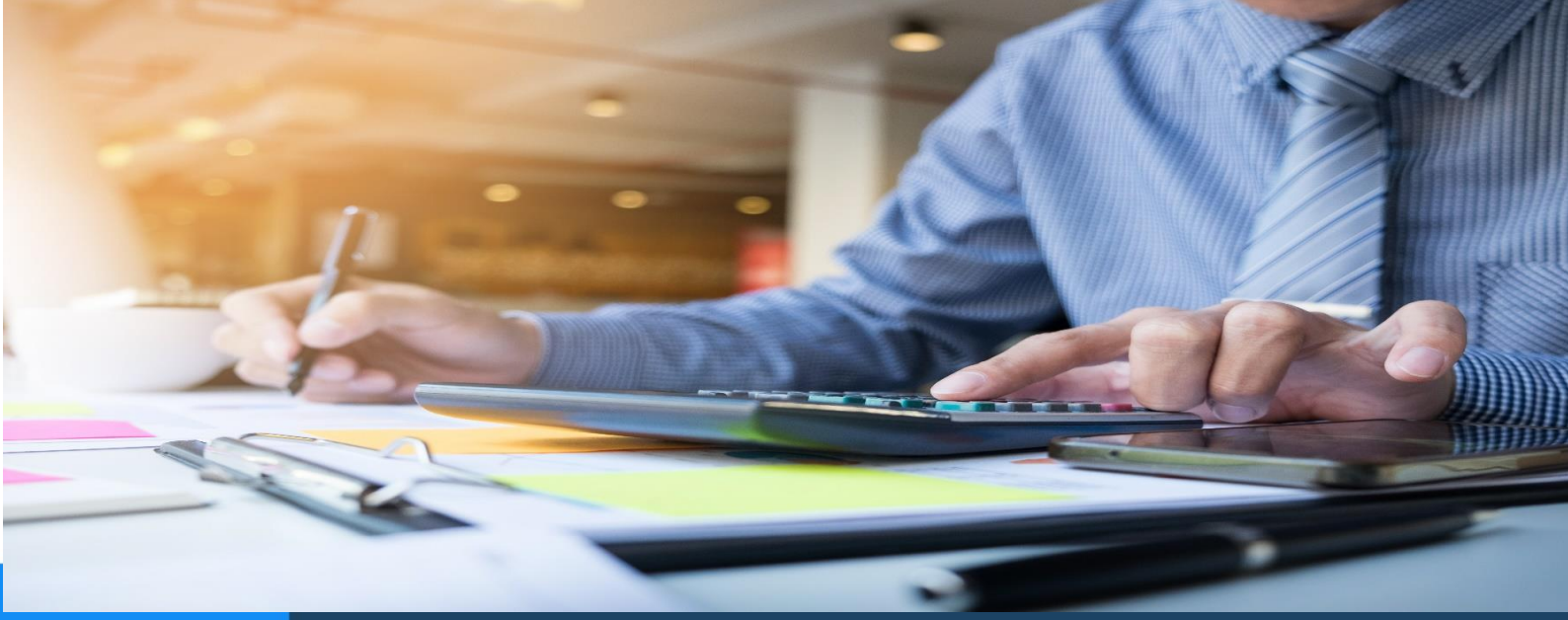

Indirect Tax Update

Summary of Notifications and Circulars issued on 5th and 6th July 2022

Key Highlights:

- ✓ Change in form GSTR 3B
- ✓ Rate of interest and manner of calculation of Interest
- ✓ Clarification on various issue pertaining to GST
- ✓ Clarification on applicable demand and penalty provisions in case of fake invoicing
- ✓ Manner of re-credit in electronic credit ledger
- ✓ Filing quarterly return CMP-08 for composition taxpayer
- ✓ Declaration to be provided on tax invoice by the taxpayers exempt from issuing e-invoice
- ✓ Many others . . . .

