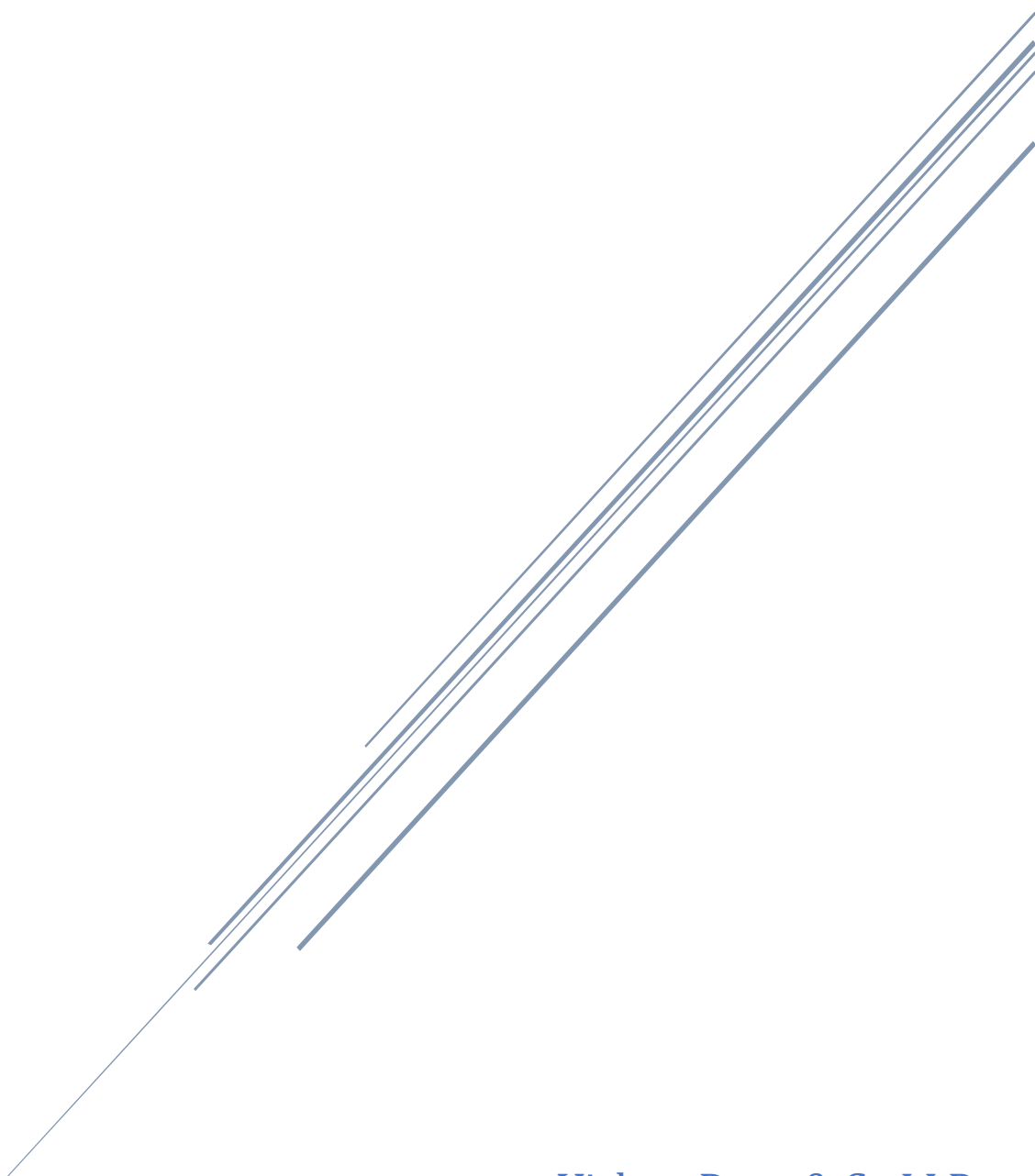


GST UPDATE

Changes Announced in 47th GST Council Meeting



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GST Council conducted 47th meeting on 29.06.2022 and announced several changes both in respect of rate of tax and procedures. The details of the changes announced are detailed below:

CHANGES RELATED TO RULES AND REGULATIONS:

CHANGES TO THE GST RULES:

The following changes have been done to the GST Rules¹:

1. **Revocation of registration suspension:**

A proviso has been inserted to Rule 21A (4) to provide that in case where the suspension of registration has been initiated for non-filing of the returns and the registration is not yet cancelled by the proper officer, the suspension shall be deemed to be revoked upon furnishing all the pending returns.

