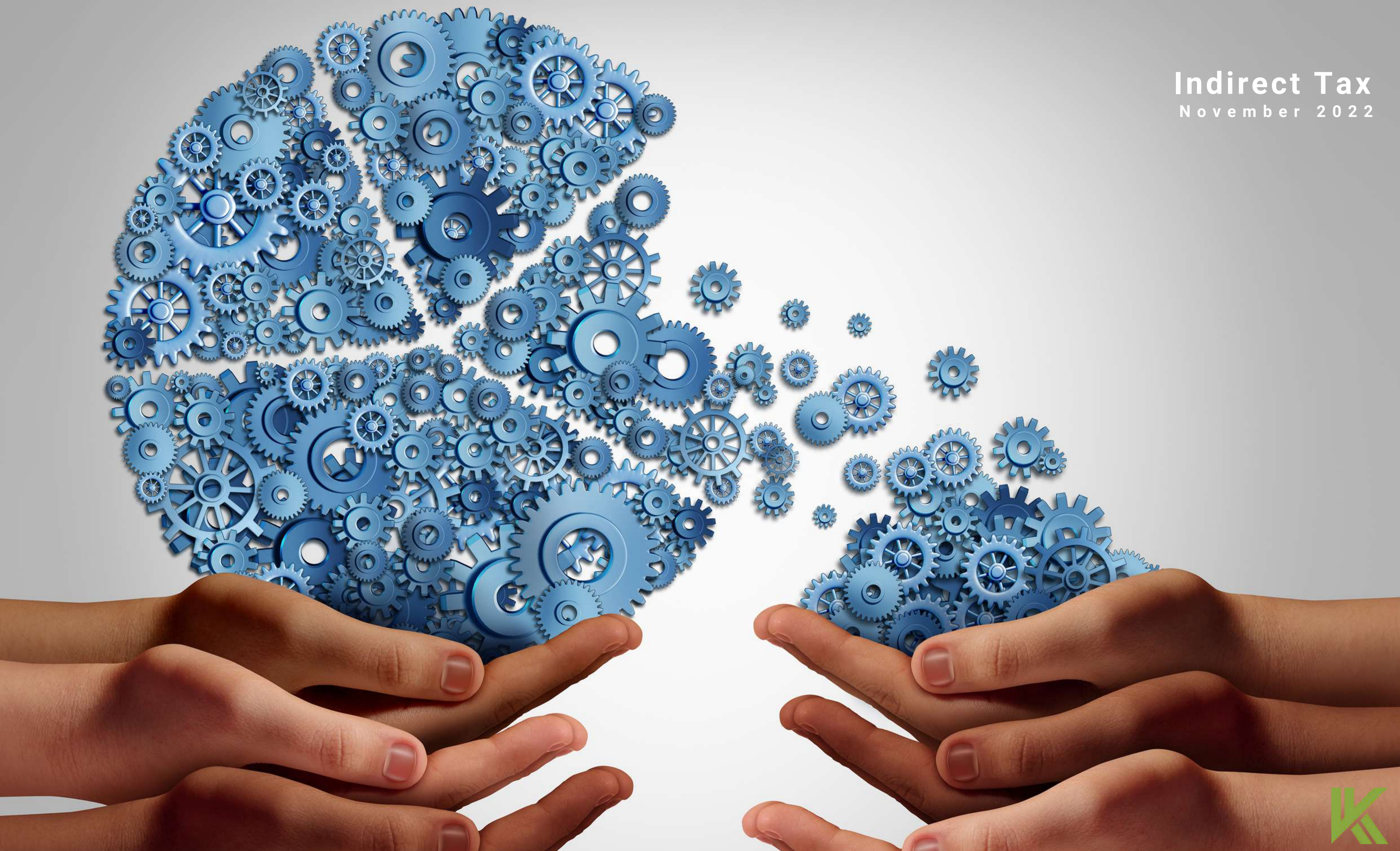


Indirect Tax
November 2022



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CBIC issues clarification on refund related issued under GST

The CBIC issued Circular No. 181/13/2022-GST dated November 10, 2022 to update on clarifications on refund related issued under GST. 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"), amend Notification No. 13/2020 – Central Tax, dated March 21, 2020.

