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## **CBIC issues 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**

The CBIC issued **Circular No. 183/20/2022-GST dated December 27, 2022** to update 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.

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.

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 up to 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.

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:

- that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;
- that he has received the goods or services or both;
- 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.

- 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.



- 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.
- 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.
- 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.
- 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.
- 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.

- 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.

### Issue

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.

### Clarifications

- 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.
- 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

**Source: Circular No. 183/20/2022-GST dated December 27, 2022**



## CBIC issued 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

- 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.
- 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:

### Issue

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

### Clarification

- 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:
- “(8) 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 person;
  - a person other than a registered person, shall be the location at which such goods are handed over for their transportation: 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”

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.

### Issue

Whether the supply of services will be treated as inter-State supply or intra-State supply

### Clarification

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



**Issue**

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

**Clarification**

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

**Issue**

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

**Clarification**

The supplier of service shall report place of supply 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.

**Source:** Circular No 184/16/2022-GST dated December 27, 2022



## CBIC issued clarification with regard to applicability of provisions of Section 75(2) of Central Goods and Services Tax Act, 2017 and its effect on limitation

CBIC vide Circular 185/17/2022-GST dated December 27, 2022 issued the following clarifications:

- 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 ( "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.
- 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. 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:

### Issue

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?

### Clarification

- 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.



**Issue**

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?

**Clarification**

- 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 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.
- 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,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.

- 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.

**Source: Circular No 185/17/2022-GST dated December 27, 2022**





## CBIC issued clarification on various issue pertaining to GST

CBIC vide Circular 186/18/2022-GST dated December 27, 2022 issued the following clarifications:

Taxability of No Claim Bonus offered by Insurance companies:

**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 refrain from the act of lodging insurance claim during the previous years?**

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 claim during any period covered under the policy, in lieu of No Claim Bonus. 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.

**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?**

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. 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. 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.

### Clarification on applicability of e-invoicing w.r.t an entity

Whether the exemption from mandatory generation of e-invoices in terms of Notification No. 13/2020-Central Tax, dated 21st 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? 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.

**Source: Circular No 186/18/2022-GST dated December 27, 2022**



## CBIC issued clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalized under Insolvency and Bankruptcy Code, 2016

CBIC vide Circular 187/19/2022-GST dated December 27, 2022 issued the following clarifications:

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

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 ("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.

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, clarifications are mentioned below:

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-*

- *it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;*

- *the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;*
- *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."*
- 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.
- 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.
- 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 finalized 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.

*Source: Circular No 187/19/2022-GST dated December 27, 2022*

## CBIC issued clarification regarding prescribing manner of filing an application for refund by unregistered persons

CBIC vide Circular 188/20/2022-GST dated December 27, 2022 issued the following clarifications:

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 notes 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.

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.

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.



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).

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.

### **Filing of refund application:**

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.

- 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.
- 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.
- 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.



**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. In respect of cases where the supplier and the unregistered person (recipient) have entered into a long-term contract for the supply, with the provision of making payment in advance or in instalments, e.g. 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. 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.

**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.
- 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 wrt completeness and eligibility of the refund claim to his satisfaction and issue the refund sanction order in FORM GSTRFD-06 accordingly. The proper officer shall also upload a speaking order along with the refund sanction order in FORM GST RFD-06.
- 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.

**Source: Circular 188/20/2022-GST dated December 27, 2022**



## No recovery of tax to be made during search, inspection or investigation unless it is voluntary

The Hon'ble Delhi High Court in the case of M/s. Vallabh Textiles v. Senior Intelligence Officer and Ors (W.P.(C) No. 9834/2022 dated December 20, 2022) has held that, payment of tax made during the conduct of search cannot be considered as voluntary payment of tax. Further directed the Revenue Department to refund the amount deposited by the assessee along with the interest.