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1. Circular on information disclosure in GSTR-3B

[Circular No. 170/02/2022-GST read with Notification No.14/2022-Central Tax]

A. Clarification on disclosure of ITC details in Table 4 of GSTR-3B

The circular provides the following clarification on the reporting requirement with regard to ITC in Form GSTR-3B:

- All ITC, whether eligible or ineligible, which is being reflected in current month's GSTR-2B would be shown in different fields of Table 4A.
- ITC which is to be reversed and is permanent in nature i.e., which is not to be re-availed by the registered person would be disclosed in Table 4B (1). (e.g., reversals under Rule 38, sections 42,43 and 17(5))
- ITC, which is to be reversed in the current month but which can be reclaimed later is to be reversed in Table 4B (2). (e.g., reversals under rule 37, or due to non-fulfilment of conditions in sections 16(2)(b) and 16(2)(c))
- Hence, net ITC claimable would-be Table 4A – (Table 4B (1) + Table 4B (2)).
- ITC to be reclaimed out of the ITC reversed in Table 4B (2) in subsequent month(s) is to be added to Table 4A (5) i.e., all other ITC. Further, it is to be separately disclosed in Table 4D (1) as a disclosure.

H & A Comments: -

As per the amended Table 4 of Form GSTR-3B and the additional disclosure requirements being sought for, the taxpayer would have to put in additional efforts and have to be more cautious in the values being reported.

Compared to the existing practice of reporting only eligible ITC (matched with Form GSTR-2B), the registered person would now have to verify all the entries of Form GSTR-2B and keep a track of permanent and temporary reversals.

Effectively, Table 4A would now completely flow from GSTR-2B (except RCM which may only be partial) and any deviation in such figure would only be due to ITC reclaimed out of ITC reversed in previous month(s). This would further be specifically identifiable by disclosure made by registered person in Table 4D (1).

The rationale of having disclosures bifurcated under "permanent reversals" and "temporary reversals" is to enable accurate settlement of funds between the Centre and the State is done in a proper manner, based on the disclosures made in Table 4B(1).

B. Clarification on mandatory disclosure in some tables of GSTR-3B:

Emphasis has again been made on disclosure of proper figures in Table 3.2 of GSTR-3B i.e., interstate supplies made to unregistered persons, composition taxable persons and UIN holders to ensure correct accounting and accurate settlement of funds between the state and the central government.

H & A Comments: -

It is to be ensured that disclosure in Table 3.2 is not missed. As these details are already auto-populated from information furnished in GSTR-1, the taxpayer is required to only validate these details and proceed for filing of returns. Nevertheless, the details are of utmost importance to the Government for settlement of funds and cannot be omitted from GSTR-3B disclosure.

Further, care must be given to ensure that any amendments made in GSTR-1 w.r.t. these fields may also be given appropriate effect in GSTR-3B.

2. Interest on delayed payment of tax

[Notified vide NN. 09/2022-CT dated 05.07.2022]

As per Section 110 (c) of the Finance Act, 2022, (substituted in Section 49), the amount lying in the electronic cash ledger of a tax payer can be transferred to another registration of the same entity, having same PAN. This would be possible, only if the transferor unit is not having any outstanding liability.

As per Section 111 of the Finance Act, 2022, a new sub-section (3) has been introduced under Section 50 of the CGST Act, with retrospective effect from 01.07.2017, which states that where the ITC has been wrongly availed and utilised, the registered person shall pay interest on such ITC wrongly availed and utilised, at such rate not exceeding 24% as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.

The effective date for the amendments made to CGST Act, 2017 vide Section 110 (c) and 111 of the Finance Act, 2022 is 5th July'2022.

H&A Comments:

With this amendment a long-standing debate and dilemma comes to an end which brings clarity to the taxpayers as to payment of interest only if credit is **utilised**. As the erstwhile

sub-section (3) of Section 50, prescribed 24 % interest in certain circumstances, there was confusion about the rate of interest applicable in case of wrong availment of ITC. Now, it is clear that the rate of interest is only 18 % per annum.

