GST UPDATE
(November, 2019)

Directorate of Training, Excise and Taxation Department, Punjab

ABSTRACT OF GST UPDATE

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(I) GIST OF GST NOTIFICATIONS

1. Due date of filing GSTR-1 for registered persons in J & K extended

CBIC has extended the due date of filing GSTR-1 for the quarter July, 2019 to September, 2019 till November 30, 2019 and for registered persons filing GSTR-1 monthly, due date for each of the months from July, 2019 to September, 2019 has been extended till November 15, 2019, for registered persons having principal place of business in the State of Jammu and Kashmir.

[Notification No. 52/2019-Central Tax and Notification No. 53/2019-Central Tax, dated November 14, 2019]

2. Due date of filing GSTR-3B for registered persons in J & K extended

CBIC has extended the due date of filing GSTR-3B for the months July, 2019 to September, 2019 till November 20, 2019 and for registered persons who are required to file GSTR-7 due date for the months from July, 2019 to September, 2019 has been extended till November 15, 2019, for registered persons having principal place of business in the State of Jammu and Kashmir.

[Notification No. 54/2019-Central Tax and Notification No. 55/2019-Central Tax, dated November 14, 2019]

3. Amendments in and Simplification of the annual return / reconciliation statement

FORM GSTR 9: Table – 4 & 5 (Outward Supply): 4B To 4E can be filled net of Credit Notes, Debit Notes and Amendments*, Instead of reporting in separately in 4I, 4J 4K & 4L;

Table 5A to 5F can be filled net of Credit Notes, Debit Notes and Amendments, Instead of reporting in separately in 5H, 5I, 5J & 5KJ; In case of Table 5D, 5E & 5F (exempted, nil rated and Non-GST supply) – *Single figure can be reported against EXEMPTED* in 5D;

Table 6 – ITC availed during the FY, In Table 6B, 6C, 6D & 6E the registered person can
report the entire input tax credit under the *“inputs” row only*;

Table 7 – ITC Reversal: Details of table 7A to 7E can be reported under 7H (Other Reversal); However TRAN I & II reversal has to be reported respectively;

Table 8 – Other ITC related information: The registered person can upload the details for the entries in Table 8A to 8D (Reconciliation of GSTR 2A with GSTR 3B) *duly signed, in PDF format in Form GSTR-9C* (without the CA certification); Table 15, 16, 17 & 18 (*HSN summary also*) has been made optional

FORM GSTR 9C: Some relaxation has been made in this form also which are as below: Detail of turnover adjustments required in *Table 5B to 5N made optional* and all the adjustment required to be reported can be reported in Table 5O;

Table 12B, 12C and 14 (ITC reconciliation) has also been made optional; Some minor changes in Declaration part also.

[Notification No. 56/2019- Central Tax dated November 14, 2019]

4. Extension of Dates for Jammu and Kashmir

Notification No.	Date	Form	Period	Aggregate Turnover	Extended Due Date
57/2019-Central Tax	26-11-2019	GSTR-1	July 2019 ~ Sept 2019 (Monthly)	More than Rs 1.50 crores	30-11-2019
58/2019-Central Tax	26-11-2019	GSTR-1	Oct 2019	More than Rs 1.50 crores	30-11-2019
59/2019-Central Tax	26-11-2019	GSTR-7 (TDS)	July 2019 ~ Oct 2019	Any Amount	30-11-2019
60/2019-Central Tax	26-11-2019	GSTR-3B	July 2019 ~ Sept 2019 (Monthly)	More than Rs 1.50 crores	30-11-2019
61/2019-Central Tax	26-11-2019	GSTR-3B	Oct 2019	More than Rs 1.50 crores	30-11-2019

[Notification No. 57-61/2019- Central Tax, dated November 14, 2019]

5. Migration Plan from J & K State to Union Territories

As per Jammu and Kashmir Reorganization Act, 2019, the State of J & K has been divided between Union Territories, namely, UT of J & K and UT of Ladakh. Accordingly, CBIC notified the transition plan with respect to J & K reorganization w.e.f. 31.10.2019. It has prescribed a special procedure for those persons whose principal place of business or place of business lies in the erstwhile State of Jammu and Kashmir till the 30th day of October, 2019; and lies in the Union territory of Jammu and Kashmir or in

the Union territory of Ladakh from the 31st day of October, 2019 onwards. This special procedure is to be followed till 31 December 2019.

[Notification No. 62/2019- Central Tax dated 26.11.2019]

6. CBIC has mandated quoting of Document Identification Number (DIN) on all the communications issued by its officers w.e.f. 8 Nov,2019.

i. Objective:

The objective is to have transparency and accountability in indirect tax administration through widespread use of information technology.
This would create a **digital directory** for maintaining a proper **audit trail** of such communication.
Further, it would also provide the recipients of such communication a digital facility to ascertain their genuineness.

ii. Applicability:

Following are the cases for which the DIN has been mandated now:
search authorization,
summons,
arrest memo,
inspection notices and
letters issued in the course of any enquiry
by any officer of CBIC, to any tax payer or other person
It is also specified that the DIN shall be mandated for all other communications, and also there is a plant to have the communication itself bearing the DIN generated from the system.
Note: For the above said cases, unless the same is covered as per below exceptions, the communications without DIN shall be treated as invalid and shall be deemed to have never been issued.

iii. Exceptions

Following are the cases where DIN can be generated on Post-Facto basis:
i. when there are **technical difficulties** in generating the electronic DIN, or
ii. when communication regarding investigation/enquiry, verification etc. is required to be issued at short notice or in **urgent situations** and the **authorized officer is outside** the office in the discharge of his official duties.
In such cases, the communications should expressly state that it has been issued without a DIN. The reasons for the same should be recorded in the concerned file.

iv. Regularization of exceptions

The communications issued without DIN, as per above said circumstances, should be regularized within 15 working days, in the following manner:
i. obtaining the **post facto approval** of the immediate superior officer as regards the justification of issuing the communication without the electronically generated DIN;
ii. mandatorily electronically **generating the DIN** after post facto approval; and

iii. **printing** the electronically generated pro-forma bearing the DIN and filing it in the concerned file.

v. Format of DIN – "CBIC-YYYY MM ZCDR NNNNNN":
Various components of the DIN are explained as followed:
a) YYYY – Calendar year in which the DIN is generated,
b) MM – Calendar month in which the DIN is generated,
c) ZCDR – Zone-Commissionerate-Division-Range Code of the field formation/Directorate of the authorized user generating the DIN,
d) NNNNNN – 6 digit alpha-numeric system generated random number.

vi. Verification of Genuineness
The genuineness of the communication can be ascertained by recipient (public) by entering the CBIC- DIN for that communication in a window VERIFY CBIC-DIN on CBIC's website cbic.gov.in.
Only in those cases where the DIN entered is valid, information about the office that issued that communication and the date of generation of its DIN would be displayed on the screen.

[Circular No. 122/41/2019-CT, Date: 05th Nov 2019]

7. Certain clarifications were provided for applying Rule 36(4) i.e. credit restriction to matching GSTR-2A+20%

i. What are the credits covered under this rule? And From which date the rule shall be applicable?
The restriction is only in respect of invoices, Debit notes and Credit notes which are required to be uploaded by the supplier in his GSTR-1.
The ITC in respect of IGST paid on import, documents issued under RCM, credit received from ISD etc. which are outside the ambit of sub-section (1) of section 37 are not covered under this rule.
Further, the restriction is only in respect of the invoices / debit notes on which **credit is availed** after 09.10.2019.

