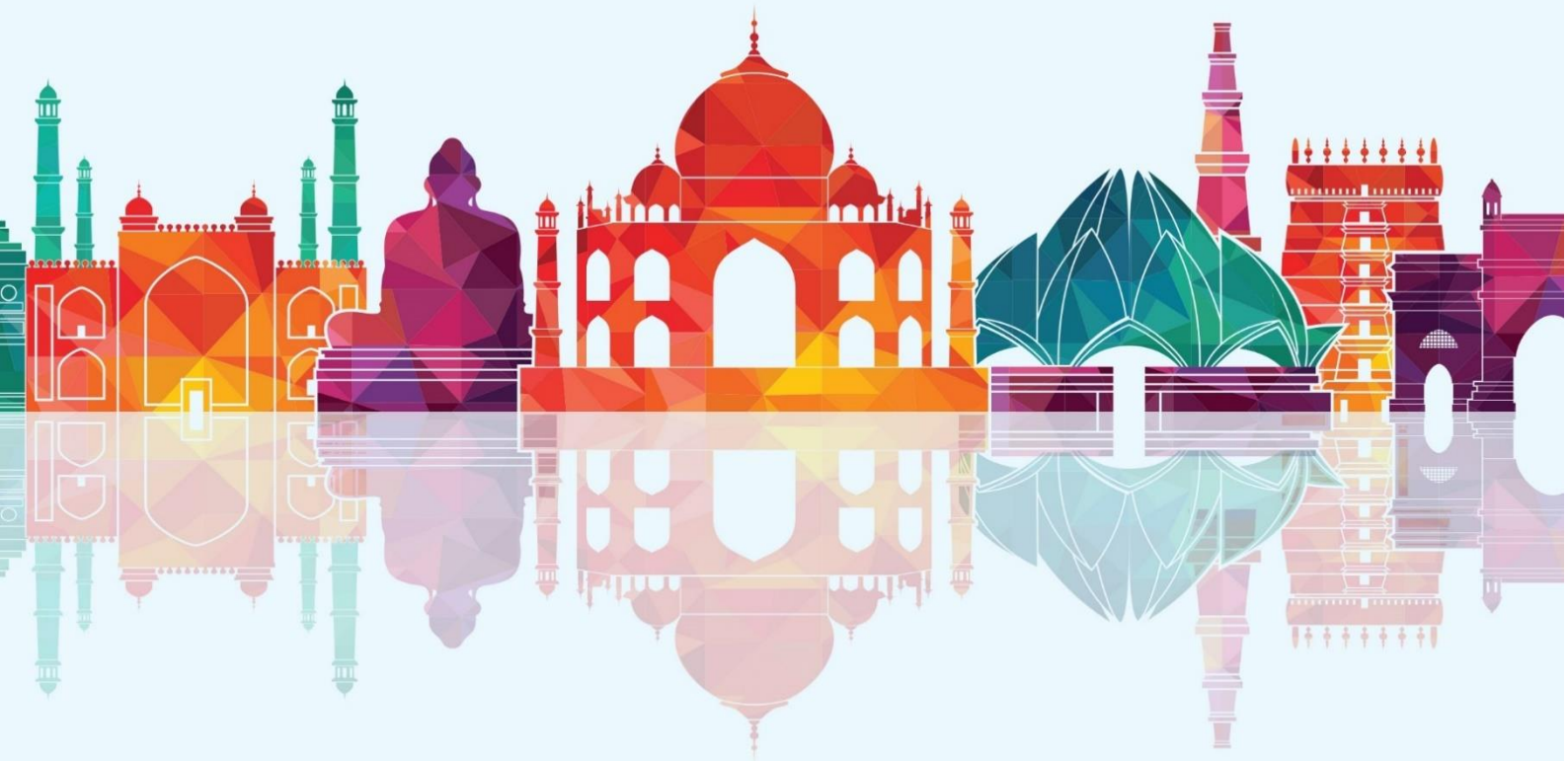




ECONOMIC
LAWS
PRACTICE
ADVOCATES & SOLICITORS



47th GST COUNCIL MEETING:

ANALYSIS BY

ECONOMIC LAWS PRACTICE

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NOTIFICATIONS ISSUED UNDER GST

COMPLIANCE RELATED CHANGES VIDE NOTIFICATION NO. 10, 11, 12 & 13/2022 – CENTRAL TAX DATED JULY 5, 2022

Exemption from filing annual return

- CBIC, vide Notification No. 10/2022-Central Tax dated July 05, 2022, exempts taxpayers having aggregate turnover up to INR 2 crores from filing annual return in Form GSTR-9/9A for the Financial Year 2021-22.

ELP COMMENTS:

- This will provide relief to small, registered persons having an aggregate turnover up to INR 2 crores.
- The said relaxation was also provided for the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21.