2. **Reversal of ITC not required for supply of Duty Credit Scrips:**

A clause has been inserted to Explanation 1 to Rule 43 providing that the value of exempted supply for the purpose of Rule 42 and Rule 43 shall not include the value of supply of Duty Credit Scrips.

Our comments: Hitherto, when the supply of duty credit scrips was done, reversal of common ITC was required to be done as the sale of duty credit scrips were subject to Nil rate of GST. With this amendment, the suppliers need not reverse any ITC on the sale of duty credit scrips like MEIS, SEIS.

The amendment is not retrospective and therefore, shall be effective from the date of the notification.

3. **Amendment to invoice contents:**

A clause has been added to Rule 46 to provide that the following declaration shall be given in the invoice by a person whose turnover exceeds the limit for issuing the E-Invoice but is exempted from doing so under Rule 48:

“I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under

¹ Notification No. 14/2022 – Central Tax dated 05.07.2022

sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule”.

4. Erroneous refund:

In rule 86, sub-rule (4B) has been inserted to provide that if the registered person deposits an erroneous refund along with interest & penalty by debiting Cash ledger, then an amount equivalent to the deposit by taxpayers through DRC-03, shall be re-credited to Electronic Credit Ledger by the proper officer by an order made in FORM GST PMT-03A.

5. Payment of GST liability:

Rule 87 has been amended to provide for that Immediate Payment Services (IMPS) and Unified Payment Interface (UPI) are allowed as modes of payment towards tax, interest, penalty, fees, or any other amount.

6. Transfer of Cash Ledger balance from one GSTIN to another GSTIN under same PAN enabled:

Further, sub-rule (14) has been inserted under Rule 87 to provide that the amount available in the Electronic Cash Ledger (CGST/IGST) can be transferred to the Electronic Cash Ledger (CGST/IGST) of Distinct Person using Form GST PMT-09. However, if the Registered person has outstanding liability in its Electronic Liability Ledger, the amount cannot be transferred.

7. Manner of calculating interest on delayed payment of tax:

Rule 88B has been inserted to provide for the computation of interest. Specific procedures have been provided for calculation of interest on delayed payment of output tax and reversal of ITC. **The amendment shall be effective retrospectively from 01st July 2017.**

Delayed payment of output tax:

- In the case, where the return is furnished after the due date, the interest on tax payable in respect of such supplies shall be calculated on the portion of the tax,

which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date.

- In other cases, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid.

Our comments: The relaxation from the payment of interest on the tax paid using electronic credit ledger is available only in respect of the delayed filing of the GSTR3B. However, if certain output tax has been missed in one month's tax payable and such tax liability has been included in the subsequent month's return, then, even if such liability is paid using the electronic credit ledger, the interest shall apply.

Reversal of input tax credit:

- In the case, where interest is payable on the amount of input tax credit wrongly **availed and utilised**, the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting **from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount.**
- Input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.
- The date of utilisation of such input tax credit shall be the date on which the return is due to be furnished or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return.
- In other cases, the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.

Our comments: The amendment brings clarity on the method of calculating the interest liability in case of reversal of ITC. So long as the wrongly availed credit is not utilised, the payment of interest is not warranted.

8. Changes in the refund related provisions:

Certain amendments have been made to the refund related provisions. The details are given below:

- Under sub-rule (2) an explanation has been added to clarify that specified officer means a “specified officer” or an “authorised officer” as defined under rule 2 of the Special Economic Zone Rules, 2006.
- Refund process on account of export of electricity has been enabled. Detailed procedure is provided through circular.
- For claiming a refund of accumulated ITC on the export of goods, the value of goods shall be taken as **lesser of the:**
 1. Free on Board (FOB) value declared in the Shipping Bill or Bill of Export Form or
 2. the value declared in the tax invoice or bill of supplyIn Statement-3, under the heading Shipping bill/Bill of export, after column 9, column 9A “FOB Value” inserted in Form GST RFD-01.