Issue: Whether the tax deposited by the Petitioner during the search procedure can be considered as voluntary deposit:

The Hon'ble Delhi High Court in W.P.(C) No. 9834/2022 dated December 20, 2022, held as under:

- Observed that, although the payment was made through FORM GST DRC-03, however, there was no document on record issued by officials confirming the acknowledgement of accepting the payment, which does not establish the voluntariness of payment of tax amount by the Petitioner.
- Further, the High Court directed the Central Board of Indirect Taxes and Customs ("CBIC") to align Instruction No. 01/2022-2023 dated May 25, 2022 with the directions issued by the Hon'ble Gujarat High Court in Bhumi Associate [R/Special Civil Application No. 3196 & Ors. of 2021, dated February 18, 2021] wherein, the court instructed that if the taxpayer comes forward to make voluntary payment in GST DRC-03, the taxpayer should be advised to file the same after the search ended and officer have left the premise of the taxpayer.
- Noted that, the deposits made by the Petitioner were between 01:00 AM to 7:00 AM, however the search was concluded at 9:30 AM of the same date. Thus, the deposits were made during the conduct of search. Hence, was in contravention of Section 73(5) or Section 74(5) of the CGST Act.

- Opined that, if a procedure is prescribed under a statute or by law, that is, via dicta contained in a judgment, it has to be followed. Further, failure to follow the prescribed procedure will conclude that the deposit of tax, interest and penalty was not voluntary.
- Directed the Revenue Department to return the amount deposited by Petitioner of INR 1,80,10,000/- along with the interest at the rate of 6% from the date of payment, within 10 days.

**Source: High Court of Delhi in the case of M/s Vallabh Textiles vs Sr Intelligence Officer and ors vide W.P.(C) 9834/2022 dated December 20, 2022**



## Assessee allowed to take reimbursement of additional GST liability on contract/work order awarded in pre-GST regime.

- The Hon'ble Chhattisgarh High Court in M/s Gordhandas Gobindram v. State of Chhattisgarh [WPC No. 5471 of 2022 dated December 20, 2022] allowed the petition filed by the assessee to seek reimbursement of the additional tax liability on implementation of the Goods and Services Tax ("GST") law for contracts and work orders which had been executed before the GST regime.
- Petition had been filed by M/s Gordhandas Gobindram ("the Petitioner"), who was awarded a contract/work order by the Public Works Department, Raipur ("the Respondent") prior to the introduction of GST law. The Petitioner on account of the introduction of new GST law was required to pay certain additional tax liability, which the Petitioner now intends to get it refunded from the Respondent.
- The Petitioner submitted that the Respondent itself has taken a policy decision vide order dated October 10, 2018 ("Impugned Order") passed by the State Government to ensure the reimbursement of additional tax liability incurred by the contractors in respect of contracts, which were awarded prior to July 1, 2017 i.e., the date from which the GST law came into force.

The Hon'ble Chhattisgarh High Court in WPC No. 5471 of 2022 held as under:

- Relied on the judgment of the Hon'ble Chhattisgarh High Court in M/s D.A. Enterprises v. State of Chhattisgarh [WPT No.94 of 2020 on November 17, 2022], wherein under identical set of facts the Court allowed the petition.
- Permitted the Petitioner to approach the Respondent in terms of the Impugned Order.
- Directed the Petitioner to file a fresh claim and produce necessary proof of the additional tax liability incurred on account of the introduction of the GST law within a period of one week.
- Further directed the Respondent, to scrutinize Petitioner's fresh claim and take a decision within a further period of 90 days.

**Source: High Court of Chhattisgarh in case of M/s Gordhandas Gobindram vs State of Chhattisgarh vide WPC No.5471 of 2022 dated December 20, 2022**

## Opportunity of hearing must be provided to the assessee before passing of an order.

The Hon'ble Telangana High Court in M/s Suvarna Traders v. Assistant Commissioner of State Tax [Writ Petition No. 33292 of 2022 dated December 15, 2022] set aside the order confirming the excess claim of Input Tax Credit ("ITC") passed by the Assistant Commissioner (ST) on the ground that the Petitioner was not granted fair opportunity of hearing.