Issue	Clarification
<p>Whether the formula prescribed under sub-rule (5) of rule 89 of the CGST Rules, 2017 for calculation of refund of unutilized input tax credit on account of inverted duty structure, as amended vide Notification No.14/2022-Central Tax dated 05.07.2022, will apply only to the refund applications filed on or after 05.07.2022, or whether the same will also apply in respect of the refund applications filed before 05.07.2022 and pending with the proper officer as on 05.07.2022?</p>	<p>Vide Notification No. 14/2022-Central Tax dated 05.07.2022, amendment has been made in sub-rule (5) of rule 89 of CGST Rules, 2017, modifying the formula prescribed therein. The said amendment is not clarificatory in nature and is applicable prospectively with effect from 05.07.2022. Accordingly, it is clarified that the said amended formula under sub-rule (5) of Rule 89 of the CGST Rules, 2017 for calculation of refund of input tax credit on account of inverted duty structure would be applicable in respect of refund applications filed on or after 05.07.2022. The refund applications filed before 05.07.2022 will be dealt as per the formula as it existed before the amendment made vide Notification No. 14/2022-Central Tax dated 05.07.2022</p>
<p>Whether the restriction placed on refund of unutilized input tax credit on account of inverted duty structure in case of certain goods falling under chapter 15 and 27 vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, which has been made effective from 18.07.2022, would apply to the refund applications pending as on 18.07.2022 also or whether the same will apply only to the refund applications filed on or after 18.07.2022 or whether the same will be applicable only to refunds pertaining to prospective tax periods?</p>	<p>Vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, under the powers conferred by clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act, 2017, certain goods falling under chapter 15 and 27 have been specified in respect of which no refund of unutilized input tax credit shall be allowed, where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such specified goods (other than nil rated or fully exempt supplies). The said notification has come into force with effect from 18.07.2022. The restriction imposed vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022 on refund of unutilized input tax credit on account of inverted duty structure in case of specified goods falling under chapter 15 and 27 would apply prospectively only. Accordingly, it is clarified that the restriction imposed by the said notification would be applicable in respect of all refund applications filed on or after 18.07.2022, and would not apply to the refund applications filed before 18.07.2022.</p>

Source: Circular No. 181/13/2022-GST dated 10th November, 2022

Extended time for allowing ITC claims and amend Invoices

- CBIC has amended CGST Rules, 2017 so as to allow ITC claims and amendment in invoices up to 30th November, 2022.
- Accordingly, effect has been given in GSTR-9 form to extend the date of ITC claims and amendment in invoices till 30th November, 2022.
- Now, one can amend the details of taxable outward supplies made to the registered person that is already reported in table 4A, 4B, 6B, 6C – B2B invoices.
- The taxpayers will have to provide the financial year and invoice number and click on 'Amend Record' to search for the invoice.

Source: NOTIFICATION No. 22/2022 – Central Tax New Delhi, dated 15th November, 2022



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

CBIC has issued following guidelines for verification of TRAN-1 credit:

- Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.
- Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).
- GSTN has to ensure that there is no technical glitch during the said time.
- The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.
- Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.
- If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims. The Special Leave Petitions are disposed of accordingly. Pending applications, if any, also stand disposed of.