Comments:
Since the rule specifies the restriction for the "credit to be **availed**", and not on the basis of the date of invoice or return period, the restriction shall be applicable to all the invoices for which the credit availed on or after 09-Oct-19.
Further, as per GST law, mere accounting of credit in books of accounts doesn't amount to availment of credit. The credit availment shall be only by filing of **GST returns.**
Hence, the rule shall be applicable for all the returns filed on or after 09-10-2019. For eg. If the returns Jul'19-Sep'19 are filed after 09-Oct-19, then the rule shall be applicable to the credit availed in all those returns.

ii. Whether the said restriction is to be calculated supplier wise or on consolidated basis?

The restriction is for the total eligible credit from all suppliers and not to be applied supplier wise.
Further, only those invoices which are otherwise eligible credit should be considered for calculating 20%.
Comments:
Since the rule specifies the restriction for the "20% of **eligible credit**", the invoices reflecting in GSTR-2A for which the credit isn't eligible for any other reason like restriction under Sec 17(5), failure to satisfy conditions of Sec 16..etc shouldn't considered for calculating 20% amount.

iii. GSTR-2A being dynamic document, what is the date to be considered for ascertaining the credit as per this rule?
Invoices reflecting in GSTR-2A as on the Due date for filing GSTR-1 by the suppliers, should be considered as basis for ascertaining credit as per this rule.

iv. If few of the suppliers had not furnished their GSTR-1, how much ITC a registered tax payer can avail in his FORM GSTR-3B?
The amount of credit to be availed has been explained through different examples. In nutshell, the credit to be availed shall be lower of Eligible credit as per books of accounts and (Value of Invoices/DN/CN in 2A)*120%.

[Circular No. 123/42/2019-GST, Dated: 11th Nov 2019]

8. CBIC has clarified that, for the optional filing cases, GSTR-9/9A should be filed before the due date, otherwise the same shall not be allowed to be filed

Following are the clarifications provided:
i. The registered persons under composition scheme should file GSTR-9A and with aggregate turnover in a financial year not exceeding 2 cores, should file their GSTR-9 on or before the due date for filing the same, otherwise the same shall not be allowed to file later.
ii. Further, it is also clarified that, in case the registered person has identified any missed liability and would like to pay the same on voluntary basis, same can be paid through DRC- 03 at any point of time.

[Circular No. 124/43/2019-GST, Dated: 11th Nov 2019]

9. Consolidated master circular was issued for new 100% electronic refund processing

Considering the changes in the refund filing mechanism and also to provide a consolidated list of clarifications, the department has issued a circular to provide the guidance on the new refund process and also to provide the clarifications for various issues.
Process flow for the refunds in general:

Step-I: Submission of application and Provisional order
The Registered person(RP) shall submit Application in RFD-01

ARN shall be generated by system
System shall allocate this to the respective jurisdictional officer
In case of incorrect allocation by the system, Commissioner/Persons authorized by the commissioner can re-allocate to the proper officer
The officer shall verify the application for its completeness and issue Deficiency memo (DM) in RFD-03 for missing information
Acknowledgement in RFD-02, if there is no missing information
In case of DM, the RP shall re-file the application with all the relevant information
The Officer shall verify the same and Acknowledgement in RFD-02
Note: If all the deficiencies referred in the original deficiency memo are rectified by the tax payer, the officer should not add new deficiencies unless there are any exceptional circumstances

Step-II: Provisional Refund
For exports, within 7 days from the date of acknowledgement, the officer should issue
Provisional Order in RFD-04 and Payment order in RFD-05

Step-III: Scrutiny of the information & Proposal for rejection, if any
The officer shall scrutinize the information in detail, and, if he believes the claim amount is Partly/Fully ineligible, he shall issue SCN in RFD-08, seeking for the reply from the applicant, as to why the said amount should not be disallowed.
The applicant shall reply for the same in RFD-09.

Step-IV: Final Order
After receiving the required clarifications, the officer shall decide the amount eligible & ineligible and issue final order in RFD-06 and also payment order in RFD-05.
Further, in case the officer decides to
Adjust part of the amount against outstanding demand or
Withhold the part of the amount for any specific reason,
The same shall be mentioned in RFD-06, and RFD-05 shall be issued for the balance amount.
However, if the entire amount to be adjusted against an outstanding demand or to be withheld for any reason, then RFD-07 shall be issued instead of RFD-06.
Note: Considering the volume of the circular, the summary of the clarifications and the comprehensive procedure with documents required etc has been provided as different article. The same shall be shared separately and also will be uploaded in the website.

[Circular No. 125/44/2019-GST, Date: 11th Nov 2019]

10. CBIC has clarified that, the supply of Job work services to regd. persons shall be taxable @ 12% and the rest are taxable @ 18%

Issue:
After inserting the new entry in rate notification at item (id) under heading 9988 w.e.f 01-10- 2019, to reduce rate of GST on all job work services, which earlier attracted 18 % rate, to 12%, there was a confusion in the trade as to what are covered under Sl.no. i(d)-12% and what are covered under Sl.no, iv-18%.

Analysis:
The words used in i(d) refers to Job-work and as per definition provided in Sec2 "Job work means any treatment or processing undertaken by a person on goods belonging to another **registered** person and the expression 'job worker' shall be construed accordingly."
Further, in entry iv, it is specified as "Manufacturing services on physical inputs (goods) owned by others, other than (i), (ia), [(ib), (ic), (id),]125 (ii), (iia) and (iii) above".

Conclusion:
Since the Job-work definition covers only registered tax payers,
The entry **i(d)**e. 12% shall be applicable only for the case where the recipient is registered and
The entry **iv**e. 18% shall be applicable for the residual cases including

[Circular No. 126/45/2019-GST, Date: 11th Nov 2019]

11. An explanation has been added in rate notification to specify that the word "bus body building" includes building of body on chassis of any vehicle falling under chapter 87.

An explanation has been inserted in the rate notification for item (id) under heading 9988 to specify that the word "bus body building" includes building of body on chassis of any vehicle falling under chapter 87 in the First Schedule to the Customs Tariff Act, 1975. Since the state Jammu & Kashmir has been split into two union territories, the GSTINs of the registered

[Notification No. 26/2019-GST, Date: 22nd Nov 2019]

(II) CENTRAL TAX NOTIFICATIONS

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs

Notification No. 52/2019 – Central Tax

New Delhi, the 14th November, 2019

G.S.R.....(E).–In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Central Government, on the recommendations of the Council, hereby makes the following amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 27/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 453 (E), dated the 28th June, 2019, namely:–

In the said notification, in the second paragraph, the following proviso shall be inserted, namely: –

"Provided that for registered persons whose principal place of business is in the State of Jammu and Kashmir, shall furnish the details of outward supply of goods or services or both in **FORM GSTR-1** under the Central Goods and Services Tax Rules, 2017 effected during the quarter July-September, 2019 till 30th November, 2019.".

2. This notification shall be deemed to come into force with effect from the 31st day of October, 2019.

[F. No. 20/06/08/2019-GST]

(Ruchi Bisht)
Under Secretary to the Government of India

Note: The principal notification No. 27/2019 – Central Tax, dated the 28th June, 2019 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 453 (E), dated the 28th June, 2019.

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs

Notification No. 53/2019 – Central Tax

New Delhi, the 14th November, 2019

G.S.R.....(E).–In exercise of the powers conferred by the second proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner, on the recommendations of the Council, hereby makes the following amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 28/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 454 (E), dated the 28th June, 2019, namely:–

In the said notification, in the first paragraph, the following proviso shall be inserted, namely: –

"Provided that for registered persons whose principal place of business is in the State of Jammu and Kashmir, the time limit for furnishing the details of outward supplies in **FORM GSTR-1** of Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial year, for each of the months from July, 2019 to September, 2019 till 15th November, 2019.".