Extension of due date for filing Form GST CMP-08

- CBIC, vide Notification No. 11/2022-Central Tax dated July 05, 2022, extended the due date for filing Form GST CMP-08 for composition taxpayers for the quarter ending June 30, 2022, from July 18, 2022 to July 31, 2022.

Extended waiver of late fees for delay in filing of Form GSTR-4

- CBIC, vide Notification No. 12/2022-Central Tax dated July 05, 2022, extended the waiver of late fee for delay in furnishing of Form GSTR-4 by composition dealers for the Financial Year 2021-22 till July 28, 2022.

Extension of timeline for adjudication process and refund

- CBIC, vide Notification No. 13/2022-Central Tax dated July 05, 2022, extended the period of limitation w.e.f. March 01, 2020 as under:
 - The time limit for issuance of order under Section 73(10) of the CGST Act towards recovery of tax not paid or short paid or Input tax credit wrongly availed or utilized, in respect of the Financial Year 2017-18 has been extended till September 30, 2023.
 - For the purposes of computing the time limit for issuance of order under Section 73(10) of the CGST Act towards recovery of erroneous refund, the period from March 01, 2020, to February 28, 2022 ought to be excluded.
 - The time period from March 01, 2020, to February 28, 2020, ought to be excluded for computation of the limitation period for filing application of refund under Section 54 or Section 55 of CGST Act.

ELP COMMENTS:

The said extension is in line with the directions given by the Hon'ble Supreme Court in Suo Moto Petition No. 3 of 2020, as amended from time to time.

AMENDMENTS TO THE CGST RULES VIDE NOTIFICATION NO. 14/2022 – CENTRAL TAX DATED JULY 5, 2022

- Revocation of suspension - Suspension of registration due to non-filing of returns for specified period by regular taxpayers and beyond 3 months of the due date by the composition dealer shall be automatically revoked on the filing of all previous returns, provided the registration has not been already cancelled.
- Duty credit scrips - The value of duty credit scrips shall be excluded in the computation of aggregate value of exempt supplies for the reversal of common credits under Rule 42 and Rule 43 of the CGST Rules.

ELP COMMENTS:

Since Rule 42 and 43 pertains to reversal of credit for common services, the GST authorities are taking a view that only credit of common services is available, and not that of input input services that are directly used.

- Declaration on the invoice - The taxpayers having aggregate turnover exceeding INR 20 crores in any of the FY from 2017-18 and onwards, but not mandated to generate e-invoice/IRN such as banking company, financial institution, NBFC, SEZ unit shall be required to provide a declaration to that effect in the invoices issued by them.
- GSTR-3B: The format of From GSTR 3B has been revised for reporting the supply of services through aggregators/e-commerce operators, the tax on which shall be paid by such operators. Disclosures under Table 4 for ITC claims has also been revised, and Circular No. 170/02/2022-GST dated July 06, 2022, clarifies such changes in disclosure in GSTR 3B.

ELP COMMENTS:

Currently there is no clarity as regards utilization of ITC in respect of services where an e-commerce operator is liable to pay tax in terms of Section 9(5) of the CGST Act. As GST is paid by the e-commerce operators and ITC is lying in the credit ledger of supplier of such services. e.g., passenger transport by bus where the service provider has opted for 12% rate of GST with ITC.

- Amendments to Rule 87: The following new modes of payment have been allowed for deposits into the electronic cash ledger:
 - Unified Payment Interface (UPI) from any bank
 - Immediate Payment Services (IMPS) from any bank

ELP COMMENTS:

With UPI emerging as the preferred payment mode for a large segment in India, allowing of GST payment through the said mechanism is another step closer to the leitmotif 'Digital India'. While appropriate amendments in the law have been prescribed, industry would await its actual implementation on the GST portal soon.

- Allowing transfer of any amounts from electronic cash ledger of a person into central tax and integrated tax balances of other GST registrations under the same PAN. However, the said transfer is not allowed where there exists any unpaid liability in electronic liability register. The enabling provision for this in the CGST Act i.e., Section 49(10) has also been effectuated with effect from July 5, 2022.

ELP COMMENTS:

Similar amendments are also expected under the state laws to allow transfer into SGST balances of other GST registrations. This measure saves the hassle of claiming a refund of excess credits made to the electronic cash ledger by a tax payer, allowing a seamless fungibility to electronic cash ledger balances between different registrations of the same person. Also, while appropriate amendments in the law have been prescribed, industry would await its actual implementation on the GST portal.