### Facts:

M/s Suvarna Traders ("the Petitioner") has filed this petition challenging the legality and validity of the Order dated May 5, 2022 ("the Impugned Order") passed by the Assistant Commissioner (ST) ("the Respondent") wherein excess claim of Input Tax Credit ("ITC") of INR 41,10,622/- under Central Goods and Services Tax ("CGST") and equivalent amount of State Goods and Services Tax ("SGST") each was confirmed. The Respondent submitted the copy of Show Cause Notice ("SCN")

dated April 31, 2021 followed by the reminder dated June 2, 2021 issued to the Petitioner. Further, the Impugned Order and the notice of personal hearing was uploaded on the common portal of the Petitioner, which is an accepted mode of service under Section 169 of the Central Goods and Services Tax Act, 2017 ("the CGST Act"). However, the Petitioner submitted that the GST registration of petitioner was cancelled on January 19, 2021, therefore, the Petitioner could not access the common portal.

The Hon'ble Telangana High Court in Writ Petition No. 33292 of 2022 held as under:

- Opined that, it would only be in the interest of justice if the Petitioner is granted an opportunity of hearing by the Respondent before passing the fresh order.
- Set aside the Impugned Order and remanded the matter to the Respondent for passing a fresh order in accordance with law.
- Held that, though the Impugned Order has been set aside, may be construed as the SCN. Further, directed the Petitioner to submit its reply within 15 days.

***Source: Telangana High Court in M/s Suvarna Traders v. Assistant Commissioner of State Tax WPC No. 33292 of 2022 dated December 15, 2022***

# CBIC issued regulations for Postal Exports (Electronic Declaration and Processing) Regulations, 2022 and implementation of PBE Automated System

## CBIC Vide Circular No. 25/2022-Customs

- In order to leverage the vast network of post offices across the country and enable MSME 's (Micro, Small and Medium Enterprises) to export to global markets using e-commerce or other regular channels, the CBIC in collaboration with the Department of Posts (DoP) has developed a dedicated Postal Bill of Exports (PBE) Automated System for postal exports.
- Postal Exports (Electronic Declaration and Processing) Regulations, 2022 (herein after referred to as the Regulations) have accordingly been notified by the Board vide Notification No. 104 dated 9th December 2022. These regulations are meant to facilitate the processing of commercial postal exports by automating the entire procedure and seamlessly connecting the postal network to the notified Foreign Post Offices or FPO.
- For exporting a parcel through the postal route, an exporter or his agent is presently required to come to any of the twenty-eight FPOs to file the export declaration and hand over his consignment for export. In the new system, the exporter will not be required to visit an FPO, rather he will be able to file PBE online from home/office and deposit the parcel in a nearby post office for export. The export parcel so deposited by the exporter will be moved by the DoP to an FPO for customs clearance. The system of export clearance will operate on a digital platform while harnessing the existing post office network spread across the country and will be amenable to being scaled up to cover small exporters/producers located in remote areas.
- An overview of the functionalities offered by the PBE Automated System and the various steps prescribed under the Regulations for undertaking a postal export of commercial nature are elaborated below for ease of understanding:

- Access: The Postal Bill of Exports (PBE) Automated System can be accessed by the trade using the link <https://dnk.cept.gov.in/customers.web>. This link will direct the user to the login page of 'Dak Ghar Niryat Kendra - Customer Portal'.
- Similarly, the Customs officers can access the export documentation uploaded by the exporter for according Customs clearance by going to the link, <https://ips.ccpt.gov.in/customs.web/login.aspx>. This link will direct the Customs officer to the login page of 'Dak Ghar Niryat Kendra Customs Portal'.
- Step-by-step detailed guidance on the work flow, both for exporters and Customs officers, shall be provided by DoP on the aforesaid portals.
- Regulation 4 mandates registration of an exporter on the PBE Automated System. On initial logging into the portal, every exporter is required to register himself. The first step of the registration process is OTP based authentication (with the OTP being shared on registered mobile number) and thereafter involves capturing certain mandatory identifiers corresponding to the exporter's personal and business profile including Name, Address, IEC number and GSTIN etc. and uploading of KYC documents. A username and password are assigned to access the System. In its present form, the PBE Automated System also provides for registering details of the authorised agent where required.
- Booking of Postal Article for Export: To book an export article, the exporter is required to login using his username and password. The exporter can fill the required fields of PBE form (III or IV as prescribed under the Regulations) such as description of consignment, export destination, sender's and receiver's details etc. under the 'Article Booking' sub menu. If the exporter chooses to utilize services of an authorized agent, then the exporter shall also fill in the agent's name, address and customs broker licence number. On completion of the said process, an Article Booking ID reference and a PBE number will be auto generated. The exporter can then print the CN 23 form or the Harmonised label, as appropriate, corresponding to the export. The portal also facilitates upload of bulk information for multiple articles as also upload of supporting documentation such as licenses, certificates etc. essential for Customs purpose.