Our comments: The value of supply should be determined as per the valuation provisions. The amendment restricts the value of the exported goods by considering the lesser of the FOB value or invoice value for the purpose of refund. This amendment will impact negatively in cases where the value of exported goods under CIF terms with the export customers.

- The Formula has been amended to calculate the Maximum Amount of Refund on account of ITC accumulated due to inverted tax structure.

Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC / Adjusted Total Turnover} - {tax payable on such inverted rated supply of goods and services x (Net ITC/ ITC availed on inputs and input services)}

9. Removal of 95A rule:

GST refund for tax-free sales by the retailers in the International Airport to outgoing international tourists has been withdrawn retrospectively from 1st July 2019.

10. Refund of IGST paid on export of goods:

Several amendments have been proposed to Rule 96 related to refund on account of export goods with payment of IGST. The amendments have been made retrospectively with effect from 1st July 2017:

- Amendment has been recommended to provide for transmission of system generated Form GST RFD-01 electronically to the jurisdictional GST authorities for processing of such IGST refund claims where the refund is withheld in cases of taxpayers in default.
- If there is any mismatch between the data furnished by the exporter of goods in Shipping Bill and those furnished in statement of outward supplies in FORM GSTR-1, such application for refund of integrated tax paid on the goods exported out of India shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter.

Our comments: The exporters who are exporting the goods on payment of IGST needs to be vigilant about the goods exported and refund received. Any mismatch should be verified and corrected on real time basis. If the correction is delayed beyond two years from the date of export, then the refund claim may be rejected by the tax authorities as time barred as the relevant date for computing the limitation is 2 years from the date of export of the goods.

11. Changes in the format of GSTR-3B:

The format of GSTR-3B has been revised for reporting the supply of services made through E-commerce operators. The Registered Suppliers and E-commerce operators have to report e-commerce sales classified under Section 9(5) in Table 3.1.1 in GSTR 3B. E-commerce operators must furnish details in Clause (i) for sales made through them on which they pay taxes. At the same time, Clause (ii) must be reported by the registered person making supplies through E-commerce operator on which E-commerce operator is required to pay tax.

In table 4(Eligible ITC), changes are made to Part B (ITC Reversed) and Part D (Ineligible ITC). ITC reversed figure in Part B must be derived based on the CGST Rules 38, 42, and 43 as well as Section 17(5) against earlier CGST Rules 42 and 43. The heading in part D is changed to 'Other Details' from the earlier 'Ineligible ITC'. Two rows are added under this part to report 'ITC reclaimed which was reversed under Table 4(B)(2) in earlier tax period' and 'Ineligible ITC under section 16(4) and ITC restricted due to the place of supply provisions'.

12. Changes in the format of GSTR-9:

- For FY 2021-22, the registered person shall report Non-GST supply (5F) separately and shall have an option to either separately report his supplies as exempted and nil rated supply or report consolidated information for these two heads in the "exempted" row only.
- From FY 2021-22 onwards, it shall be mandatory to report HSN code at six digits level in Table 17.
- For FY 2021-22, the registered person shall have an option to not fill Table 18.

OTHER CHANGES:

1. Applicability of GSTR-9 or GST Annual Return for FY 2021-22:

The taxpayers having Annual aggregate turnover up to Rs.2 crore during the Financial Year 2021-22 shall be exempt from filing Annual returns.

Notification No. 10/2022 – Central Tax

2. Extension of timelines for Submitting CMP-08:

The due date to submit Form CMP-08 containing the self-assessed tax for April-June 2022 is extended to 31st July 2022 from 18th July 2022 for Composition Taxpayers.
Notification No. 11/2022 – Central Tax

3. Late fee waiver for delayed filing of GSTR-4:

The CBIC extended the Late fee waiver for delayed filing of GSTR-4 by the Composition Taxpayers for FY 2021-22 from 30th June 2022 to 28th July 2022.
Notification No. 12/2022 – Central Tax

4. Extension of the limitation period for various actions:

Time limit u/s 73(10) to issue Order u/s 73(9) for recovery of tax not paid, short paid or of ITC wrongly availed and utilized for FY 2017-18 shall be allowed till 30th September 2023. The time period between 1st March 2020 to 28th February 2022 needs to be excluded for the computation of the period of limitation u/s 73(10) for recovery of erroneous refunds.