- Manner of calculating interest on delayed payment of tax - Rule 88B has been inserted in the CGST Rules to provide for the manner of calculating interest leviable under Section 50 of the CGST Act. It provides as under:

S.No.	Scenarios	Manner of computing interest
I.	Supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with provisions of section 39, except where such return is furnished after commencement of any proceedings under Section 73 or Section 74 in respect of the said period	Interest shall be calculated on the net tax liability paid by debiting the electronic cash ledger, for the period of delay in filing in the return.
II.	Interest payable in cases other than above, which falls under Section 50(1)	Interest shall be calculated on the total amount of tax which remains unpaid, for the period starting from the due of payment of tax till the actual date of payment.
III.	Interest payable on amount of ITC wrongly availed and utilized in accordance with Section 50(3)	<p>Interest shall be calculated on the amount of ITC wrongly availed and utilized, for the period starting from the date of utilisation of ITC till the date of reversal of such ITC or payment of tax in respect of such amount.</p> <p>The Explanation (1) to Rule 88B provides that wrongly availed ITC shall be deemed to be utilized when the balance in the electronic credit ledger falls below the said amount of ITC and to the extent by which the balance in electronic credit ledger falls below the amount of ITC wrongly availed.</p> <p>The Explanation (2) to Rule 88B provides for the date of utilization of wrongly availed ITC as under:</p> <ul style="list-style-type: none"> - In cases where ITC has been utilized for payment of tax through filing of GST return under Section 39 – Due date of filing return or actual date of filing return, whichever is earlier. - In all other cases – Date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of ITC wrongly availed.

ELP COMMENTS:

- Rule 88B has been notified to bring forth the intent of the Government as regards payment of interest on the net tax liability under Section 50(1), as well as to provide consistency in the way the interest must be calculated.
 - As regards Section 50(1), it has now been clearly specified [and which intent was also clear from language of the proviso to Section 50(1)] that interest on net tax liability will only apply to a scenario where the delay in payment of tax had arisen because of late filing of returns for a particular month in which such tax liabilities and credits are reported, and not otherwise. In the event there is otherwise a delay in payment of tax (not arising out of delay in filing the returns), the interest will be applicable on the total amount due irrespective of whether the same has been paid in cash or by way of utilizing credit.
 - Under Section 50(3), the interest will commence at the first instance when the balance in the electronic credit ledger reduces below the amount of ITC wrongly availed. Subsequently, even if the credit balance increases beyond the wrongly availed ITC, the interest will continue. This is logical as the increase in credit balance is on account of new credits.
- Various amendments to Rule 89: The rules governing the refund under GST regime have become more stringent in lieu of the recent amendments brought into effect after 47th GST Council meeting. The important changes with regard to claiming refund are as follows:
 - Aadhar authentication has been made mandatory for all refund applications filed online
 - Refund of tax wrongfully collected and paid may be claimed within a period of two years from the date of payment of such wrongfully collected tax
 - Appropriate changes to facilitate refunds in case of export of electricity
 - In cases involving refund of input tax credit on account of zero-rated supplies without payment of tax, the value of goods exported will be FOB value declared on the shipping bills/ bill of export or the value declared on tax invoice/ bill of supply, whichever is less.
 - Amendment to the formula for grant of refund under the Inverted duty structure: The amendment is an outcome of the observations made by the Hon'ble Supreme Court in the case of **Union of India vs. VKC Footsteps India Pt. Ltd**¹ regarding the anomaly in the formula prescribed under Rule 89(5) of the CGST Rules². The formula for the maximum amount of refund of input tax credits that can be claimed on account of inverted duty structure has been amended to consider utilization of ITC on account of inputs and input services in the same ratio in which ITC had been availed during the said tax period.
 - Post the amendment, the revised formula is stated below:

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

¹ [2020 (43) G.S.T.L. 336 (Guj.)]

² Central Goods and Services Tax Rules, 2017

Sr. No.	Description	As per old formula (figures in INR)	As per new formula (figures in INR)
(i)	(ii)	(iii)	(iv)
1.	Value of supply of goods, attracting 5 % GST (Turnover having inverted rate structure)	50,00,000	50,00,000
2.	Value of supply of goods, not having inverted rate structure (18 %)	50,00,000	50,00,000
3.	Adjusted Total Turnover (1) + (2)	1,00,00,000	1,00,00,000
4.	GST payable @ 5 % on turnover having inverted rate structure 5 % on (1)	2,50,000	2,50,000
5.	GST payable @ 18 % on turnover not having inverted rate structure	9,00,000	9,00,000
6.	ITC on inputs availed during the tax period	6,00,000	6,00,000
7.	ITC on input services availed during the tax period	2,00,000	2,00,000
8.	Net ITC	6,00,000	6,00,000
9.	Refund entitlement as per the formula	6,00,000 X [50,00,000 / 1,00,00,000] minus 2,50,000 = 50,000	6,00,000 X [50,00,000 / 1,00,00,000] minus [2,50,000 X 6,00,000 / 8,00,000] = 1,12,500

- Amendment to Rule 96: Clause (b) of sub-rule (1) of Rule 96 of the CGST Rules has been substituted with retrospective effect from July 1, 2017 to provide that in case of any mismatch between the details of shipping bills and the details furnished in GSTR-1, the date of rectification of such mismatch will be considered as the date on which the refund claim has been filed. This will have a positive impact on the refund entitlement on account of becoming time barred.
- Rule 96(4) of the CGST Rules provides for situations where a claim for refund can be withheld on a request made by specified jurisdictional GST authority or proper officer of Customs or specified officer of CBIC. A new sub- clause has now been introduced for transfer of such refund claim from Customs Department to jurisdictional GST authorities. In such case, the date of such transmission will be considered as the date of filing of the refund application.