The taxpayer can transfer the balance of IGST and CGST in electronic cash ledger to any other GSTIN in the same PAN, subject to that there is no unpaid liability in the electronic liability ledger. This helps in better workings capital management for the taxpayers.

3. Manner of calculating interest on delayed payment of tax specified under Rule 88B.

[Notified vide NN. 14/2022-CT dated 05.07.2022]

A new rule to Section 50 of the CGST Act i.e., Rule 88B has been introduced with retrospective effect from 01.07.2017, prescribing the manner of calculation of interest.

- **Belated Returns:** As per sub-rule (1), if the tax liability declared in the return is paid belatedly, i.e., if the return is filed belatedly, interest would be payable only on the cash portion of the liability.
- **Wrong Payment of Taxes:** In case of wrong availment of ITC, interest would be payable only if the wrongly availed ITC is utilised.
- **Other Cases:** As per sub-rule (2), in all other cases (such as short payment of tax, non-payment of tax, etc.) interest is payable from the due date for payment of such tax, till its payment. Let us assume that instead of paying tax @ 12 %, a taxpayer has paid tax @ 5 %. When the differential tax is paid later, notwithstanding the fact that he had enough ITC to pay the differential tax at the relevant point of time, interest would be payable from the due date for payment of tax till its actual payment.

H&A Comments:

The wrongly availed credit is deemed to be utilised when the balance in Electronic Credit Ledger falls below the wrongly availed credit amount. For example, if ITC of Rs. 60,000 is availed wrongly in January 2022 and the closing balance of ITC in March 2022 GSTR-3B return is Rs.30,000, Rs.30,000 of wrongly availed ITC is deemed to have been utilised in the month of March 2022.

The manner of determination of date of utilisation of credit is also prescribed, which is explained below:

- Continuing with the above example, the utilisation of wrong ITC of Rs.30,000 would be:
  I. The date of filing of GSTR-3B return (or)
  II. Due date or the due date for filing the said return, whichever is earlier.

In other words, if the return is filed beyond the due date, the date of utilisation of credit would be the due date for filing the return and the taxpayer cannot reduce the interest liability on utilisation of wrong credit, by delaying the filing of GSTR-3B.

4. Clarification on applicable demand and penalty provisions in case of fake invoicing:

[Circular No. 171/03/2022-GST]

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

Case	Action	Comments
Mr. A issued tax invoice to Mr. B without any underlying supply. Impact on Mr. A?	Penal action would be taken against Mr. A under section 122(1)(ii) for issuance of fake invoice	As there is no supply, no proceedings for demand and recovery under Section 73 or Section 74 can be made against Mr.A
Mr. B receives a tax invoice from Mr. A without any underlying supply. Mr. B issues tax invoice against an underlying supply to its customer. Mr. B utilizes the ITC availed based on the fake invoice. Impact on Mr. B?	Proceedings would be initiated against Mr. B for recovery of incorrect ITC olus penalty under Section 74 of the CGST Act, along with applicable interest as per Section 50.	No separate penal proceedings under Section 122 against Mr. B, as proceedings have already been initiated under Section 74. (Refer Section 75(13)).
Mr. B receives a tax invoice from Mr. A without any underlying supply.	Penal action would be taken against Mr. B both under section 122(1) ((ii) and section 122(1)(vii) of	No proceeding in section 73 and 74 as no underlying supply present.

Mr. B issues tax invoice without any underlying supply to Mr. C. Impact on Mr. B?	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.	

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

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

- wrongful/fraudulent availment or utilization of input tax credit, or
- in cases of issuance of invoices without supply of goods or services or both,

leading to wrongful availment or utilization of input tax credit or refund of tax.

