



Certain Circulars have been issued by CBIC on 06.07.2022 clarifying various matters as discussed in 47<sup>th</sup> GST Council Meeting held in Chandigarh. A brief summary of all the circulars are as follows:

A. **CIRCULAR NO. 170/02/2022-GST DATED. 06.07.22: 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 FORMGSTR-3B and statement in FORMGSTR-1:**

▪ **Registered persons making inter- State supplies:-**

1. Unregistered persons:

- ⇒ Provide details as per place of supply wise,
- ⇒ GSTR-3B: Table 3.2
- ⇒ GSTR-1: Table 7B or Table 5 or Table 9/10

2. Composition taxable person and UIN Holders:

- ⇒ Provide details as per place of supply wise,
- ⇒ GSTR-3B: Table 3.2
- ⇒ GSTR-1: Table 4A or 4C or 9

3. Shall update their customer database properly with correct State name and ensure that correct Place of Supply (PoS) is declared in the tax invoice and in Table 3.2 of FORM GSTR-3B while filing their return, so that tax reaches the Consumption State as per the principles of destination-based taxation system.

4. Further, if any amendment carried in Table 9 or Table 10 if FORM GSTR 1 or any entry in Table 11 of GSTR-1 relating to such supplies should also be given effect to while reporting the figures in Table 3.2 of FORM GSTR-3B.

▪ Following procedure to be followed by registered person is being detailed hereunder for correct reporting of information regarding ITC availed, reversal thereof and ineligible ITC in Table 4 of GSTR-3B:

1. 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 -3B (except for the ineligible ITC on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act or where the recipient of an intra-State supply is located in a different State / UT than that of place of supply),
2. Reversal of ITC which are absolute and not reclaimable like under Rule 38, Rule 42, Rule 43 and as per S.17(5) to be made in Table 4(B)(1).
3. Reversal of ITC which can be reclaimed later such as under Rule 37, S.16(2)(b) & S.16(2)(c) to be made 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.

4. Net ITC available will be calculated in Table 4(c), which is per Formula  $(4A - [4B(1) + 4B(2)])$   
Same will be credited to the ECL of the registered person.
  5. Ineligible ITC under Section 17(5) are being provided in Table 4(B) - No further details of such ineligible ITC required to be provided in Table 4(D)(1).
  6. ITC not available, on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act or where the recipient of an intra-State supply is located in a different State / UT than that of place of supply, may be reported by the registered person in Table 4D(2). Such details are available in Table 4 of FORM GSTR-2B.
- ❖ Accordingly, it is clarified that reversal of ITC of ineligible credit under Section 17(5) or any other provision of CGST Act and rule there under is required to be made under Table 4(B) and not under table 4(D) of FORM GSTR-3B.

**B. Circular No. 171/03/2022-GST dated. 06.07.22:- 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:-**

- ⇒ A number of cases have come to the notice where the registered persons are found to be involving in issue of Tax invoice, without actual supply of goods and Service or both. In order to enable of recipients of such invoices to avail and utilized ITC fraudulently.
- ⇒ Representations are being received from the trade as well as filed formations seeking clarification on the issue relating to applicability of demand and penalty provisions under CGST Act, 2017.
- ⇒ The Board, exercise of powers, hereby clarifies issue in details as follows:

**❖ ISSUE / SITUATION No.1:-**





**Question:**

1. Such transaction is considered as “Supply” under Section 7 of CGST Act,2017?
2. Whether any demand and recovery can be made from “A” under provision of Section 73 /74 of CGST Act,2017?
3. Whether any penal action taken against “A”

**Ans:**

1. No, there is no supply. Since only issuing Tax invoice without underlying supply of goods or Service or both, therefore, such activity does not satisfy the criteria of “Supply” as define under Section 7 of CGST Act,2017.
2. As there is no supply between “A” to “B” in respect of such Tax invoice as per Section 7 of CGST Act,2017, no Tax liability arises against “A”. No demand and recovery made against “A” under Section 73/74 of CGST Act,2017
3. No penal action under provision of Section 73/74 of CGST Act, 2017 against “A”. However, “A” is liable for penal action under Section 122(1)(ii) of CGST Act, 2017 for issuing Tax invoice without supply of goods and Service.