CLARIFICATIONS ISSUED UNDER GST

CIRCULAR NO. 170/02/2022-GST DATED JULY 06, 2022: TO ENSURE UNIFORMITY IN FILING FORM GSTR 3B AND FORM GSTR 1

- With respect to furnishing of information regarding ITC (availed, reversal ineligible) in Table 4 of Form GSTR 3B, it has been clarified that:
 - Reversal of ITC under the following illustrative scenarios which are absolute in nature and are not re-claimable are to be reported in Table 4(B)(1)³ of Form GSTR 3B:
 - Reversal of credit by a banking company or a financial institution - Rule 38 of the CGST Rules
 - Reversal on input and input services on account of supply of exempted goods or services - Rule 42 of the CGST Rules
 - Reversal on capital goods on account of supply of exempted goods or services - Rule 43 of the CGST Rules
 - Ineligible ITC under section 17(5) of the CGST Act
 - Reversal of ITC under the following illustrative scenarios which are not permanent in nature are to be reported in Table 4(B)(2)⁴ of Form GSTR 3B and the same can be re-claimed in future subject to fulfilment of specific conditions in Table 4(A)(5)⁵ of Form GSTR 3B:
 - Non-payment of consideration to supplier within 180 days - Rule 37 of CGST Rules
 - Non receipt of goods or services - Section 16(2)(b) of the CGST Act
 - Non-payment of tax qua supply - Section 16(2)(c) of the CGST Act
 - Reversal of any ITC availed in Table 4(A) in previous tax periods because of some inadvertent mistake
 - As the details of ineligible ITC under Section 17(5) of the CGST Act are being provided in Table 4(B)(1), no further details of such ineligible ITC will be required to be provided in Table 4(D)(1)
 - ITC not available on account of limitation of time period under Section 16(4) of the CGST Act or where the recipient of an intra-State supply is located in a different State/UT than that of place of supply are to be reported by the registered person in Table 4D(2)⁶ of Form GSTR 3B
- With respect to furnishing of information regarding inter-State supplies made by registered persons to unregistered persons, composition taxable persons and UIN holders it has been clarified that:
 - Details of inter-state supplies made to unregistered persons shall be reported place of supply wise in Table 3.2⁷ of Form GSTR 3B and Table 7B⁸ or Table 5⁹ or Table 9/10¹⁰ of FORM GSTR 1, as the case may be

³ ITC reversed – As per rules 38, 42 and 43 of CGST Rules and Section 17(5)

⁴ ITC reversed - Others

⁵ ITC available – All other ITC

⁶ Other details - Ineligible ITC under section 16(4) and ITC restricted due to PoS provisions

⁷ Of the supplies shown in 3.1 (a) and 3.1.1(i) above, details of inter-State supplies made to unregistered persons, composition taxable persons and UIN holders

⁸ Inter-state taxable supplies made to unregistered persons where invoice value is upto Rs. 2.5 lacs

⁹ Inter-state taxable supplies made to unregistered persons where invoice value is more than Rs. 2.5 lacs

¹⁰ Amendments to taxable outward supplies

- Details of inter-state supplies made to composition taxable persons and UIN holders shall be reported place of supply wise in Table 3.2 of Form GSTR 3B and Table 4A or 4C¹¹ or 9 of FORM GSTR 1, as the case may be
- Any amendment carried out in Table 9 or Table 10 of Form GSTR 1 or any entry in Table 11¹² of Form GSTR 1 relating to such supplies should also be given effect to while reporting the figures in Table 3.2 of Form GSTR 3B

ELP COMMENTS:

With effect from December 2020, Form GSTR 3B is getting auto-generated on the portal by way of auto-population of ITC from Form GSTR 2B and auto-population of liabilities from Form GSTR 1, with an editing facility made available to the registered person. Owing to such auto-population, inconsistencies in reporting were observed by the Government. Form GSTR 3B has been suitably amended vide Notification No. 14/2022-Central tax dated July 05, 2022, to resolve the inconsistencies to ensure correct reporting of information in the returns. This will consequently ensure accurate settlement of funds between the Central and State Governments. Uniform reporting of data may help the Government in meaningful usage of the results of data analytics such as carrying out specific investigations, detecting revenue leakages etc.