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

H & A Comments: -

In relation to fake invoicing, proceedings initiated under Section 73/74 were struck down due to lack of underlying supplies. This circular would be a guideline for the Officers handling such issues, to ensure correctness and consistency of proceedings against fake invoicing.

5. Clarification on various issue pertaining to GST

[Circular No. 172/04/2022-GST]

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

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

applicability of provisions of blocked credits under section 17 on the availment of such ITC.

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

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

Another issue was the lack of clarity regarding the inclusion of such ITC in "Net ITC" used for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.

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

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

H & A Comments: -

The above clarifications would aid the refund applicants in case of such refunds, which was earlier rejected due to incorrect interpretation/position taken by the Department.

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

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

"Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force."

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

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

H & A Comments: -

Though the said view appeared to be the correct legal view and in line with the intent of the legislature, the contrary view was taken by certain Officers and AAR. Based on the above clarification, ITC on the inward supplies covered in sub-clause (i) and (ii) of clause 17(5)(b) can be availed as long as they are obligatory by employer to provide to its employees.

Being a clarification, there would be no further doubts with regard to the coverage of the said proviso, from the introduction of this proviso in the CGST Act, i.e., 01.02.2019.

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

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

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

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

H & A Comments: -

This clarification appears to be provided as a matter of abundant caution, as the existing provision is clear on the said aspect. It could also be on account of contrary view taken by certain Officers, that such a clarification has been provided.

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

Perquisites provided by employer to its employees in terms of contractual agreement would be covered under Entry 1 of Schedule III i.e. "services by employee to the employer in the course of or in relation to his employment". Hence such perquisites would be treated as neither a supply of goods nor a supply of service for the reason being these perquisites are provided in lieu of the services by employee to the employer in relation to his employment. Hence such perquisites provided in lieu of employment would not be subjected to GST.

H & A Comments: - Clarification has bought a clarity on the aspect that where the perquisites have been provided under the employment contract in lieu of the employment would be treated as neither as a supply of goods nor supply of services. Perquisites which are provided by an employer under a contractual agreement without any recoveries from employees have been clearly carved out of the scope of GST, which has been clarified.

Various AARs/AAAR have provided different views about applicability of GST on the recoveries from employees for canteen, transportation etc. This Circular has not provided any specific clarification with regard to such recoveries. However, extending the same analogy and taking cue from the said clarification, it is possible to take a view that such recoveries (cost recovery) would also not be treated as supply of goods nor supplies of service.

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

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

extent of discharge of any liability in accordance with provisions of Section 49/49A/49B of CGST Act 2017.

Further output tax has been defined as tax chargeable on taxable supply of goods or services or both but excludes tax payable on reverse charge mechanism. Accordingly, it is clarified that any payment towards output tax, whether **self-assessed in the return or payable as a consequence of any proceeding instituted** under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person.

It has also been clarified as follow:

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

H & A Comments: - Clarification has provided a relief to the taxpayers where the Department has demanded payment of output tax liability only through electronic cash ledger, while the proceedings are being carried out.

However, the Circular has not specifically clarified on the issue of whether payment of pre-deposit can be made through the electronic credit ledger. Contrary Judgement was passed by Orrisa High Court in case of M/S. Jyoti Construction [2021 (10) TMI 524 - ORISSA HIGH COURT] where it was held that the electronic credit ledger cannot be debited for making payment of pre-deposit at the time of filing of the appeal in terms of Section 107 (6) of the OGST Act.

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

(*Notification No 14/2022-CTR dated 5th July 2022 &* Circular No. 173/05/2022 – GST dated 06th July 2022)

Vide this circular, para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020 stands substituted as under:

"3.2 It may be noted that refund of accumulated ITC in terms of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act.

3.3 There may, however, be cases where although inputs and output goods are the same, the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs. In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to the supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund under the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act, other than the cases where output supply is either Nil rated or fully exempted, and also provided that supply of such goods or services are not notified by the Government for their exclusion from the refund of accumulated ITC under the said clause."