The period between 1st March 2020 and 28th February 2022 must be excluded for computation of the period of limitation for filing refund application under Section 54 or Section 55 of CGST Act, 2017.

Notification No. 13/2022 – Central Tax

CLARIFICATIONS ISSUED BY CBIC:

1. 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:

It is advised that 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;

- 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.
- 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.

The procedure to be followed by the registered person for correct reporting of Inputs in the GSTR 3B:

- 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.
- 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).
- 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.

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.

- 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).
- ITC not available, on account of limitation of time period as mentioned 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 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.

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.

Circular No. 170/02/2022-GST

2. 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:

The circular provides an illustration of various scenarios of fake invoicing and provides clarification on the issues relating to applicability of demand and penalty provisions. Summary of the same is as under (registered person considered as Mr.A and Mr.B)

Case	Action	Comments
Mr. A issued tax invoice to Mr. B without any underlying supply. Impact on Mr. A?	Penal action would be taken against Mr. A under section 122(1)(ii) for issuance of fake invoice	As there is no supply, no proceedings for demand and recovery under Section 73 or Section 74 can be made against Mr.A .
Mr. B receives a tax invoice from Mr. A without any underlying supply. Mr. B issues tax	Proceedings would be initiated against Mr. B for recovery of incorrect ITC plus penalty under Section 74 of the CGST Act, along	No separate penal proceedings under Section 122 against Mr. B, as proceedings have

invoice against an underlying supply to its customer. Mr. B utilizes the ITC availed based on the fake invoice. Impact on Mr. B?	with applicable interest as per Section 50.	already been initiated under Section 74. (Refer Section 75(13)).
Mr. B receives a tax invoice from Mr. A without any underlying supply. Mr. B issues tax invoice without any underlying supply to Mr. C. Impact on Mr. B?	Penal action would be taken against Mr. B 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.	No proceeding in section 73 and 74 as no underlying supply present.

The circular also clarifies that proceeding under section 122(1A) can be initiated against any person who has retained the benefit of the transactions specified therein or at whose instance such transactions are conducted.

It has also been clarified that provisions of section 132 of the CGST Act may also be invocable in 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.

The provisions of section 132 would be invocable subject to the satisfactions of conditions specified therein and based on facts and circumstances of each case.

Circular No. 171/03/2022-GST

3. Applicability of Section 17 on ITC availed by recipients of supplies regarded as deemed export:

As per circular 147/03/2021-GST, the Department had earlier provided the facility to the recipients of deemed export supplies to avail the tax paid on such supplies as ITC to aid them in applying for refund. However, there was ambiguity regarding the applicability of provisions of blocked credits under section 17 on the availment of such ITC.

Vide this recent circular, the Department has clarified that the ITC availed by the recipients of deemed exports are only to resolve issues in their refund process. Such ITC is not ITC as per chapter V of the CGST Act (including section 16, 17 and 18 of the CGST Act). In other words, the provisions of ITC including the blocked credit provisions would not apply to such ITC.

4. Inclusion of ITC availed by recipients of supplies regarded as deemed export in unutilized ITC refund formula:

Another issue was the lack of clarity regarding the inclusion of such ITC in “Net ITC” used 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.

It had been clarified in the same Circular that the provisions of ITC (chapter V of the CGST Act) including the blocked credit provision would not apply to ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports.

On similar lines, it has been clarified that such ITC would not to be included in the “Net ITC” for computation of refund of unutilised ITC on account of zero-rated supplies or on account of inverted-rate structure.

5. Clarification on the ambit of proviso after clause 17(5)(b):

Post substitution of 17(5)(b) vide Central Goods and Service Tax (Amendment Act) 2018, a proviso was placed at the end of clause 17(5)(b) reproduced below:

“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.”