2. This notification shall be deemed to come into force with effect from the 11th day of August, 2019.

[F. No. 20/06/08/2019-GST]

(Ruchi Bisht)
Under Secretary to the Government of India

Note: The principal notification No. 28/2019 – Central Tax, dated the 28th June, 2019 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 454 (E), dated the 28th June, 2019.

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs

Notification No. 54/2019 – Central Tax

New Delhi, the 14th November, 2019

G.S.R.....(E).–In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby makes the following further amendments in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.29/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R.455(E), dated the 28th June, 2019, namely:–

In the said notification, in the first paragraph, after the third proviso, the following proviso shall be inserted, namely: –

"Provided also that the return in **FORM GSTR-3B** of the said rules for the months of July to September, 2019 for registered persons whose principal place of business is in the State of Jammu and Kashmir, shall be furnished electronically through the common portal, on or before the 20th November, 2019.".

2. This notification shall be deemed to come into force with effect from the 20th day of September, 2019.

[F. No. 20/06/08/2019-GST]

(Ruchi Bisht)
Under Secretary to the Government of India

Note: The principal notification No. 29/2019 – Central Tax, dated the 28th June, 2019 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 455(E), dated the 28th June, 2019 and was subsequently amended by notification No. 37/2019 – Central Tax, dated the 21st August, 2019 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 589 (E), dated the 21st August, 2019.

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs

Notification No. 55/2019 – Central Tax

New Delhi, the 14th November, 2019

G.S.R.....(E).–In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner hereby makes the following further amendments in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 26/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 452 (E), dated the 28th June, 2019, namely:–

In the said notification, in the first paragraph, after the second proviso, the following proviso shall be inserted, namely: –

"Provided also that the return by a registered person, required to deduct tax at source under the provisions of section 51 of the said Act in **FORM GSTR-7** of the Central Goods and Services Tax Rules, 2017 under sub-section (3) of section 39 of the said Act read with rule 66 of the Central Goods and Services Tax Rules, 2017, for the months of July, 2019 to September, 2019, whose principal place of business is in the State of Jammu and Kashmir shall be furnished electronically through the common portal, on or before the 15th November, 2019.".

2. This notification shall be deemed to come into force with effect from the 20th day of September, 2019.

[F. No. 20/06/08/2019-GST]

(Ruchi Bisht)
Under Secretary to the Government of India

Note: The principal notification No. 26/2019 – Central Tax, dated the 28th June, 2019 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 452 (E), dated the 28th June, 2019 and was subsequently amended by notification No. 40/2019 – Central Tax, dated the 31st August, 2019 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 617 (E), dated the 31st August, 2019.

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs

Notification No. 56/2019 – Central Tax

New Delhi, the 14th November, 2019

G.S.R……(E). - In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

1. (1) These rules may be called the Central Goods and Services Tax (Seventh Amendment) Rules, 2019.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules),-

(i) in **FORM GST RFD-01**, in Annexure 1,

(a) for **Statement 1A,** the following Statement shall be substituted, namely:-

"**Statement 1A [rule 89(2)(h)]**

Refund Type: ITC accumulated due to inverted tax structure [clause (ii) of first proviso to section 54(3)]

Sl. No.	Details of documents of inward supplies received of inputs							Tax paid on inward supplies			Details of documents of outward supplies issued					Tax paid on outward supplies		
	Type of Inward Supply	GSTIN of Supplier /Self GSTIN	Type of Document	No./ B/E	Port Code	Date	Taxable Value	Integrated Tax	Central Tax	State/ UT Tax	Type of Outward Supply	Type of Document	No.	Date	Taxable Value	Integrated Tax	Central Tax	State/ UT Tax
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19

											B2B/B2C							”;

(b) for **Statement 2,** the following Statement shall be substituted, namely:-

“Statement 2 [rule 89(2)(c)]

Refund Type: Export of services with payment of tax (accumulated ITC)

Sr. No.	Document Details					Integrated Tax	Cess	BRC/ FIRC		
	Type of Document	No.	Date	Value	Taxable value			No.	Date	Value
1	2	3	4	5	7	8	9	10	11	12
										”;

(c) for **Statement 3,** the following Statement shall be substituted, namely:-

“Statement 3 [rule 89(2)(b) and rule 89(2)(c)]

Refund Type: Export without payment of tax (accumulated ITC)

Sr. No.	Document Details				Goods / Services (G/S)	Shipping bill/ Bill of export			EGM Details		BRC/ FIRC		
	Type of Document	No.	Date	Value		Port code	No.	Date	Ref No.	Date	No.	Date	Value
1	2	3	4	5	6	7	8	9	10	11	12	13	14
													”;

(d) for **Statement 4,** the following Statement shall be substituted, namely:-

“Statement 4 [rule 89(2)(d) and rule 89(2)(e)]

Refund Type: On account of supplies made to SEZ unit or SEZ Developer (on payment of tax)

GSTIN of recipient	Document Details				Shipping bill/ Bill of export/ Endorsed invoice by SEZ		Taxable Value	Integrated Tax	Cess
	Type of Document	No.	Date	Value	No.	Date			
1	2	3	4	5	6	7	8	9	10

									”;

(e) after **Statement 4,** the following Statement shall be inserted, namely:-

“Statement 4A

Refund by SEZ on account of supplies received from DTA – With payment of tax

GSTIN of Supplier	Document Details				Shipping bill/ Bill of export/ Endorsed invoice by SEZ		Taxable Value	Integrated Tax	Cess
	Type of Document	No.	Date	Value	No.	Date			
1	2	3	4	5	6	7	8	9	10
									”;

(f) for **Statement 5,** the following Statement shall be substituted, namely:-

“Statement 5 [rule 89(2)(d) and rule 89(2)(e)]

Refund Type: On account of supplies made to SEZ unit or SEZ Developer (without payment of tax)

Sr. No.	Document Details				Goods/ Services (G/S)	Shipping bill/ Bill of export/ Endorsed invoice no.	
	Type of Document	No.	Date	Value		No.	Date
1	2	3	4	5	6	7	8
							”;

(g) for **Statement 5B,** the following Statement shall be substituted, namely:-

"Statement 5B [rule 89(2)(g)]

Refund Type: On account of deemed exports claimed by supplier

Sl. No.	Document details of inward supplies in case refund is claimed by Supplier				Tax paid			
	Type of Document	No.	Date	Taxable Value	Integrated Tax	Central Tax	State/Union Territory Tax	Cess
1	2	3	4	5	6	7	8	9

Statement 5B [rule 89(2)(g)]

Refund Type: On account of deemed exports claimed by recipient

Sl. No.		Document details of inward supplies in case refund is claimed by recipient				Tax paid			
	GSTIN of Supplier	Type of Document	No.	Date	Taxable Value	Integrated Tax	Central Tax	State/Union Territory Tax	Cess
1	2	3	4	5	6	7	8	9	10
									";"

(h) for **Statement 6,** the following Statement shall be substituted, namely:-

"Statement 6 [rule 89(2)(j)]

Refund Type: On account of change in POS (inter-state to intra-state and vice versa)

Document Type B2C/Registered	Recipeint GSTIN/UIN	Name (in case of B2C)	Document Details				
			Type of Document	No.	Date	Value	Taxable Value
1	2	3	4	5	6	7	8

Details of documents covering transaction considered as intra –State / inter-State transaction earlier					
Inter/Intra	Integrated Tax	Central tax	State/UT Tax	Cess	PoS

9	10	11	12	13	14

Transaction which were held inter State / intra-State supply subsequently					
Inter/Intra	Integrated Tax	Central tax	State/UT Tax	Cess	PoS
15	16	17	18	19	20
					".