❖ **ISSUE/ SITUATION NO. 2:-**

Registered person

“A”

Issued Tax Invoice

Without supply of Goods and Services

Registered person

“B”

avails ITC on the basic of  
Tax invoice and utilised  
ITC for payment of Tax  
liability for outward supply

Issue Tax Invoice

Along with supply of goods and Service

Buyer of “B”

“C”

**Question:**

1. Whether “B” will be liable for the demand and recovery of ITC, alongwith penal action under provision of Section 73/74 of CGST Act, 2017 or any other provision of the CGST Act?

**Ans:**

1. Since “B” has availed and utilised ITC on the basic of Tax invoice issued by “A” , without receiving goods or services or both, therefore “B” contravention of provision of Section 16(2)(b) of CGST Act,2017 and he shall be liable for demand and recovery



of the said ITC alongwith penal action under Section 74 of CGST Act and also liable for Interest under Section 50 of CGST Act, 2017.

Further as per provision of Section 75(13) of CGST Act, 2017, if penal action for fraudulent availment or utilization of ITC taken against “B” under Section 74 of CGST Act, No other penalty for the same Act.

**However, the above clarification does not answer whether any demand of ITC can be raised against C or not. This situation is very common where genuine buyers are unaware as to what their supplier has done on its own procurement and ITC availment, while genuinely supplying goods to them. In our view, when C received goods and B also paid GST (evenif by utilizing wrongly availed ITC), the demand ought to be only against B and not against C at all.**

❖ ISSUE/ SITUATION NO. 3:-

Registered person

“A”

Issued Tax Invoice

Without supply of Goods and Services

Registered person

“B”

avails ITC on the basis of Tax invoice and utilised

Issue Tax Invoice

Without supply of Goods and Services

Registered person

“C”

**Question:**

1. Whether “B” will be liable for the demand and recovery and penal action under provision of Section 73/74 of CGST Act, 2017 or any other provision of the CGST Act?

**Ans:**

1. Once B has already reversed ITC in form of paying GST on supply shown to be made to C, whereas no supply was made and no GST was payable actually, B cannot be expected to reverse ITC again as wrongly availed since it is already used to pay GST, which was never payable by B since they never supplied to C.

However, “B” shall be liable for penal action both under Section 122(1)(ii) and Section 122(1)(vii) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/utilizing input tax credit without actual receipt of goods and/or services.



**This scenario is most commonly seen in paper credit transactions, especially those done to show merely inflated turnover for bank purposes etc.**

**C. CIRCULAR No. 172/04/2022 -GST DATED. 06.07.2022 Clarification on various issue pertaining to GST:-**

**I. Refund claimed by the recipients of supplies regarded as deemed export:-**

⇒ The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017.

⇒ Therefore, the ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017.

⇒ ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the "Net ITC" for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.

**II. Interpretation of Section 17(5) of CGST Act, 2017:-**

⇒ The proviso after sub clause (iii) of clause (b) of sub-section (5) of Section 17 is applicable to whole of clause (b) of sub-section (5) of Section 17 of CGST Act, 2017.

⇒ The word "Leasing" of Section 17(5)(b)(i) refers to "leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items. Accordingly, availment of ITC is not barred under Section 17(5)(b)(i) of the CGST Act, 2017 in case of leasing, other than leasing of motor vehicles, vessels and aircrafts.

**III. Perquisites provided by employer to the employees as per contractual agreement:-**

⇒ Schedule III to the CGST Act provides that "services by employee to the employer in the course of or in relation to his employment" will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.

⇒ The perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.

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

⇒ 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 except



RCM, can be made by utilization of the amount available in the electronic credit ledger of a registered person.

⇒ Amount available in ECL can be used only for making payment of output Tax liability of CGST & IGST Act. Hence, ECL cannot be used for making payment of any other payments like penalty, interest, fees, other payment under this Act, and also erroneous refund sanctioned, where such refund sensation in cash.

**D. CIRCULAR NO. 173/05/2022-GST: Clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification;-**

⇒ That the Circular No. 135/05/2020-GST dated. 31.03.2020 at Para 3.2 did not cover refund of inverted duty structure of those cases where the input and output supply are same.

⇒ Therefore, it is clarified that in such cases, refund of accumulated input tax credit on account of inverted structure as per clause (ii) of sub-section (3) of section 54 of the CGST Act, 2017 would be allowed in cases where accumulation of input tax credit is on account of rate of tax on outward supply being less than the rate of tax on inputs (same goods) at the same point of time, as per some concessional notification issued by the Government providing for lower rate of tax for some specified supplies subject to fulfilment of other conditions.