**Procedure at the Booking Post Office: Once the article(s) is booked on the portal. the exporter or his authorized agent has to physically deliver the export article(s) to the nearest or the most convenient booking post office (bpo). Postal authorities shall authorize certain post offices as the bpo's and corresponding FPOs as provided under sub-regulation (1) of regulation 6.**

- On receipt of the export goods at the bpo counter, the declaration on the package with respect to inter alia weight of the article and the destination country name will be verified by the postal authorities. who shall also collect necessary payments.
- KYC documents will also be obtained from the customer bringing the article to bpo. Postal authorities shall be responsible for onward secure transfer of the export package to the corresponding FPO for further processing and export.
- Customs Procedures at the FPO: The postal authorities shall present the expm1 goods to the proper officer at the FPO for Customs clearance. The proper officer is the officer so assigned to perform the specified functions in terms of the notification issued under Section 5 of the Customs Act. 1962. The proper officer will access the Customs portal as per the role allocation i.e., Assessment, Inspection. Examination or Escalation as assigned by the System Administrator appointed for the said purpose by the jurisdictional Principal Commissioner or Commissioner. The details of the PBE can be fetched by the proper officer on Customs portal for assessment and final clearance. The exporter or his authorized agent. where required. shall discharge the export duty on an item.
- When in doubt, the proper officer may call for further clarification or document(s) by raising a query on the portal that will be notified to the exporter electronically and will reflect under the bell icon of exporters web page. Once a query is raised, the exporter will be enabled to provide necessary information and upload requisite documents on the portal. The reply to the query, provided by the exporter. can be viewed by Customs under the 'Customer Referral' sub menu

- Once the proper officer is satisfied with the declaration, and the duty, if any. assessed thereon and any charges payable under the Act in respect of the same having been paid, he may clear the package for export. The proper officer may also detain an export package for further investigation, if required.
- The proper officer may also exercise the option of cancellation of export if the export item is prohibited. The export may also be cancelled, before communication of Customs decision. on receipt of a request placed by the exporter on the portal for back to town (or return of the export item) on account of several factors including order cancellation etc. The postal authorities will be responsible for the secure movement of such goods from the FPO to the concerned bpo.
- Export Incentive Claim: Once the postal consignment has been cleared by Customs for export, the exporter will be able to print the finalised PBE form by downloading it from the 'Forms Download' sub menu on his portal for the purposes of claiming export incentive, where eligible. Further, sub-regulation (6) of regulation 7 casts the responsibility on the postal authorities to furnish the proof of export and corresponding electronic data to Customs. However. till such time as the data exchange between Customs server and Postal server is enabled, the procedure for IGST refund from Customs as prescribed in Circular 14/20 18-Customs dated 04.06.2018 shall continue.

**Source: Circular No 25/2022 of Customs dated December 09,2022**



## GST Revenue for the month of December 2022

The gross GST revenue collected during December 2022 is Rs 1,49,507 crore, of which CGST is Rs 26,711 crore, SGST is Rs 33,357 crore, IGST is Rs 78,434 crore (including Rs 40,263 crore collected on import of goods) and Cess is Rs 11,005 crore (including Rs 850 crore collected on import of goods).

**Source: Press Release**



Revenue



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