(ii) in **FORM GSTR-9**, in the Table,-

(a) against serial number 8C, in column 2,-

(A.) before the letters and words "ITC on inward supplies", the word, letters and figures "For FY 2017-18" shall be inserted;

(B.) after the entry ending with the words and figures, "April 2018 to March 2019", the following entry shall be inserted, namely :-

"For FY 2018-19, ITC on inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs) received during 2018-19 but availed during April 2019 to September 2019" ;

(b) in Pt. V,-

(A.) before the words "Particulars of the transactions", the word, letters and figures "For FY 2017-18" shall be inserted;

(B.) after the heading ending with the words and figures "April 2018 till March 2019", the following entry shall be inserted, namely :-

"For FY 2018-19, Particulars of the transactions for the FY 2018-19 declared in returns between April 2019 till September 2019";

(iii) in **FORM GSTR-9,** in the instructions,

(a) for paragraph 2, the following paragraph shall be substituted, namely: -

"2. It is mandatory to file all **FORM GSTR-1** and **FORM GSTR-3B** for the financial year for which the return is being filed for before filing this return and for FY 2017-18, the details for the period between July 2017 to March 2018 are to be provided in this return.";

(b) in **paragraph 4**, -

(A.) before the words, "It may be noted", the word, letters and figures "For FY 2017-18," shall be inserted;

(B.) after the words, letters and figures, "that additional liability for the FY 2017-18", the letters and figures "or FY 2018-19" shall be inserted;

(C.) after the words, "taxpayers cannot claim input tax credit", the words, letters and figures "unclaimed during FY 2017-18", shall be omitted;

(D.) in the Table, in second column ,-

(I) against serial number 4I, after the entry ending with the words " filling up these details.", the following entry shall be inserted, namely:-

"For FY 2017-18 and 2018-19, the registered person shall have an option to fill Table 4B to Table 4E net of credit notes in case there is any difficulty in reporting such details separately in this table.";

(II) against serial number 4J, after the entry ending with the words " filling up these details.", the following entry shall be inserted, namely:-

"For FY 2017-18 and 2018-19, the registered person shall have an option to fill Table 4B to Table 4E net of debit notes in case there is any difficulty in reporting such details separately in this Table.";

(III) against serial number 4K & 4L, after the entry ending with the words " filling up these details.", the following entry shall be inserted, namely:-

"For FY 2017-18 and 2018-19, the registered person shall have an option to fill Table 4B to Table 4E net of amendments in case there is any difficulty in reporting such details separately in this table.";

(IV) against serial number 5D,5E and 5F, after the entry ending with the words, figures and brackets "under Non-GST supply (5F).", the following entry shall be inserted, namely:-

"For FY 2017-18 and 2018-19, the registered person shall have an option to either separately report his supplies as exempted, nil rated and Non-GST supply or report consolidated information for all these three heads in the "exempted" row only.";

(V) against serial number 5H, after the entry ending with the words "filling up these details.", the following entry shall be inserted, namely:-

"For FY 2017-18 and 2018-19, the registered person shall have an option to fill Table 5A to Table 5F net of credit notes in case there is any difficulty in reporting such details separately in this Table.";

(VI) against serial number 5I, after the entry ending with the words "filling up these details.", the following entry shall be inserted, namely:- "For FY 2017-18 and 2018-19, the registered person shall have an option to fill Table 5A to Table 5F net of debit notes in case there is any difficulty in reporting such details separately in this Table.";

(VII) against serial number 5J & 5K, after the entry ending with the words "filling up these details.", the following entry shall be inserted, namely:-

"For FY 2017-18 and 2018-19, the registered person shall have an option to fill Table 5A to Table 5F net of amendments in case there is any difficulty in reporting such details separately in this Table.";

(c) in paragraph 5, in the Table, in second column ,-

(A.) against serial number 6B, after the entry ending with the words, figure, brackets and letter "under 6(H) below.", the following entry shall be inserted, namely:-

"For FY 2017-18 and 2018-19, the registered person shall have an option to either report the breakup of input tax credit as inputs, capital goods and input services or report the entire input tax credit under the "inputs" row only.";

(B.) against serial number 6C and serial number 6D, after the entry ending with the words "filling up these details.", the following entry shall be inserted, namely:-

"For FY 2017-18 and 2018-19, the registered person shall have an option to either report the breakup of input tax credit as inputs, capital goods and input services or report the entire input tax credit under the "inputs" row only.

For FY 2017-18 and 2018-19, the registered person shall have an option to either report Table 6C and Table 6D separately or report the consolidated details of Table 6C and 6D in Table 6D only.";

(C.) against serial number 6E, after the entry ending with the words "filling up these details.", the following entry shall be inserted, namely:-

"For FY 2017-18 and 2018-19, the registered person shall have an option to either report the breakup of input tax credit as inputs and capital goods or report the entire input tax credit under the "inputs" row only.";

(D.) against serial number 7A, 7B, 7C, 7D, 7E, 7F, 7G and 7H, after the entry ending with the words, figures and letters "in 7E of **FORM GSTR-9**.", the following entry shall be inserted, namely:-

"For FY 2017-18 and 2018-19, the registered person shall have an option to either fill his information on reversals separately in Table 7A to 7E or report the entire amount of reversal under Table 7H only. However, reversals on account of TRAN-1 credit (Table 7F) and TRAN-2 (Table 7G) are to be mandatorily reported.";

(E.) against serial number 8A,-

(I) for the letters and figures, "FY 2017-18", the words "the financial year for which the return is being for" shall be substituted;

(II) before the words, "It may be noted", the word, letters and figures, "For FY 2017-18," shall be inserted;

(III) after the entry ending with the words "auto-populated in this table.", the following entry shall be inserted, namely:-

"For FY 2018-19, It may be noted that the **FORM GSTR-2A** generated as on the 1st November, 2019 shall be auto-populated in this table. For FY 2017-18 and 2018-19, the registered person shall have an option to upload the details for the entries in Table 8A to 8D duly signed, in PDF format in FORM GSTR-9C (without the CA certification).";

(F.) against serial number 8B, after the entry ending with the words "be auto-populated here.", the following entry shall be inserted, namely:-

"For FY 2017-18 and 2018-19, the registered person shall have an option to upload the details for the entries in Table 8A to 8D duly signed, in PDF format in FORM GSTR-9C (without the CA certification)." ;

(G.) against serial number 8C,–

(I) before the words, "Aggregate value of", the word, letters and figures, "For FY 2017-18," shall be inserted;

(II) after the entry ending with the words "shall be declared here.", the following entry shall be inserted, namely:-

"For FY 2018-19, Aggregate value of input tax credit availed on all inward supplies (except those on which tax is payable on reverse charge basis but includes supply of services received from SEZs) received during April 2018 to March 2019 but credit on which was availed between April 2019 to September 2019 shall be declared here.";

(III) after the entry ending with the words "for filling up these details.", the following entry shall be inserted, namely:-

"For FY 2017-18 and 2018-19, the registered person shall have an option to upload the details for the entries in Table 8A to Table 8D duly signed, in PDF format in FORM GSTR-9C (without the CA certification).";

(H.) against serial number 8D, after the entry ending with the words "shall be negative.", the following entry shall be inserted, namely:-

"For FY 2017-18 and 2018-19, the registered person shall have an option to upload the details for the entries in Table 8A to Table 8D duly signed, in PDF format in FORM GSTR-9C (without the CA certification)." ;

(d) in paragraph 7,–

(A.) before the words and letter "Part V consists", the word, letters and figures "For FY 2017-18," shall be inserted;

(B.) after the entry ending with the words and figures "April 2018 to March 2019", the following entry shall be inserted, namely :-

"For FY 2018-19, Part V consists of particulars of transactions for the previous financial year but paid in the **FORM GSTR-3B** between April 2019 to September 2019.";