H & A Comments: - The officers are rejecting the refund applications in cases where the supply made at lower rate as per concessional rate notification issued. This is relying on the para 3.2 of circular No. 135/05/2020-GST dated 31.03.2020 where it was stated IDS refund would not be applicable in cases where the input and the output supplies are the same. In this regard, government has clarified now that the refund is admissible in cases where inputs and output goods are same but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs.

Below examples could be considered for better understanding

a. Where the inputs are taxable at 18% and outward supply also taxable at 18%, however under a concessional notification provides for reduced rate in special circumstances. Example could be the supply made to Public funded research institution under NN 47/2017-ITR at concession rate of 5% – **IDS refund is admissible.**

b. An applicant trading in goods has purchased, say goods "X" attracting 18% GST. However, subsequently, the rate of GST on "X" has been reduced to, say 12%. -IDS refund is not admissible as per para 3.2 of circular No. 135/05/2020-GST dated 31.03.2020.

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

(*Notification No 14/2022-CTR dated 5th July 2022 &* Circular No. 174/06/2022 – GST dated 06th July 2022)

Where a registered person deposits the amount of erroneous refund sanctioned to him, –

(a) under sub-section (3) of section 54 of the Act, or

(b) under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96,

along with interest and penalty, wherever applicable, through FORM GST DRC-03, by debiting the electronic cash ledger, **on his own or on being pointed out**, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03A.

Following categories of refund sanctioned erroneously, re-credit of amount in the electronic credit ledger can be done through FORM GST PMT-03A, on deposit of such erroneous refund along with interest and penalty, wherever applicable, by the taxpayer:

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

Till the time an automated functionality for handling such cases is developed on the portal, by making a written request, in the format enclosed as Annexure-A, to the jurisdictional proper officer to re-credit the amount equivalent to the amount of refund thus paid back through FORM GST DRC-03, to electronic credit ledger.

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

H & A Comments: - Earlier there was no system to re-claim ITC of erroneous refund paid back to the Government vide DRC-03. Certain taxpayers would re-avail the amount of refund paid back, which resulted in mismatch with the ITC reported in Form GSTR-2B. Now, the Government has introduced Form GST PMT-03A wherein the Jurisdictional Officer would enable re-credit directly to the ECL, based on the amount paid back through FORM GST DRC-03.

8. Manner of filing refund of unutilized ITC on account of export of electricity.

[Notification No 14/2022-CTR dated 5th July 2022 & Circular No. 175/07/2022-GST dated 6th July, 2022]

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

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

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

1. Till the time necessary changes are carried out on the portal, the applicant would be required to file the application for refund under "Any Other" in FORM FRD-01. 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.
2. **Applicants require to upload following documents**
   a. Statement 3B 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.

   b. The copy of statement of scheduled energy for electricity exported by the Generation Plants (in format attached as provided in notification).
   c. The copy of the relevant agreement(s) detailing the tariff per unit for the electricity exported.
   d. Details of calculation of the refund amount in Statement -3A of FORM GST RFD-01 by uploading the same in pdf format.
3. 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.
4. 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.
5. 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.
6. Turnover of export of electricity shall be calculated using the lower of
   a. The quantum of electricity exported mentioned on the statement of scheduled energy exported and
   b. That mentioned on the invoice issued on account of export of electricity.
7. The turnover of electricity supplied domestically would be excluded while calculating the adjusted total turnover as electricity has been wholly exempted from the levy of GST.
8. If the proper officer is satisfied with the completeness of application and eligibility shall request the applicant, in writing, if required, to debit the said amount from the electronic credit ledger through FORM GST DRC-03.
9. 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.

H & A Comments: -

Power generating units were facing the problem in filing application for refund application. With regard to this government has amended CGST Rules and issued circular to provide for refund of unutilized Input Tax Credit on account of Export of Electricity. This would facilitate the exporters of electricity in claiming refund of utilized ITC on zero rated supplies.