¹¹ Taxable outward supplies made to registered persons (including UIN-holders)

¹² Statement of advances received and adjusted

CIRCULAR NO. 171/03/2022-GST DATED JULY 06, 2022: DEMANDS AND PENALTIES IN RESPECT OF FAKE INVOICE

- CBIC has issued **Circular No. 171/03/2022-GST** clarifying on various issues relating to applicability of demand and penalty in respect of transactions involving fake invoices [issuing tax invoice, without actual supply of goods or services or both]. The below table summarizes the implications arising out of the clarification:

Implications	Issue of Tax invoice without any underlying Supply by 'A' and availment of credit by Recipient 'B'				
	Whether activity constitutes a 'Supply'	Recovery of Tax on output ¹³	Recovery of Credit ¹	Penalty	Prosecution u/s 132 of the CGST Act
(i) <u>Implications on 'A'</u>	No	No	NA	u/s. 122 (1)(ii) ^{14 15}	Yes
(ii) <u>Implications on B</u>					
(a) 'B' uses credit against output liability on Supply to his buyers for <i>underlying supply</i> of goods or services (not a fake output supply) and utilizes ITC	NA	NA	Yes	u/s. 74 ¹³ of the CGST Act <u>OR</u> u/s. 122 (1)(vii) ^{15 16}	Yes
(b) 'B' uses credit against output liability on Supply to his buyer 'C' <i>without underlying goods or services (Fake supply)</i> and utilizes ITC	No (for supply to 'C')	No	No	u/s. 122 (1)(ii) and (vii) ^{14 15 16}	Yes

- The Circular clarifies that in case of a fake invoice, since there is no supply of underlying goods or services by the supplier ('A'), there is no 'supply' per se and hence, there cannot be any GST liability on the supplier. On the same rationale, if a tax invoice is further issued by the recipient ('B') to his buyer ('C'), without there being any underlying

¹³ u/s. 73 (voluntary payments) or 74 (fraud or suppression)

¹⁴ 122(1)(ii)- "issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder"

¹⁵ Penalty for offences u/s. 122 - Penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, **whichever is higher.**

¹⁶ 122(1)(vii)- "takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;"

supply of goods or services, there is no supply involved. Consequently, since no tax is required to be paid, the credit as well cannot be recovered (as already utilized for a wrong tax payment). However, where 'B' uses the credit against his genuine supplies, the credit can be recovered from 'B' u/s. 73 & 74. In all instances, penalty and prosecution provisions will apply.

- The circular further clarifies that any person who has retained the benefit of transactions specified under sub-section (1A) of section 122 of CGST Act, and at whose instance such transactions are affected, then such person will also be liable for penal action under the provisions of the said sub-section.

ELP COMMENTS:

The circular issued by CBIC provides the much-needed clarity in respect of demand notices required to be issued and action proposed to be taken in case of fake invoices. This will prevent multiple demand and penal notices being raised for the same amounts on both the supplier and the recipient. However, the following issues need consideration:

- The Circular refers to demands u/s. 73 or 74, which clearly indicates that the authorities are bound to follow the due process of law. At present, we have seen multiple situations where demands are recovered forcefully without issuance of any show cause notice. Instruction No. 01/2022-23 dated May 25, 2022 is worth noting wherein it has been stated that there cannot be any recovery proceedings during search, inspection, investigation and due process of law has to be mandatorily followed.
- The penal provisions provide for a penalty for an amount equivalent to **the tax evaded or ... input tax credit availed of or passed** on or distributed irregularly, or the refund claimed fraudulently, whichever is higher. In situation (i) above, the circular itself clarifies that no demand can be raised and hence, can it be argued that no tax has been evaded? Can 'A' be penalized in such case?
- Similarly, the prosecution provisions u/s. 132 states that "*Whoever commits, or causes to commit and retain the benefits arising out of...*" certain specified offences shall be prosecuted in case where **the amount of tax evaded or the amount of input tax credit wrongly availed or utilized** or the amount of refund wrongly taken exceeds specified amounts. In such case, can the supplier 'A' be prosecuted when per se no demand can be raised against him?
- The aforesaid clarification clearly puts more obligations on the recipient who has wrongly availed and/or utilized credit and also penalizes a genuine buyer who might have purchased the goods/services but was issued a fake invoice by the supplier. In such case, the bona fide buyer will have to pay GST for wrong availment of credit and suffer the consequences. This puts quite an onerous burden on the bona fide recipients.

CIRCULAR NO. 172/04/2022 – GST DATED JULY 06, 2022: CLARIFICATION ON VARIOUS ISSUE PERTAINING TO GST

- Clarification on refunds claimed by recipients of deemed export supplies: An explicit clarification has been issued on refund of tax claimed by recipient of deemed export supplies, on these not being in the nature of refund of ITC claims. The Circular clarifies that the refund allowed to recipients of deemed export supplies is that of tax paid on such supplies and not refund of ITC availed by the receivers of deemed export supplies.
- With the same rationale, it has also been clarified that as the said amounts are not in the nature of the ITC claimed by deemed export recipients, they would not be included in the computations of “Net ITC” for refunds pertained to exports and inverted duty supplies.