Verification of Transitional Credit

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

- The verification of the transitional credit shall be conducted by the jurisdictional tax officer who will pass an appropriate order regarding the veracity of the claim filed by the applicant, based on all the facts and the provisions of the law. In respect of TRAN-1/TRAN-2 filed/revise by the applicant under the administrative control of the central tax authorities, such verification and issuance of order shall be done by the jurisdictional officer of central tax, whereas in respect of TRAN-1/TRAN-2 filed/revise by the applicant under the administrative control of the state tax authorities, the same shall be done by the jurisdictional officer of state tax. The jurisdictional tax officer shall start the verification process immediately on availability of TRAN-1/TRAN-2 filed/revise by the applicant on the back-office system or on receipt of self-certified downloaded copy of the same from the applicant, whichever is earlier. It is needless to mention that principles of natural justice shall be followed in the process of passing the order relating to allowance or disallowance of the Transitional Credit.
- The jurisdictional tax officer shall, on the basis of declaration made by the applicant in the format specified in Annexure A to Circular no. 180/12/2022 dated 09.09.2022, and on the basis of data available on the back-office system, shall check whether the applicant had earlier filed TRAN-1/ TRAN-2 or not. In cases where TRAN-1/ TRAN-2 had already been filed by the applicant earlier, the tax officer shall check whether there is any change from the earlier filed TRAN-1/TRAN-2 or not. In case, there is no change from the earlier filed TRAN-1/ TRAN-2, then such claim of transitional credit is liable for rejection by the tax officer, through a reasoned order, after providing due reasonable opportunity to the applicant.
- In other cases, the jurisdictional tax officer shall proceed for verification of claim of transitional credit made by the applicant in FORM TRAN-1/TRAN-2. In this regard, in respect of transitional credit pertaining to central tax, he may refer to the guidelines detailed in Annexure I to this circular. In respect of verification of transitional credit pertaining to the State Tax/Union territory Tax, the tax officer may refer to the guidelines issued by the relevant state/UT, if any.
- There may be cases where the transitional credit claim filed/revise by the applicant may have components of both central tax and state/UT tax. In such cases, where the applicant is under the jurisdiction of central tax officer and where the transitional credit claimed has component of state/Union Territory tax also, the jurisdictional central tax officer shall refer the said claim for verification of component of state/UT tax to his counterpart state/UT tax officer. For this purpose, he shall share the list of GSTINs/ARNs with the counterpart officer, in respect of which verification report is needed from him, on a weekly basis, along with an intimation of the same to the nodal officer of central tax as well as state/UT tax referred in Para 6.1 below through his official email ID or physically. Similar action, as above, shall also be taken by the jurisdictional state/UT tax officers in cases where the applicant is under the jurisdiction of state/UT tax officer and where the transitional credit claimed has component of central tax also.
- The jurisdictional tax officer shall, in parallel, continue the verification of the remaining portion of the transitional credit at his end.