There has been ambiguity regarding whether the said proviso applies only to sub-clause (iii) of clause 17(5)(b) or to the complete clause 17(5)(b). Not applying the proviso to sub-clause (i) and (ii) of clause 17(5)(b) was leading to disallowance of ITC on certain crucial expenses such as health insurance and life insurance that are legally required to be taken by the employer.

It has now been clarified that the said proviso is applicable to the entire clause (b).

6. Clarification on interpretation of sub-clause 17(5)(b)(i):

Among the ITC blocked inward supplies provided in sub-clause (i) of clause 17(5)(b), the services “leasing, renting or hiring of motor vehicle, vessels or aircraft” was also provided.

The department has clarified that the term “leasing” is not an independent inward supply being blocked. The term “leasing” stated above refers to the leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items.

Hence, ITC is not blocked in the case of leasing other than leasing of motor vehicles, vessels and aircrafts.

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

Perquisites provided by employer to its employees in terms of contractual agreement would be covered under Entry 1 of Schedule III i.e. “services by employee to the employer in the course of or in relation to his employment”. Hence such perquisites would be treated as neither a supply of goods nor a supply of

service for the reason being these perquisites are provided in lieu of the services by employee to the employer in relation to his employment. Hence such perquisites provided in lieu of employment would not be subjected to GST.

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

Amount available in the electronic credit ledger can be used for making payment of output tax as provided under Section 49(4) of CGST Act 2017 subject to order of utilisation provided under Section 49B of CGST Act 2017 read with Rule 88A of CGST Rules 2017. Also, Rule 86(2) provides for debiting of electronic credit ledger to the extent of discharge of any liability in accordance with provisions of Section 49/49A/49B of CGST Act 2017.

Further output tax has been defined as tax chargeable on taxable supply of goods or services or both but excludes tax payable on reverse charge mechanism. 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.

It has also been clarified as follow:

1. Electronic credit ledger cannot be used for making payment of any interest, penalty, fees or any other amount payable under the said acts.
2. Electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.
3. Only 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

Circular No. 172/04/2022-GST

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

It is clarified that the refund of accumulated ITC on account of inverted structure 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.

Circular No. 173/05/2022-GST

10. Prescribing manner of re-credit in electronic credit ledger using FORM GST PMT-03A

Notification No. 14/2022-CT was issued on 05.07.2022 to provide for re-credit in the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03A, where the taxpayer deposits through DRC-03 the erroneous refund sanctioned to him. Through this Circular, the CBIC has provided the following clarifications:

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.

Till the time an automated functionality for handling such cases is developed on the portal, by making a written request, in the format enclosed as Annexure-A, to the 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.

The proper officer, on being satisfied that the full amount of erroneous refund along with applicable interest, and penalty, wherever applicable, has been paid by the said registered person in FORM GST DRC-03. he shall re-credit an amount in electronic credit ledger, by passing an order in FORM GST PMT-03A, preferably within a period of 30 days from the date of receipt of request.

Circular No. 174/06/2022-GST

11. Filing refund of unutilized ITC on account of export of electricity

Vide said notification No.14/2022-CTR dated 5th July 2022 para 8(b), government inserts rule 89(2)(ba) as follows:

“A statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement, along with the copy of statement of scheduled energy for exported electricity by Generation Plants issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under clause (nnn) of sub regulation 1 of Regulation 2 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and the copy of agreement detailing the tariff per unit, in case where refund is on account of export of electricity;”

Further, the circular No. 175/07/2022-GST dated 6th July, 2022 prescribes the procedure for filing and processing of refund of unutilised ITC on account of export of electricity.

Circular No. 175/07/2022-GST

12. Withdrawal of Circular No. 106/25/2019-GST dated 29.06.2019

Vide notification No. 14/2022-Central Tax, dated 05.07.2022, GST refund for tax-free sales by the retailers in the International Airport to outgoing international tourists has been withdrawn retrospectively from 1st July 2019. In order to give effect to said notification, CBIC Withdrawn Circular No. 106/25/2019-GST dated 29.06.2019.

Circular No. 176/08/2022-GST