ELP COMMENTS:

- For the uninitiated, the GST law permits refund of tax paid on deemed exports supplies with an option of such refund being claimed by the supplier or recipient of supplies. On account of technical glitches, the recipients of deemed export supplies were unable to file an online application for refund of tax paid on such supplies without a debit to the electronic credit ledger. To address the said concern, the current mechanism being followed was to claim ITC of the tax paid on such supplies with the said being debited at the time of filing of refund by the recipient of such supplies. Because of the said modus, there remained ambiguity on whether the said process entailed such refunds to be perceived as refund of ITC thereby obligating potential restrictions mentioned under Section 17 of the CGST Act.
- The Circular clarifies explicitly that the said refund is not in the nature of refund of ITC and hence, restrictions as prescribed under Section 17 would not apply. Similarly, as the said is not an actual availment of ITC, the same would not form a part of the computation of “Net ITC” for refunds pertaining to exports and inverted duty supplies.

- Clarification on scope of certain items prescribed as blocked credits under Section 17(5)(b) of the CGST Act: An explicit clarification has been issued on ITC being allowed on supplies mentioned in Section 17(5)(b), where the said are obligatorily provided by an employer to its employee under any law for the time being in force

ELP COMMENTS:

- With effect from February 01, 2019, Section 17(5)(b) of the CGST Act was amended to allow ITC on supplies which are obligatorily provided by an employer to an employee under any law in force. The said prescription was made vide insertion of a Proviso after clause (iii) of Section 17(5)(b) of the CGST Act. Clause (iii) of the said Section concluded with a “:”, entailing a possible interpretation on the proviso insertion being applicable only on clause (iii) and not the entire Section 17(5)(b). This had entailed potential restriction for ITC on services like rent-a-cab etc. extended to women employees under obligations of various State laws, etc. The said view was also upheld by the Gujarat Authority for Advance Rulings in an application filed by M/s Emcure Pharmaceuticals Ltd [2022 (4) TMI 1335].
- With this clarification, all services including food, life insurance, rent-a-cab etc. if provided by employers against mandatory requirement under any law would be allowed as ITC.

- Clarification has been issued on the scope of leasing services restricted under Section 17(5)(b) of the CGST Act only being applicable to leasing of motor vehicles, vessels or aircraft and not all other goods

ELP COMMENTS:

This clarification brings to rest a potential ambiguity on leasing being read as a standalone term in Section 17(5)(b) of the CGST Act and restrictions in reference to motor vehicles, vessels or aircraft only being read in the context of renting or hiring.

- Clarification on perquisites provided by employer to employees: It has been clarified that 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.

ELP COMMENTS:

- The Government had issued a similar clarification vide a Press Release earlier. While the Press Release included a similar clarification, there remained an ambiguity as the said release also included a condition of it being a part and parcel of the Cost to Company (CTC). While the above clarification should help bring certainty to businesses, the scope of contractual arrangement remains an open area; with certain perquisites being granted without an explicitly agreed arrangement on the same.
- Another matter which remains a contentious issue is taxability of perquisites where a nominal recovery is made from employees. With divergent Advance Rulings in different states with some AAR's upholding non-applicability of GST on such recoveries/perquisites as by the Maharashtra Authority of Advance Ruling in the case of M/s Syngenta India Ltd, M/s Emcure Pharmaceuticals Ltd., and some upholding GST being leviable on such recoveries as by the Haryana Appellate Authority for Advance Ruling in the case of M/s Beumer India Pvt. Ltd., an explicit clarification on this issue is also warranted.

- Clarification on utilization of amounts available in electronic credit ledger: It has been clarified that payment towards any output tax (excluding reverse charge liability), whether self-assessed or paid as a consequence of any proceeding, could be made through utilization of balance available in electronic credit ledger.
- The Circular further clarifies that balances in electronic credit ledger cannot be used for:
 - Payment of interest, penalty, fees or other amounts (except output tax) payable under the GST laws
 - Payment of refunds wrongly sanctioned when the original refund was sanctioned in cash

However, balances in electronic cash ledger can be used for any of the above payments.

ELP COMMENTS:

The above clarifications are helpful specifically in the context of payments as a consequence of proceedings with insistence by adjudicating/investigating officers on differential payments, if any being made in cash only.