(C.) in the Table, in second column ,-

(I) against serial number 10 & 11,

(1.) before the words, "Details of additions", the word, letters and figures, "For FY 2017-18," shall be inserted;

(2.) after the entry ending with the words "shall be declared here.", the following entry shall be inserted, namely:-

"For FY 2018-19, Details of additions or amendments to any of the supplies already declared in the returns of the previous financial year but such amendments were furnished in Table 9A, Table 9B and Table 9C of **FORM GSTR-1** of April 2019 to September 2019 shall be declared here.";

(II) against serial number 12,

(1.) before the words, "Aggregate value of", the word, letters and figures, "For FY 2017-18," shall be inserted;

(2.) after the entry ending with the words "filling up these details.", the following entry shall be inserted, namely:-

"For FY 2018-19, Aggregate value of reversal of ITC which was availed in the previous financial year but reversed in returns filed for the months of April 2019 to September 2019 shall be declared here. Table 4(B) of **FORM GSTR-3B** may be used for filling up these details. For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this table.";

(III) against serial number 13, –

(1.) before the words, "Details of ITC for", the word, letters and figures, "For FY 2017-18," shall be inserted;

(2.) after the entry ending with the words, letters and figures "annual return for FY 2018-19.", the following entry shall be inserted, namely:-

"For FY 2018-19, Details of ITC for goods or services received in the previous financial year but ITC for the same was availed in returns filed for the months of April 2019 to September 2019 shall be declared here. Table 4(A) of **FORM GSTR-3B** may be used for filling up these details. However, any ITC which was reversed in the FY 2018-19 as per second proviso to sub-section (2) of section 16 but was reclaimed in FY 2019-20, the details of such ITC reclaimed shall be furnished in the annual return for FY 2019-20. For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this table.";

(e) in paragraph 8, in the Table, in second column ,–

(A.) against serial number 15A, 15B, 15C and 15D, after the words and letters "details of non-GST refund claims.", the words and figures "For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this Table." shall be inserted;

(B.) against serial number 15E, 15F and 15G, after the words "shall be declared here.", the words, letters and figures "For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this Table." shall be inserted;

(C.) against serial number 16A, after the words "filling up these details.", the words, letters and figures "For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this Table." shall be inserted;

(D.) against serial number 16B and serial number 16C, after the words "shall be declared here.", the words, letters and figures "For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this table." shall be inserted;

(E.) against serial number 17 & 18, after the words "value of inward supplies.", the words, letters and figures "For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this table." shall be inserted;

3. In the said rules, in **FORM GST GSTR-9C**, in the instructions, in paragraph 2,

(i) for the letters and figures, "FY 2017-18", the words "current financial year" shall be substituted;

(ii) before the words, "The details for the", the word, letters and figures "For FY 2017-18," shall be inserted;

(iii)in Paragraph 4, in the Table, in second column,–

(a) against serial number 5B and serial number 5C, after the entry ending with the words and brackets "shall be declared here.", the following entry shall be inserted, namely:-

"For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this table. If there are any adjustments required to be reported then the same may be reported in Table 5O.";

(b) against serial number 5D, after the entry ending with the words "not required to be included here.", the following entry shall be inserted, namely:-

"For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this table. If there are any adjustments required to be reported then the same may be reported in Table 5O.";

(c) against serial number 5E and serial number 5F, after the entry ending with the words "shall be declared here.", the following entry shall be inserted, namely:-

"For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this table. If there are any adjustments required to be reported then the same may be reported in Table 5O.";

(d) against serial number 5G, after the entry ending with the words "shall be declared here.", the following entry shall be inserted, namely:-

"For FY 2017-18, the registered person shall have an option to not fill this table. If there are any adjustments required to be reported then the same may be reported in Table 5O.";

(e) against serial number 5H, serial number 5I, serial number 5J, serial number 5K, serial number 5L, serial number 5M and serial number 5N, after the entry ending with the words "shall be declared here.", the following entry shall be inserted, namely:-

"For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this table. If there are any adjustments required to be reported then the same may be reported in Table 5O.";

(iv) in paragraph 6, in second column ,–

(A.) against serial number 12B, after the entry ending with the words and figures "availed during Financial Year 2017-18.", the following entry shall be inserted, namely:-

"For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this Table.";

(B.) against serial number 12C, after the entry ending with the words " shall be declared here.", the following entry shall be inserted, namely:-

"For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this Table.";

(C.) against serial number 14, after the entry ending with the words "are to be declared here.", the following entry shall be inserted, namely:-

"For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this Table.";

(v) for Part B, the following shall be substituted, namely:-

"**PART – B- CERTIFICATION**

I. Certification in cases where the reconciliation statement (FORM GSTR-9C) is drawn up by the person who had conducted the audit:

* I/we have examined the—

(a) balance sheet as on ……

(b) the *profit and loss account/income and expenditure account for the period beginning from ……..…to ending on ……., and

(c) the cash flow statement (if available) for the period beginning from ……..…to ending on ……, —attached herewith, of M/s …… (Name), …… (Address), ……(GSTIN).

2. Based on our audit I/we report that the said registered person—

*has maintained the books of accounts, records and documents as required by the IGST/CGST/<<>>GST Act, 2017 and the rules/notifications made/issued thereunder

*has not maintained the following accounts/records/documents as required by the IGST/CGST/<<>>GST Act, 2017 and the rules/notifications made/issued thereunder:

1.

2.

3.

3. (a) *I/we report the following observations/ comments / discrepancies / inconsistencies; if any:

……

……

3. (b) *I/we further report that, -

(A) *I/we have obtained all the information and explanations which, to the best of *my/our knowledge and belief, were necessary for the purpose of the audit/ information and explanations which, to the best of *my/our knowledge and belief, were necessary for the purpose of the audit were not provided/partially provided to us.

(B) In *my/our opinion, proper books of account *have/have not been kept by the registered person so far as appears from*my/ our examination of the books.

(C) I/we certify that the balance sheet, the *profit and loss/income and expenditure account and the cash flow Statement (if available) are *in agreement/not in agreement with the books of account maintained at the Principal place of business at ……and ** ……additional place of business within the State.

4. The documents required to be furnished under section 35 (5) of the CGST Act / SGST Act and Reconciliation Statement required to be furnished under section 44(2) of the CGST Act / SGST Act is annexed herewith in Form No. GSTR-9C.

5. In *my/our opinion and to the best of *my/our information and according to explanations given to *me/us, the particulars given in the said Form No.GSTR-9C are true and fair subject to following observations/qualifications, if any:

(a) ……

(b) ……

(c) ……

……

……

**(Signature and stamp/Seal of the Auditor)

Place: ……

Name of the signatory ……

Membership No……

Date: ……

Full address ……

II. <u>Certification in cases where the reconciliation statement (FORM GSTR-9C) is drawn up by a person other than the person who had conducted the audit of the accounts:</u>

*I/we report that the audit of the books of accounts and the financial statements of M/s. ……..…… (Name and address of the assessee with GSTIN) was conducted by M/s. ……..……. (full name and address of auditor along with status), bearing membership number in pursuance of the ……Act, and *I/we annex hereto a copy of their audit report dated …… along with a copy of each of :-

(a) balance sheet as on ……

(b) the *profit and loss account/income and expenditure account for the period beginning from ……..…to ending on …….,

(c) the cash flow statement (if available) for the period beginning from ……..…to ending on ……, and

(d) documents declared by the said Act to be part of, or annexed to, the *profit and loss account/income and expenditure account and balance sheet.

2. I/we report that the said registered person—

*has maintained the books of accounts, records and documents as required by the IGST/CGST/<<>>GST Act, 2017 and the rules/notifications made/issued thereunder

*has not maintained the following accounts/records/documents as required by the IGST/CGST/<<>>GST Act, 2017 and the rules/notifications made/issued thereunder:

1.