- The jurisdictional tax officer and the counterpart tax officer shall verify the transitional credit claimed under the CGST or the SGST head, as the case may be, by referring to the guidelines detailed in Annexure I to this circular for transitional credit pertaining to central tax and the guidelines issued by the relevant state/UT for verification of transitional credit pertaining to the State Tax/Union territory Tax, as applicable. While conducting the verification, the officer must also check whether any adjudication or appeal proceedings in TRAN-1/TRAN-2 related matter are pending/concluded against the applicant. In such cases, where any adjudication or appellate proceedings have been initiated against the applicant in respect of TRAN-1/TRAN-2, the officer should take a note of the relevant facts in the notice/ order, and the grounds/reasons for inadmissibility of transitional credit, if any, in the said notice/ order.
- In respect of verification done by the counterpart officer, after verification, he will prepare a verification report, in the format detailed in Annexure-II of this circular, specifying the amount of transitional credit which may be allowed to be credited to the electronic credit ledger of the applicant and the amount which is liable for rejection, along with detailed reasons/ grounds on which the said amount is liable to be rejected. Such duly signed verification report shall be sent by the counterpart officer to the jurisdictional tax officer at the earliest, though generally not later than ten days from the date of receipt of the request from the jurisdictional officer. In case, where the adjudication or appeal proceedings in respect of TRAN-1/TRAN-2 related matter are pending/ concluded against the applicant, the counterpart officer shall categorically bring out the relevant facts in his/her verification report along with his detailed findings, admissibility/ inadmissibility, reasons of inadmissibility thereof and the copy of the relevant notice and/or orders.
- For the purpose of verification of the claim of the transitional credit, the jurisdictional tax officer as well as the counterpart tax officer, if required, may call for relevant records including requisite documents/returns/invoices, as the case may be, from the applicant.
- After receiving the verification report from the counterpart officer, the jurisdictional tax officer shall decide upon the admissibility of the credit claimed by the applicant. In case the jurisdictional tax officer finds that the transitional credit claimed by the applicant is partly or wholly inadmissible as per the provisions of the Act and the rules thereof, then a notice shall be issued by the jurisdictional tax officer to the applicant preferably within a period of seven days from the receipt of report from the counterpart officer, seeking explanation of the applicant as to why the said credit claimed by him should not be denied wholly/partly, as the case may be. The applicant shall also be provided an opportunity of personal hearing by the jurisdictional tax officer in such cases. If required, the jurisdictional tax officer may seek comments of the counterpart officer on the submissions made by the applicant in so far as the said submission relates to the tax (central or State) being administered by such counterpart officer.
- After considering the facts of the case, including verification report received from the counterpart officer, submissions made by the applicant and the comments, if any, of the counterpart officer on the same, the jurisdictional tax officer shall proceed to pass a reasoned order, preferably within a period of fifteen days from the date of personal hearing, specifying the amount of transitional credit allowed to be transferred to the electronic credit ledger of the applicant and upload a pdf copy of the said order, on the common portal for crediting the amount of allowed transitional credit to the electronic credit ledger of the applicant. In any case, such order shall be passed within a period of 90 days from 01.12.2022 i.e., up to 28.02.2023.
- Where the amount credited to the electronic credit ledger pursuant to the originally filed TRAN-1/TRAN-2 exceeds the amount of credit admissible in terms of the revised TRAN-1/TRAN-2 filed by the applicant, such excess credit is liable to be demanded and recovered from the applicant, along with interest and penalty, in accordance with the provisions of Chapter XV of the Act and the rules made thereunder.
- GSTN will also issue a separate advisory for entering the details on the portal by the tax officers.
- It may be noted that consequent to reorganization of the state of Jammu & Kashmir and merger of the Union territories of Dadra and Nagar Haveli & Daman and Diu, the taxpayers of UT of Ladakh and the earlier UT of Daman and Diu have been allotted new GSTINs. Accordingly, the taxpayers of Ladakh and Daman and Diu can file/ revise TRAN-1/ TRAN-2 only through their newly allotted GSTINs. It is, therefore, advised that the concerned jurisdictional tax officers should take into consideration transitional credit, if any, claimed by such taxpayers under their previous GSTINs.

Source: Circular No. 182/14/2022-GST dated 10th November, 2022



GST not applicable on payment of notice pay and allowed ITC on canteen services

Issue

GST is applicable on recovery of: Notice pays from an employee by employer in lieu of notice period Telephone charges Group Medical Insurance Policy ("the Policy") recovered from employees and providing Canteen facility to employees free of cost?

The Hon'ble Appellate Authority of Advance Ruling in Appeal No No. MP/AAAR/07/2021 dated November 11, 2022 have reversed duling of AAR which held the recovery of GST on the above issues

- Ruling: Noted that, para 5(e) of the Schedule II of the Central Goods and Services Tax Act, 2017 ("CGST Act") is similar to the Section 66E(e) of the Finance Act, 1994 ("the Finance Act") applicable during Service Tax regime. In the GST era also, services provided by an employee to the employer is treated neither as supply of goods nor supply of services under Schedule III of the CGST Act.
- Relied on the judgment of the Hon'ble Madras High Court in GE T & D India Limited v. Deputy Commissioner of Central Excise [W.P. Nos. 35728 to 35734 of 2016] wherein, it was held that, no service tax is payable on notice pay recovery made by the Employer.
- Stated that, the services by an employee to the Employer in the course of or in relation to his employment have been placed out of the purview of GST. Further, the compensation which accrues to the Employer is in relation to the services provided by the employee and is related to the services not provided by him to the Employer during the course of employment i.e. the Employer is being compensated for the employee's sudden exit.
- Observed that, the Appellant is collecting amounts only in respect of Mediclaim cover in lieu of the Policy provided to the employee's non-dependent parents and retired employees who opt for such cover. Evidently, the Appellant is not in the business of providing insurance coverage and providing such insurance cover is not a mandatory requirement under any law for the time being in force and therefore, non-providing insurance coverage to employee's non-dependent parents and retired employees would not affect Appellants business by any means. Therefore, activity of recovery of cost of insurance premium at actuals cannot be treated as an activity done in the course of business or for the furtherance of business.
- Reversed the ruling passed by the AAR, Madhya Pradesh and held that:
 - Merely because the Employer is being compensated does not mean that any services have been provided by him or that he has 'tolerated' any act of the employee for premature exit.
 - Facilitating medical insurance services in lieu of the Policy to non-dependent parents and retired employees upon recovery of premium amount on actuals and telephone connection to employees upon recovery of usage charges on actuals cannot be considered as 'supply of service' under CGST Act.
 - GST is not applicable on the collection by the Appellant, of employees' portion of amount towards foodstuff supplied by the third party / Canteen Service Provider and the Appellant is providing the facility to employees, without making any profit and working as mediator and the Employer is mandated to run a canteen under the Factories Act, 1948 ("the Factories Act"). Further, canteen services provided to employees without charging any amount i.e. free of cost will also fall under Para 1 of Schedule III of CGST Act that shall be treated neither as a supply of goods nor a supply of services and therefore, not be subjected to GST.
 - ITC on GST paid towards telephone services and Policy would not be available to the Appellant in terms of Section 17(1) of the CGST Act and Section 17 (5) of the CGST Act respectively. Further, ITC in respect of canteen facility provided by the Appellant would be available as per Section 17(5)(b), as obligatory for an Employer to provide the same to its employees under the Factories Act.