**E. CIRCULAR NO. 174/06/2022-GST -Prescribing manner of re-credit in electronic credit ledger using FORM GST PMT-03A:-**

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

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

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

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





- ⇒ Till the time an automated functionality for handling such cases is developed on the portal, the taxpayer shall make a written request, in format enclosed as Annexure-A of Circular No. 174/06/2022-GST dated. 06.07.22, to jurisdictional proper officer.
- ⇒ The proper officer, on being satisfied that the full amount of erroneous refund along with applicable interest, as per the provisions of section 50 of the CGST Act, and penalty, wherever applicable, has been paid by the said registered person in FORM GST DRC-03 by way of debit in electronic cash ledger, he shall re-credit an amount in electronic credit ledger, equivalent to the amount of erroneous refund so deposited by the registered person, by passing an order in FORM GST PMT-03A, preferably within a period of 30 days from the date of receipt of request for re-credit of erroneous refund amount so deposited or from the date of payment of full amount of erroneous refund along with applicable interest, and penalty, wherever applicable, whichever is later.

**F. CIRCULAR NO. 175/07/2022-GST- Manner of filing refund of unutilized ITC on account of export electricity:-**

a. Filing of refund claim:-

- ⇒ The applicant would be required to file the application for refund under “Any Other” category electronically in FORM GST RFD-01, on portal.
- ⇒ In remark column of the application, the taxpayer would enter “Export of electricity-without payment of Tax (accumulated ITC)”. At this stage, applicant s not required to make any debit from the electronic credit ledger.
- ⇒ The applicant would be required to furnish/upload the details contained in Statement 3B (and not in statement3) of FORM GST RFD-01(in pdf format), containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement.
- ⇒ The applicant will also be required to upload the copy of statement of scheduled energy for electricity exported by the Generation Plants (in format attached as Annexure-I of the said Circular) issued as part of Regional Energy Account by Regional Power Committee Secretariat (“RPC”) under regulation 2 (1)(nnn) of the CERC(Indian Electricity Grid Code) Regulations, 2010, for the period for which refund has been claimed and the copy of the relevant agreement(s) detailing the tariff per unit for the electricity exported.
- ⇒ The applicant will also give details of calculation of the refund amount in Statement -3A of FORM GST RFD-01 by uploading the same in pdf format along with refund application in FORM GST RFD-01.

b. Relevant date for filing of refund:-



⇒ The relevant date shall be the last date of the month, in which the electricity has been exported as per monthly Regional Energy Account (REA) issued by the Regional Power Committee Secretariat under regulation 2(1)(nnn) of the CERC (Indian Electricity Grid Code) Regulations, 2010.

c. Processing of refund claim by proper officer :-

⇒ Export of electricity being zero-rated supply, refund of unutilised ITC on account of export of electricity would also be calculated using the same formula mentioned in Rule 89(4), which is reproduced hereunder :

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

⇒ The turnover of export of electricity would be calculated by multiplying the energy exported during the period of refund with the tariff per unit of electricity, specified in the agreement.

⇒ It is clarified that quantum of Scheduled Energy exported, as reflected in the Regional Energy Account (REA) issued by Regional Power Committee (RPC) Secretariat for a particular month, will be deemed to be the quantity of electricity exported during the said month and will be used for calculating the value of zero-rated supply in case of export of electricity. Such monthly Regional Energy Account (REA) issued by Regional Power Committee (RPC) Secretariat, as uploaded on the websites of RPC Secretariat can be downloaded by GST officers as well as the concerned electricity generator for the purpose of refund under Rule 89(4) of CGST Rules 2019. The calculation of the value of the exports of electricity during the month, can be done based on the quantity of scheduled electricity exported during the month by the exporter (as detailed in the REA for the month) and the tariff rate per unit (details of which will have to be provided by the concerned exporter based on agreed contracted rates).

⇒ The proper officer shall invariably verify that no ITC has been availed on the inputs and inputs services utilised in making domestic supply of electricity.

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





**G. CIRCULAR NO.176/08/2022-GST- Withdrawal of CircularNo. 106/25/2019-GST dated 29.06.2019:-**

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

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



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