2.

3.

3. The documents required to be furnished under section 35 (5) of the CGST Act / SGST Act and Reconciliation Statement required to be furnished under section 44(2) of the CGST Act / SGST Act is annexed herewith in Form No.GSTR-9C.

4. In *my/our opinion and to the best of *my/our information and according to examination of books of account including other relevant documents and explanations given to *me/us, the particulars given in the said Form No.9C are true and fair subject to the following observations/qualifications, if any:

(a) ……
(b) ……
(c) ……
……
**(Signature and stamp/Seal of the Auditor)
Place: ……
Name of the signatory ……
Membership No……
Date: ……
Full address ……".

[F. No. 20/01/02/2019-GST]

(Ruchi Bisht)
Under Secretary to the Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* notification No. 3/2017-Central Tax, dated the 19th June, 2017, published *vide* number G.S.R. 610 (E), dated the 19th June, 2017 and last amended *vide* notification No. 49/2019 - Central Tax, dated the 9th October, 2019, published *vide* number G.S.R. 772 (E), dated the 9th October, 2019.

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs
Notification No. 57/2019 – Central Tax

New Delhi, the 26th November, 2019

G.S.R.....(E).–In exercise of the powers conferred by second proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.28/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.454(E), dated the 28th June, 2019, namely:–

In the said notification, for the proviso to the first paragraph, the following proviso shall be substituted, namely: –

"Provided that for registered persons whose principal place of business is in the State of Jammu and Kashmir, the time limit for furnishing the details of outward supplies in **FORM GSTR-1** of Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial year, for each of the months from July, 2019 to September, 2019 till 30th November, 2019."

2. This notification shall be deemed to come into force with effect from the 15th Day of November, 2019.

[F. No. 20/06/09/2019-GST]

(Ruchi Bisht)
Under Secretary to the Government of India

Note: The principal notification No. 28/2019 – Central Tax, dated the 28th June, 2019 was published in the Gazette of India, Extraordinary vide number G.S.R. 454(E), dated the 28th June, 2019 and was subsequently amended by notification No. 53/2019 – Central Tax, dated the 14th November, 2019 was published in the Gazette of India, Extraordinary vide number G.S.R. 847(E), dated the 14th November, 2019.

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs
Notification No. 58/2019 – Central Tax

New Delhi, the 26th November, 2019

G.S.R.....(E).–In exercise of the powers conferred by second proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner, on the recommendations of the Council, hereby makes the following amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.46/2019 – Central Tax, dated the 9th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.769(E), dated the 09th October, 2019, namely:–

In the said notification, in the first paragraph, the following proviso shall be inserted, namely: –

"Provided that for registered persons whose principal place of business is in the State of Jammu and Kashmir, the time limit for furnishing the details of outward supplies in **FORM GSTR-1** of Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial year, for the month of October, 2019 till 30th November, 2019."

2. This notification shall be deemed to come into force with effect from the 11th Day of November, 2019.

[F. No. 20/06/09/2019-GST]

(Ruchi Bisht)
Under Secretary to the Government of India

Note: The principal notification No. 46/2019 – Central Tax, dated the 09th October, 2019 was published in the Gazette of India, Extraordinary vide number G.S.R. 769(E), dated the 09th October, 2019.

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs
Notification No. 59/2019 – Central Tax

New Delhi, the 26th November, 2019

G.S.R.....(E).–In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.26/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.452(E), dated the 28th June, 2019, namely:–

In the said notification, in the first paragraph, for the third proviso, the following proviso shall be substituted, namely: –

"Provided also that the return by a registered person, required to deduct tax at source under the provisions of section 51 of the said Act in **FORM GSTR-7** of the Central Goods and Services Tax Rules, 2017 under sub-section (3) of section 39 of the said Act read with rule 66 of the Central Goods and Services Tax Rules, 2017, for the months of July, 2019 to October,2019, whose principal place of business is in the State of Jammu and Kashmir shall be furnished electronically through the common portal, on or before the 30th November, 2019."

2. This notification shall be deemed to come into force with effect from the 10th Day of November, 2019.

[F. No. 20/06/09/2019-GST]

(Ruchi Bisht)
Under Secretary to the Government of India

Note: The principal notification No. 26/2019 – Central Tax, dated the 28th June, 2019 was published in the Gazette of India, Extraordinary vide number G.S.R. 452(E), dated the 28th June, 2019 and was last amended by notification No. 55/2019 – Central Tax, dated the 14th November, 2019 was published in the Gazette of India, Extraordinary vide number G.S.R. 849(E), dated the 14th November, 2019.

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs
Notification No.60/2019 – Central Tax

New Delhi, the 26th November, 2019

G.S.R.....(E).–In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.29/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.455(E), dated the 28th June, 2019, namely:–

In the said notification, in the first paragraph, for the fourth proviso, the following proviso shall be substituted, namely: –

"Provided also that the return in **FORM GSTR-3B** of the said rules for the months of July to September, 2019 for registered persons whose principal place of business is in the State of Jammu and Kashmir, shall be furnished electronically through the common portal, on or before the 30th November, 2019."

2. This notification shall be deemed to come into force with effect from the 20th Day of November, 2019

[F. No. 20/06/09/2019-GST]

(Ruchi Bisht)
Under Secretary to the Government of India

Note: The principal notification No. 29/2019 – Central Tax, dated the 28th June, 2019 was published in the Gazette of India, Extraordinary vide number G.S.R. 455(E), dated the 28th June, 2019 and was last amended by notification No. 54/2019 – Central Tax, dated the 14th November, 2019 published in the Gazette of India, Extraordinary vide number G.S.R. 848(E), dated the 14th November, 2019.

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs
Notification No. 61/2019 – Central Tax

New Delhi, the 26th November, 2019

G.S.R.....(E).–In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby makes the following amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.44/2019 – Central Tax, dated the 09th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.767(E), dated the 09th October, 2019, namely:–

In the said notification, in the first paragraph, the following proviso shall be inserted, namely: –

"Provided that the return in **FORM GSTR-3B** of the said rules for the month of October, 2019 for registered persons whose principal place of business is in the State of Jammu and Kashmir, shall be furnished electronically through the common portal, on or before the 30th November, 2019."

2. This notification shall be deemed to come into force with effect from the 20th Day of November, 2019

[F. No. 20/06/09/2019-GST]

(Ruchi Bisht)
Under Secretary to the Government of India

Note: The principal notification No. 44/2019 – Central Tax, dated the 09th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.767(E), dated the 09th October, 2019

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs

Notification No. 62/2019 – Central Tax

New Delhi, the 26th November, 2019

G.S.R.....(E). - In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Government, on the recommendations of the Council, hereby notifies those persons whose principal place of business or place of business lies in the erstwhile State of Jammu and Kashmir till the 30th day of October, 2019; and lies in the Union territory of Jammu and Kashmir or in the Union territory of Ladakh from the 31st day of October, 2019 onwards, as the class of persons who shall follow the following special procedure till the 31st day of December, 2019 (hereinafter referred to as the transition date), as mentioned below.