Source: Advance Ruling No. MP/AAAR/07/2021 Dated 08-11-2022



CBIC issued circular for improvements in SWIFT: Integration of ICEGATE with AQCS-ICS (Animal Quarantine and Certification Services-Import Clearance System)

- Six Partner Government Agencies (PGAs) were brought onboard the Single Window Interface for Facilitating Trade (SWIFT). This platform enabled importers to lodge their clearance documents online through ICEGATE at a single point, facilitated risk-based inspection and an Online NOC from the PGA should be obtained, without the trader having to approach these agencies.
- These agencies were Food Safety and Standards Authority of India (FSSAI), Plant Quarantine (PQ), Animal Quarantine and Certification Services (AQCS), Central Drugs Standards Control Organization (CDSCO), Wildlife Crime Control Bureau (WCCB), and a lab module for the Textile Committee (TC) to provide its NOC for live consignments.
- Under SWIFT, the FSSAI and PQ are connected through online message exchange with their own systems, while the remaining four PGAs use ICES for providing online NoC. Further, vide Circular No. 01/2017-Cus dated 04.01.2017, the facility for automatic routing of Bills of Entry (BOEs) of WCCB for NoC in exports in SWIFT was introduced.
- Further, the facility of eSANCHIT, was enabled for the importers/exporters to upload all Licenses, Permits, Controls and Orders (LPCOs) issued by the PGAs and other documents on ICEGATE, via Circular no. 40/2017-Cus dated 13.10.2017 and extended to exports across the country, vide Circular No.43/2018-Cus dated 08.11.2018. The facility of eSANCHIT was leveraged for uploading of authorisations and LPCOs issued by PGAs in PDF format, thus dispensing with the requirement of importers and exporters to separately upload these documents, in phases vide Circular nos.44/2018-Cus dated 13.11.2018, 13/2019-Cus dated 03.06.2019, 19/2019-Cus dated 16.07.2019, 03/2020-Cus dated 15.01.2020, 11/2020-Cus dated 10.02.2020 and 24/2020-Cus dated 14.05.2020.
- To enhance transparency and better informed compliance, the Compliance Information Portal (<https://cip.icegate.gov.in/CIP/#/home>) was launched on 04.08.2021 on a single platform to provide all necessary information related to Customs laws, procedures along with applicable duties and taxes on each Customs Tariff Item, as also the information about necessary permissions to be obtained from any PGA for import or export of goods.
 - To further enhance SWIFT, the Digital Import Clearance System of AQCS-ICS has been developed by AQCS for purposes of improved functioning. This would enable migrating from Online NoC through ICES to online message exchange mode, similar to that of FSSAI and PQMS. The AQCS-ICS shall be introduced from 01.12.2022. For this, the following changes will be made in the Customs System:
 - Integrated Declaration: To enhance the ambit of paperless processing and to facilitate risk-based inspection, changes in the Integrated Declaration as follows:
 - The importer must upload the Veterinary Health Certificate issued by the exporting country with Document Code 853AQ1 for the concerned Customs Tariff Items (CTIs) listed in Annexure A (SI.No 1) of this Circular.
 - The importer must upload the Laboratory reports/certificate of analysis (COA) with Document Code 001AQ1, for the concerned CTIs listed in Annexure A (SI.No 2) of this circular.
 - The Importer must quote the IRN generated in eSanchit pertaining to Sanitary Import Permit with document Code 911DF1, issued and uploaded by AQCS, for the concerned CTIs listed in Annexure A (SI.No3) of this Circular to obtain the NoC.
 - The importer must give the following declaration under Statement Code AQ002 at item level for the CTIs listed in Annexure B of this Circular: "I certify that the invoice issued by Authorised officer of Manufacturer in the exporting country contains a declaration that the product has undergone the irreversible process of tanning in terms of O.M vide F.No. L-110110/17/2017-Trade-Part(1) (E-15243) dated 17.12.2021.
- Risk-based Inspection: Based on the above additional data being received through integrated declaration, risk-based selectivity criteria shall be introduced in stages for CTIs requiring NoC from AQCS along with the integration of AQCS-ICS with ICEGATE.
- Post Filing requirements for NoC by AQCS: All documents required to be submitted to AQCS to obtain NoC, will normally be uploaded during Integrated Declaration. Under circumstances where additional documents are required by AQCS from the importer post-filing, the importer may submit the same by logging in via ICEGATE. Till the time that the integration of AQCS-ICS with ICEGATE is complete, the importer may log in to the AQCS-ICS portal to submit the additional documents.
- Electronic transmission of NoC to Customs: The Online NoC will be automatically transmitted to ICEGATE, and importers will also have complete visibility as soon as it is issued (or rejected) by PGA officers. Any further queries by PGA officers as well as real time tracking of the status of processing of applications can be accessed through ICEGATE portal and as well as the AQCS-ICS Portal.
- With the introduction of AQCS-ICS, there is no change in the role or functioning of Customs officers. The Customs officers would be able to access the details of the BOEs referred by ICES to AQCS-ICS. The electronically received Release Order (RO) regarding the BOEs referred to AQCS-ICS shall be accepted by the Customs. The documents referred before the implementation of this Circular will continue to be processed in ICES