9. Supply by Duty Free Shops (DFS) to outgoing international passenger to be treated as exports and consequential refund benefit made available.

[Notification No 14/2022-CTR dated 5th July 2022 & Circular No. 176/08/2022-GST dated 6th July, 2022]

Vide said notification No 14/2022-CTR dated 5th July 2022 para 9, government **omits rule 95A retrospectively** and vide circular 176/08/2022-GST withdraws the Circular No. 106/25/2019-GST dated 29.06.2019 allowing refund GST 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.

H & A Comments: -

There have been many high court decisions in the recent past wherein the supplies made by retail outlets situated in departure area of international airport are treated to be 'zero rate supplies' and thereby allowing refund of input services as well. Rule 95A was limiting the refund option only on goods and with the omission of this rule, the intention appears to allow refund on input services as well. Refer *Flemingo Travel Retail Ltd Vs. UOI [2019 (10) LCX0023], Sandeep Patil Vs. UOI [2019 (010) LCX0179], CIAL Duty Free and Retail Services Ltd Vs. UOI [2020 (09) LCX0077], Atin Krishna Vs. UOI [2019 (05) LCX0024]*.

10. Turnover limit for Annual Return

[Notified vide NN. 10/2022-CT dated 05.07.2022]

This notification provides exemption from filing of annual return in form GSTR-9 and GSTR-9A (for composition tax payers) for the financial year 2021-22, if the aggregate turnover in the said year is not exceeding Rs.2 Crores.

H&A Comments:

Exemption has been provided for the small taxpayers like earlier years from the burden of filing the GSTR-9/9A if aggregate turnover for FY 2021-22 does not exceed the turnover limit of Rs. 2 Crores.

11. Due date for filing quarterly return CMP-08 for composition taxpayer

[Notified vide NN. 11/2022-CT dated 05.07.2022]

The composition taxpayer shall now furnish a statement containing the details of payment of tax in FORM GST CMP-08 for the 1st quarter ending 30th June, 2022 by 31st day of July, 2022. Earlier, Composition taxpayers were required to file a Quarterly return in form CMP-08, before 18th of the succeeding month.

H&A Comments:

Relaxation has been provided by extending the due date to 31st July 2022 for the 1st Quarter.

12. Waiver of late fees for filing Annual return by Composition taxpayer for FY 21-22

[Notified vide NN. 12/2022-CT dated 05.07.2022]

The due date for filing GSTR-4 by the composition taxpayer for every financial year is 30th April of the succeeding year. If not filed within the due date, late fee as applicable under Section 47 of the CGST Act is payable. The late fee for the FY 2021-22 was waived, if the return is filed upto 30th June 2022 (6th proviso to Notification no 73/2017 (CT) as amended). Now this waiver is extended upto 28th July 2022.

H&A Comments:

The composition taxpayers can avail the extended benefit by filing the GSTR-4 within 28th July'22 in order to avoid late fees if the same is not filled till now.

13. Extension for passing order under Section 73(10) of the CGST Act, 2017

[Notified vide NN. 13/2022-CT dated 05.07.2022]

Section 73(10) of the CGST Act, 2017 prescribes that any order for determination of tax liability under the said section has to be passed within 3 years from the due date for filing annual return for a year. The show cause notice has to be issued at least three months before the last date for passing the order. As the due date for filing annual return for 2017-18 was extended upto 31.01.2020, any order for the year 2017-18, under section 73 has to be passed on or before 30.01.2023 and show cause notice should be issued on or before 30.10.2022.

Now, the time limit for passing order under Section 73 (10) for the year 2017-18 has been extended upto 30th September 2023. It has been provided that while computing the period of limitation for recovery of erroneous refund & filing refund application, the period between 01.03.2020 to 28.02.2022 shall be excluded.