2. The said class of persons shall:–

(i) ascertain the tax period as per sub-clause (106) of section 2 of the said Act for the purposes of any of the provisions of the said Act for the month of October, 2019 and November, 2019 as below:

(a) October, 2019: 1st October, 2019 to 30th October, 2019;

(b) November, 2019: 31st October, 2019 to 30th November, 2019;

(ii) irrespective of the particulars of tax charged in the invoices, or in other like documents, raised from 31st October, 2019 till the transition date, pay the appropriate applicable tax in the return under section 39 of the said Act;

(iii) have an option to transfer the input tax credit (ITC) from the registered Goods and Services Tax Identification Number (GSTIN), till the 30th day of October, 2019 in the State of Jammu and Kashmir, to the new GSTIN in the Union territory of Jammu and Kashmir or in the Union territory of Ladakh from the 31st day of October by following the procedure as below:

(a) the said class of persons shall intimate the jurisdictional tax officer of the transferor and the transferee regarding the transfer of ITC, within one month of obtaining new registration;

(b) the ITC shall be transferred on the basis of ratio of turnover of the place of business in the Union territory of Jammu and Kashmir and in the Union territory of Ladakh;

(c) the transfer of ITC shall be carried out through the return under section 39 of the said Act for any tax period before the transition date and the transferor GSTIN would be debiting the said ITC from its electronic credit ledger in Table 4 (B) (2) of **FORM GSTR-3B** and the transferee GSTIN would be crediting the equal amount of ITC in its electronic credit ledger in Table 4 (A) (5) of **FORM GSTR-3B**.

3. The balance of State taxes in electronic credit ledger of the said class of persons, whose principal place of business lies in the Union territory of Ladakh from the 31st day of October, 2019, shall be transferred as balance of Union territory tax in the electronic credit ledger.

4. The provisions of clause (i) of section 24 of the said Act shall not apply on the said class of persons making inter-State supplies between the Union territories of Jammu and Kashmir and Ladakh from the 31st day of October, 2019 till the transition date.

[F. No. 20/06/06/2019-GST]

(Ruchi Bisht)
Under Secretary to the Government of India

(III) CENTRAL TAX (RATE) NOTIFICATIONS

[TO BE PUBLISHED IN THE GAZZETE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

Government of India
Ministry of Finance
(Department of Revenue)

Notification No. 26/2019- Central Tax (Rate)

New Delhi, the 22nd November, 2019

G.S.R.....(E).- In exercise of the powers conferred by sub-section (3) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary so to do, hereby makes the following further amendment in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No.11/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 690(E), dated the 28thJune, 2017. In the said notification, in the Table, against serial number 26, in column (3), in item (ic), the following Explanation shall be inserted, namely: -

"Explanation- For the purposes of this entry, the term "bus body building" shall include building of body on chassis of any vehicle falling under chapter 87 in the First Schedule to the Customs Tariff Act, 1975."

[F. No.354/150/2019 -TRU]

(Pramod Kumar)
Director, Government of India

Note: -The principal notification No. 11/2017 - Central Tax (Rate), dated the 28th June, 2017 was published in the Gazette of India, Extraordinary, vide number G.S.R. 690 (E), dated the 28th June, 2017 and was last amended by notification No. 20/2019-Central Tax (Rate), dated the 30th September, 2019 vide number G.S.R. 731(E), dated the 30th September, 2019.

(IV) IGST TAX (RATE) NOTIFICATIONS

[TO BE PUBLISHED IN THE GAZZETE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

Government of India
Ministry of Finance
(Department of Revenue)

Notification No. 25/2019- Integrated Tax (Rate)

New Delhi, the 22nd November, 2019

G.S.R.....(E).- In exercise of the powers conferred by sub-section (3) of section 6 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary so to do, hereby makes the following further amendment in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 8/2017- Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 683(E), dated the 28th June, 2017. In the said notification, in the Table, against serial number 26, in column (3), in item (ic), the following Explanation shall be inserted, namely: -

"Explanation- For the purposes of this entry, the term "bus body building" shall include building of body on chassis of any vehicle falling under chapter 87 in the First Schedule to the Customs Tariff Act, 1975."

[F. No.354/150/2019 -TRU]

(Pramod Kumar)
Director, Government of India

Note: -The principal notification No. 8/2017- Integrated Tax (Rate), dated the 28th June, 2017 was published in the Gazette of India, Extraordinary, vide number G.S.R. 683 (E), dated the 28th June, 2017 and was last amended by notification No. 19/2019- Integrated Tax (Rate), dated the 30th September, 2019 vide number G.S.R. 730(E), dated the 30th September, 2019.

(V) CGST CIRCULARS

Circular No. 122/41/2019-GST

GST/INV/DIN/01/2019-20
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
(GST-Investigation)

New Delhi, the 5th November, 2019

To:

All Principal Commissioners/Principal DGs/Chief Commissioners/Director Generals/Principal Commissioners/Principal ADGs
All Joint Secretaries/Commissioners, CBIC

Subject: Generation and quoting of Document Identification Number (DIN) on any communication issued by the officers of the Central Board of Indirect Taxes and Customs (CBIC) to tax payers and other concerned persons- reg.

In keeping with the Government's objectives of transparency and accountability in indirect tax administration through widespread use of information technology, the CBIC is implementing a system for electronic (digital) generation of a Document Identification Number (DIN) for all communications sent by its offices to taxpayers and other concerned persons. To begin with, the DIN would be used for search authorization, summons, arrest memo, inspection notices and letters issued in the course of any enquiry. This measure would create a digital directory for maintaining a proper audit trail of such communication. Importantly, it would provide the recipients of such communication a digital facility to ascertain their genuineness. Subsequently, the DIN would be extended to other communications. Also, there is a plan to have the communication itself bearing the DIN generated from the system.

2. The Board in exercise of its power under section 168(1) of the CGST Act, 2017/ Section 37B of the Central Excise Act, 1944 directs that no search authorization, summons, arrest memo, inspection notices and letters issued in the course of any enquiry shall be issued by any officer under the Board to a taxpayer or any other person, on or after the 8th day of November, 2019 without a computer-generated Document Identification Number (DIN) being duly quoted prominently in the body of such communication. The digital platform for generation of DIN is hosted on the Directorate of Data Management (DDM)'s online portal "cbicddm.gov.in"

3. Whereas DIN is a mandatory requirement, in exceptional circumstances communications may be issued without an auto generated DIN. However, this exception is to be made only after recording the reasons in writing in the concerned file. Also, such communication shall expressly state that it has been issued without a DIN. The exigent situations in which a communication may be issued without the electronically generated DIN are as follows:-

(i) when there are technical difficulties in generating the electronic DIN, or
(ii) when communication regarding investigation/enquiry, verification etc. is required to issued at short notice or in urgent situations and the authorized officer is outside the office in the discharge of his official duties.

4. The Board also directs that any specified communication which does not bear the electronically generated DIN and is not covered by the exceptions mentioned in para 3 above, shall be treated as invalid and shall be deemed to have never been issued.

5. Any communication issued without an electronically generated DIN in the exigencies mentioned in para 3 above shall be regularized within 15 working days of its issuance, by:

(i) obtaining the post facto approval of the immediate superior officer as regards the justification of issuing the communication without the electronically generated DIN;
(ii) mandatorily electronically generating the DIN after post facto approval; and
(iii) printing the electronically generated pro-forma bearing the DIN and filing it in the concerned file.

6. In order to implement this new facility of electronically generating the DIN, all Principal Chief Commissioners/Principal Director Generals/Chief Commissioners/Director Generals shall ensure that all their authorized officers who have to electronically generate the DIN are immediately mapped as users in the System and are conversant with the process for auto-generating a DIN. In order to successfully add users for the DIN utility and enable them to electronically generate DINs, the following steps shall be followed:

(i) The details of officers to be added as users of the DIN Utility such as name, designation/Branch and official e-mail Id shall be fed into the System (the office of the officer being added will be auto populated);
(ii) The dashboard (Manage User) is provided with add/activate/inactivate/delete and edit options which can be availed for namely adding, activating, inactivating, editing and deleting the users as follows:

(a) **Add:-** Officers name/designation and branch can be added by selecting appropriate designation and branch from the drop down menu provided against the respective column.

(b) **Activate:-** Once the user activates the URL and provides the user name and password and OTP, the authorization will be processed by the system and shall be reflected as Green Radio button.