CIRCULAR NO. 173/05/2022-GST DATED JULY 06, 2022: REFUND UNDER INVERTED DUTY STRUCTURE WHERE THE SUPPLIER IS SUPPLYING GOODS UNDER SOME CONCESSIONAL NOTIFICATION

- There has been a dispute regarding eligibility of refund under inverted duty structure where the same goods are supplied under a concessional notification. The Department had placed reliance on Circular No. 135/05/2020-GST dated March 03, 2020, especially Para 3.2 therein to state the refund in such cases may not be available. The GST Council in its 47th Meeting had recommended issuance of circulars to remove ambiguity *inter alia on this issue*.
- Vide Circular No. 173/05/2022-GST dated July 06, 2022 the CBIC has, clarified that the intent of Para 3.2 of the previous Circular No. 135/05/2020-GST dated March 31, 2020 was not to cover those cases/situations where the input and output goods are same, and the output supplies are made under concessional rate notification. It further clarifies and acknowledges that due to the benefit of such concessional rate notification, there is an accumulation of input tax credit on account of inverted duty structure. Therefore, in such cases, it is clarified that the assessee is eligible to claim refund of accumulated input tax credit on account of inverted duty structure as per the provisions of Section 54 (3) (ii) of the CGST Act, 2017. Accordingly, the said para stands substituted vide circular dated 06.07.2022.

ELP COMMENTS:

In a string of cases¹⁷, the legal sanctity of the previous Circular, especially Para 3.2, has been probed in various High Courts. It is noteworthy to see that all the High Courts have declared that the Circular dated March 31, 2020 being subordinate legislation, cannot override the Act i.e., Section 54 (3) (ii) of the CGST Act, 2017. It is a well settled law that circulars cannot go beyond the parent provision and impose additional conditions.

CIRCULAR 174/06/2022- GST DATED JULY 6, 2022 - PRESCRIBING MANNER OF RE-CREDIT IN ELECTRONIC CREDIT LEDGER USING FORM GST PMT-03A

- Rule 86(4B) of the CGST Rules has been inserted *vide* Notification No. 14/2022 - Central Tax dated July 5,2022 to provide that an amount of erroneous refund deposited by the registered person shall be re-credited to his electronic credit ledger, provided such amount is deposited along with interest and penalty, wherever applicable, through Form GST DRC-03 by debiting the electronic cash ledger. The amount shall be re-credited by the proper officer by passing an order in Form GST PMT-03A.
- This provision shall apply only in respect of the following categories of refund:
 - Refund sanctioned under Section 54(3)(i) of the CGST Act in respect of unutilized ITC on account of zero-rated supplies made without payment of tax;
 - Refund sanctioned under Section 54(3)(ii) of the CGST Act in respect of unutilized ITC on account of inverted duty structure;

¹⁷ BMG Informatics Pvt. Ltd. vs. The Union of India & Others [2021 (9) TMI 472 – Gauhati High Court], M/s Shivaco Associates & Anr. vs. Joint Commissioner of State Tax, Directorate of Commercial Taxes & Ors. [2022 (4) TMI 118 – Calcutta High Court], Baker Hughes Asia Pacific Ltd. Vs. Union of India & Ors. [TS-338-HC(RAJ)-2022-GST]

- Refund sanctioned under Rule 96(3) of the CGST Rules, in cases where refund was claimed in contravention of Rule 96(10).
- The manner and procedure of re-credit has been prescribed by the CBIC *vide* Circular F.No. CBIC-20001/2/2022-GST dated July 06, 2022 which broadly states as under:
 - While making the payment through Form GST DRC-03, the registered person shall clearly mention the reason for making payment in the text box *viz.* 'Deposit of erroneous refund of unutilised ITC' or 'Deposit of erroneous refund of IGST obtained in contravention of Rule 96(10) of the CGST Rules.
 - The registered person shall make a written request, in the prescribed format *viz.* Annexure-A, to the jurisdictional proper officer to re-credit such amount to his electronic credit ledger. This procedure of making written request has to be followed till the time an automated functionality for handling such cases is developed on the GST portal.
 - The proper officer, on being satisfied that the full amount of erroneous refund along with applicable interest and penalty, wherever applicable, has been paid by the registered person, shall pass an order in Form GST PMT-03A to re-credit the amount in the electronic credit ledger. The said order shall be passed preferably within 30 days from the date of receipt of written request in Annexure A or from the date of payment of erroneous refund, whichever is later.

ELP COMMENTS:

- This amendment seeks to address the practical difficulty faced by taxpayers in cases where erroneous refund (of ITC) was paid back in cash, however there was no mechanism available to re-avail the ITC. The only feasible option was to re-avail ITC through monthly GSTR-3B. In such an event, the GST portal used to reflect mismatch as the said amount do not appear in GSTR 2A/2B. Post this amendment, the amount of erroneous refund paid back by the taxpayer will get re-credited to his electronic credit ledger and would be available to him for utilization.
 - Importantly, this amendment is relevant only for certain specified categories of refund *viz.* refund on account of zero-rated supplies or inverted duty structure which are originally sanctioned in cash. However, it does not specify for re-credit *qua* other circumstances such as cases where refund was inadvertently sanctioned by the officer in cash instead of ITC and recovered later from the taxpayer in cash. On recovering in cash, the refund of ITC of equivalent amount also needs to be re-credited in the electronic credit ledger of the taxpayer.
- Interest applicability on wrongly availed and utilized ITC - The amendment to Section 50(3) of the CGST Act proposed *vide* the Finance Act, 2022 has been notified *vide* Notification No. 9/2022 - Central Tax dated July 05,2022. The amendment provides for levy of interest on ITC wrongly 'availed and utilised'. The rate of interest also stands reduced to 18% from 24%. These amendments shall be effective retrospectively from July 1,2017.