H&A Comments:

As a consequence, any show cause notice for the year 2017-18 under Section 73 can be issued on or before 30.06.2023. As per section 73 (10) for recovery of any erroneously sanctioned refund, the order for recovery under section 73 shall be passed within three years from the date of sanction of erroneous refund.

For example, if an erroneous refund was sanctioned on 01.08.2018, the order for recovery of the same has to be passed on or before 30.07.2021. It may be noted that as on 31.03.2020, 20 months are over and further 16 months are available. If we exclude the period from 01.03.2020 to 28.02.2022, a further period of 16 months would be available from 01.04.2022, i.e., the order can be passed upto 30.07.2023.

The period between 01.03.2020 to 28.02.2022 shall be excluded while computing the time period for filing the refund claims under sections 54 and 55 also.

The reason behind not considering the said period could be the adverse impacts COIVD-19 pandemic caused across the country which had hindered the smooth functioning of the business as well as the law-and-order system.

14. Suspension of registration shall be deemed to be revoked upon furnishing of all pending returns

[Notified vide NN. 14/2022-CT dated 05.07.2022]

A proviso has been inserted in Rule 21A (4) after the first proviso which states if the registration has been suspended for not furnishing returns for 3/6 consecutive tax periods in case of a composition taxpayer or normal taxpayer respectively and the registration has not been already cancelled by the proper officer u/r 22, the suspension of registration shall be deemed to be revoked upon furnishing of all pending returns.

H & A Comments: -

This is a welcome move wherein on furnishing of all the pending returns, suspension of registration shall be revoked/ cancelled. Taxpayers whose registration has been suspended but not cancelled for not furnishing returns on time are suggested to file all the pending returns so that suspension of registration is revoked.

15. Value of supply of Duty Credit Scrips shall not be included for the purpose of common credit reversal

[Notified vide NN. 14/2022-CT dated 05.07.2022]

For the purpose of reversal of common credit under rule 42 & 43, the value of exempt supplies shall not include the value of supply of duty credit scrips. *(Explanation 1 to Rule 43)*

H & A Comments: -

This implies that common credit need not be reversed to the extent of sale value of duty credit scrips. However, it is not clear whether the explanation added will have prospective or retrospective effect. Being a beneficial provision, this should be applicable retrospectively.

Assesses who have already reversed the ITC can re-claim the said ITC with the intimation to department or file a refund application for wrong reversal of ITC under 'Any Other Refund' category for the past period.

16. Declaration to be provided on tax invoice by the taxpayers exempt from issuing e-invoice

[Notified vide NN. 14/2022-CT dated 05.07.2022]

There are certain categories of taxpayers who are excluded from complying with the provisions of e-invoicing. Clause (s) to Rule 46 has been inserted after clause (r) requiring such taxpayers to provide a declaration in this regard in the tax invoice issued by them. The declaration to be provided is as follows:

"I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule."

H & A Comments: -

Taxpayers such as insurers, banking companies, financial institutions including NBFCs, Goods Transport Agencies (GTA), input service distributors, SEZ units, registered persons supplying services by way of admission to an exhibition of cinematograph films in multiplex screens and registered persons providing passenger transportation services are excluded from the provisions of e-invoicing. These taxpayers would now be required to provide a declaration that they are not required to issue an e-invoice.

17. Erroneously sanctioned refund to be re-credited to electronic credit ledger when deposited by debiting electronic cash ledger

[Notified vide NN. 14/2022-CT dated 05.07.2022]

Sub-rule (4B) has been introduced in Rule 86. As per this sub-rule, if any erroneously sanctioned refund [export refund, inverted rate structure refund or refund of IGST paid on export, sanctioned in contravention of Rule 96 (10)] is paid back in cash, along with interest and penalty wherever applicable, through FORM GST DRC-03, an equivalent amount would be credited in the Electronic Credit Ledger by the proper officer by an order made in FORM GST PMT-03A.