Source: Circular No. 24/2022-Customs dated 28th November, 2022

CBIC issued circular for Faceless Assessment - Anonymized Escalation Mechanism & extension of Standard Examination Orders through RMS

Issue

Board sensitizes the Pr.Chief / Chief Commissioners, in their roles as Zone and / or NAC heads, to the necessity of their monitoring to ensuring that an aspect lodged in the said AEM is not allowed to linger and that all successive actions are quickly taken without loss of time no sooner the aspect has been lodged in said AEM. They should devise whatever means are necessary for doing this. The Pr.Chief / Chief Commissioners should also keep note of the root cause(s) that needed to be redressed and the administrative/systemic actions to be adopted to achieve that redress, so that sustained improvements are made towards expediting customs clearances.

Attention is also drawn to Board's Circular No. 16/2022-Customs dated 29.08.2022 regarding phased implementation of Standard Examination Orders. To harmonize the examination orders across FAGs, the Board had decided to implement system-generated centralized examination orders in a phased manner. The Phase 1 referred to case of risk-based selection for examination after assessment (second check examination). Initially, in Part 1 of this phase, the goods under Assessment Group 4 in all Customs Stations were covered with effect from 05.09.2022. Based on the feedback received, from the National Customs Targeting Centre (NCTC), regarding the readiness for further rollout of the implementation of Standard Examination Orders through the Risk Management System, the Board has decided that in Part 2 of Phase 1, from 15.11.2022 the goods under Assessment Group 5 (Chapter 84) shall also be covered. Accordingly, the Circular No. 16/2022-Customs stands modified.

Source: Circular No. 23 / 2022-Customs dated 3rd November, 2022.



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