CIRCULAR 175-07-2022 CGST DATED JULY 06, 2022: REFUND OF UNUTILIZED ITC ON ACCOUNT OF EXPORT OF ELECTRICITY

- The power generating units were facing issues in filing refund of unutilized ITC on account of export of electricity as filing of shipping bill is not required. Accordingly, amendments have been made in CGST Rules by inserting new clause (ba) to Rule 89(2) of the CGST Rules and Statement 3B in FORM GST- RFD-01 of the CGST Rules *vide* Notification No. 14/2022-CT dated July 5, 2022.
- In this context, Circular 175-07-2022 CGST dated July 6, 2022, has been issued to provide the manner of filing refund of unutilised ITC on account of export of electricity. We have tabulated below the clarifications provided:

Sr. No	Particulars	Clarifications
I	Process of refund claim	<ul style="list-style-type: none"> ▪ Until further changes in the portal, the applicant would be required to file the application for refund under “Any Other” category electronically in FORM GST RFD-01 on the portal ▪ In remark column of the application, the taxpayer would enter “Export of electricity- without payment of tax (accumulated ITC)”- At this stage, the applicant is not required to make any debit from the electronic credit ledger ▪ The applicant would be required to furnish the details in PDF format contained in Statement 3B (and not in statement 3) of FORM GST RFD-01 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 the specified format 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 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.
II	Relevant date for filing of refund	<ul style="list-style-type: none"> ▪ In terms of Section 54 (1) of the CGST Act, the time period of two years from the relevant date has been specified for filing a refund application. ▪ In case of export of electricity, the relevant date shall be the last date of the month, in which the electricity has been exported as per monthly Regional Energy Account (REA) issued by the Regional Power Committee Secretariat under regulation 2(1)(nnn) of the CERC (Indian Electricity Grid Code) Regulations, 2010- which is the statement issued by the said Committee
III	Processing of refund claim	<ul style="list-style-type: none"> ▪ Refund would be processed in terms of formula prescribed in Rule 89(4) of the CGST Rules.

- It has been clarified that turnover for electricity is to be calculated by multiplying the units exported with tariff per unit of electricity. Further it is also clarified that quantum of Scheduled Energy exported, as reflected in the Regional Energy Account (REA) 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.
- Turnover of export of electricity units shall be lower of units as per invoice or as reflected in Regional Energy Account- in cases where the quantum of electricity exported as mentioned on invoice is different from the quantum of electricity exported mentioned on the statement.
- The turnover of electricity supplied domestically would be excluded while calculating the adjusted total turnover. It is also clarified that no ITC shall be availed for inputs and input services used for domestic supplies of electricity.
- In case the refund is available, the officer 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, the proper officer shall calculate the admissible refund and on scrutiny of the application for completeness and eligibility shall process the refund in **FORM GST RFD -06**.

CIRCULAR NO. 176/08/2022-GST DATED JULY 6, 2022 - WITHDRAWAL OF CIRCULAR 106/25/2019

- CBIC had issued a Circular No. 106/25/2019-GST dated June 29, 2019 which provides clarification in respect of filing of refund claim as per Rule 95A of CGST Rules by retail outlets established at departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange.
- However, CBIC has omitted Rule 95A of the CGST Rules retrospectively vide Notification No. 14/2022- Central Tax dated July 05, 2022. Consequently, vide Circular No. 176/2022 dated July 06, 2022 CBIC has withdrawn Circular 106/25/2019 dated June 29,2019 *ab-initio*.

ELP COMMENTS:

Supplies from retail outlets at an international terminal to outgoing international passengers are to be treated as exports and regular refund benefit to be available under GST law. Therefore, Rule 95A and relevant Circular has been withdrawn.

GLOSSARY OF TERMS

Abbreviation	Meaning
CBIC	Central Board of Indirect Taxes and Customs
CGST Act	Central Goods and Services Tax Act, 2017
CGST Rules	Central Goods and Services Tax Rules, 2017
FY	Financial Year
GST	Goods and Services Tax
IGST	Integrated Goods and Services Tax
IGST Act	Integrated Goods and Services Tax Act, 2017
ITC	Input Tax Credit
SCN	Show Cause Notice
SEZ	Special Economic Zones
SGST	State Goods and Services Tax Act, 2017
TCS	Tax Collected at Source



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