H & A Comments: -

This rule has been introduced because at the time of claiming the refund, the said amount would have been debited from the Electronic Credit Ledger, therefore, when the erroneous refund is paid back in cash, an equivalent amount is credited back to the electronic credit ledger.

18. UPI and IMPS have been added as options for making deposits into Electronic Cash Ledger

[Notified vide NN. 14/2022-CT dated 05.07.2022]

Rule 87 has been amended to include the options of Unified Payment Interface (UPI) and Immediate Payment Services (IMPS) as an accepted mode of payment of GST.

Sub-rule (14) has been inserted in Rule 87 to provide for transfer of electronic cash ledger balance between distinct persons in FORM GST PMT-09. However, no such transfer shall be allowed if there is any unpaid liability in his electronic liability register.

H & A Comments: -

As UPI & IMPS are a popular mode of online payment, providing multiple modes of payment will help taxpayers in making their tax payment faster in their preferred mode.

This was a much-needed relief as allowing transfer of electronic cash ledger balance between distinct persons will help solve working capital problem.

19. Retrospective Amendment to Rule 96 in cases of taxpayers in default

[Notified vide NN. 14/2022-CT dated 05.07.2022]

Rule 96 has been amended retrospectively w.e.f. 1st July 2017 to provide for refund withheld in cases of taxpayers in default. Such refund claims shall be transmitted online to the proper officer in FORM GST RFD-01 and shall be processed by the relevant P.O

20. Form 9 notified for the F.Y 2021-22 with few changes

[Notified vide NN. 14/2022-CT dated 05.07.2022]

1. The registered person shall report non-GST supply (5F) separately and shall have an option to either separately report his supplies as exempted and nil rated supply or report consolidated information for these two heads in the "exempted" row only.
2. It shall be mandatory to report in Table 17, HSN code at six digits level for taxpayers having annual turnover in the preceding year above 5 Cr and at four digits level for all B2B supplies for taxpayers having annual turnover in the preceding year up to 5 Cr.
3. Few other instructions for Part-IV (Table-10,11,12,13) & Part-V inserted to make the FORM relevant for the FY 2021-22.

H&A Comments:

The additional instructions in the FORM GSTR-9 of FY 2021-22 have been made requiring mandatory reporting of 6 digit HSN & 4 dight HSN for taxpayers having annual turnover in the preceding year above 5 Cr/upto 5 Cr respectively for all B2B supplies in Table 17. This additional disclosure requirement which was relaxed all these years added burden for the taxpayers.

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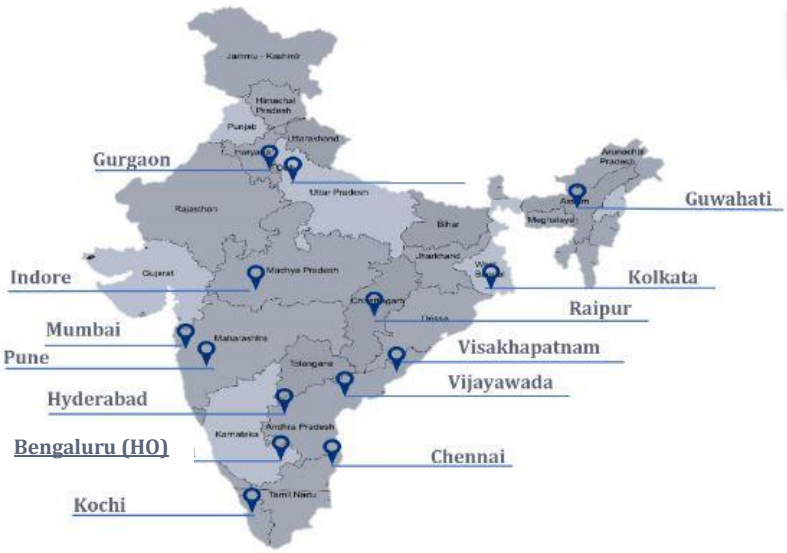

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