(c) **Inactivate:-**Any already added user who may be diverted on temporary basis to attend to some other assignment in the case of administrative exigency, can be deactivated for time being by dragging the Green Radio button to the left by which it will become red in color showing the user's position as inactive. A confirmation e-mail will also be sent to the respective user.

(d) **Edit:-** This icon will always appear with Red Radio button (indicating the inactive position of the user) and is provided for modifying/editing the name/designation/branch/e-mail Id of the officer to be authorized.

(e) **Delete:-** This icon can be used for deleting the already added user profile if the officer is permanently transferred out from that office.

7. Officers who have been added as users in the DIN utility shall electronically generate DINs, as follows:

(i) Every authorized user shall receive an e-mail on his official e-mail Id after he/she is mapped into the DIN utility. This e-mail shall provide the user of his/her user name and password. The same e-mail shall also provide an URL online link.

(ii) After clicking on the said URL link, the user shall be guided to the DIN utility within CBIC-Sanchar on the DDM's online portal "cbicddm.gov.in".

(iii) The user shall be required to submit his/her mobile number on the screen page for purposes of verification and then click "Get OTP" button for receiving a One Time Password (OTP) on the mobile.

(iv) The user shall login to the DIN utility by entering the OTP received.

(v) After successfully logging in, the user shall see the Dashboard displaying different categories, for total number of summons, search authorizations, inspection notices and arrest memos issued by the user. Initially, the figures under each category shall be 'zero'.

(vi) The user shall click "Generate DIN" on the Menu Bar located at the left hand side of the screen and enter the details of the communication to be issued by choosing its category and selecting the appropriate title of the communication from the dropdown menu "Choose Document"

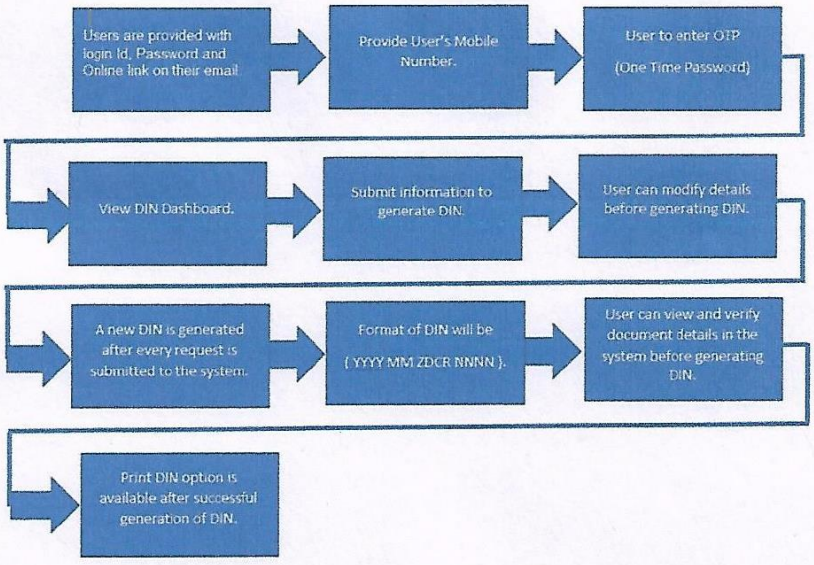
(vii) After filling in all the required information, and clicking on the "View & Save DIN" button, the user shall see a preview page. By clicking the "Back button", mistakes or typographical errors, if any, can be rectified.

Also, the user has the option of partially entering details in the System at a time and coming back later to retrieve the partially entered document (automatically saved in the System), fill in the remaining details, and generate a DIN on a later occasion.

(viii) The last step is to click on the "Generate DIN" button and a DIN shall be generated for that particular communication by the System. The generated DIN cannot be edited.

(ix) A new DIN shall be generated each time a request for generating it is submitted to the System.

(x) After the DIN is generated, the user shall print the page bearing the DIN and file it in the concerned file while also quoting the DIN on the communication.



8. The genuineness of the communication can be ascertained by recipient (public) by entering the CBIC- DIN for that communication in a window VERIFY CBIC-DIN on CBIC's website www.cbic.gov.in. Only in those cases where the DIN entered is valid, information about the office that issued that communication and the date of generation of its DIN would be displayed on the screen.

9. As aforementioned, in the first phase beginning on 8th day of November, 2019, the "Generate DIN" option shall be used for Search Authorizations, Summons, Inspection Notices, Arrest Memos, and letters issued in the course of any enquiry. The format of the DIN shall be CBIC-YYYY MM ZCDR NNNNNN where,

(a) YYYY denotes the calendar year in which the DIN is generated,

(b) MM denotes the calendar month in which the DIN is generated,

(c) ZCDR denotes the Zone-Commissionerate-Division-Range Code of the field formation/Directorate of the authorized user generating the DIN,

(d) NNNNNN denotes 6 digit alpha-numeric system generated random number.

10. The electronic generation of DIN and its use in official communications to taxpayers and other concerned persons is a transformative initiative. Principal Chief Commissioners/Principal Director Generals / Chief Commissioners/Director Generals must become fully familiar with the process involved. They are also urged to ensure that adequate and proper training is provided to all concerned officers under their charge to ensure its successful implementation. It is reiterated that any specified document that is issued without the electronically generated DIN shall be treated as invalid and shall be deemed to have never been issued. Therefore, it is incumbent upon all officers concerned to strictly adhere to these instructions.

11. Hindi version to follow.

(Commissioner GST-Inv)

Copy to:

i. Chairman, CBIC& All Members, CBIC
ii. DG Tax Payer Services, CBIC
iii. Pr. DG(Systems and Data Management)
iv. Web-master for uploading on the official website

F. No. CBEC – 20/06/14/2019 – GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
******

New Delhi, the 11th November, 2019

To

The Pr. Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All),

The Principal Director Generals / Director Generals (All)

Madam / Sir,

Subject: Restriction in availment of input tax credit in terms of sub-rule (4) of rule 36 of CGST Rules, 2017 – reg.

Sub-rule (4) to rule 36 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules) has been inserted vide notification No. 49/2019- Central Tax, dated 09.10.2019. The said sub-rule provides restriction in availment of input tax credit (ITC) in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act).

2. To ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies various issues in succeeding paragraphs.

3. The conditions and eligibility for the ITC that may be availed by the recipient shall continue to be governed as per the provisions of Chapter V of the CGST Act and the rules made thereunder. This being a new provision, the restriction is not imposed through the common portal and it is the responsibility of the taxpayer that credit is availed in terms of the said rule and therefore, the availment of restricted credit in terms of sub-rule (4) of rule 36 of CGST Rules shall be done on self-assessment basis by the tax payers. Various issues relating to implementation of the said sub-rule have been examined and the clarification on each of these points is as under: -

Sl. No	Issue	Clarification
1.	What are the invoices	The restriction of availment of ITC is imposed only in respect

	/ debit notes on which the restriction under rule 36(4) of the CGST Rules shall apply?	of those invoices / debit notes, details of which are required to be uploaded by the suppliers under sub-section (1) of section 37 and which have not been uploaded. Therefore, taxpayers may avail full ITC in respect of IGST paid on import, documents issued under RCM, credit received from ISD etc. which are outside the ambit of sub-section (1) of section 37, provided that eligibility conditions for availment of ITC are met in respect of the same. The restriction of 36(4) will be applicable only on the invoices / debit notes on which credit is availed after 09.10.2019.
2.	Whether the said restriction is to be calculated supplier wise or on consolidated basis?	The restriction imposed is not supplier wise. The credit available under sub-rule (4) of rule 36 is linked to total eligible credit from all suppliers against all supplies whose details have been uploaded by the suppliers. Further, the calculation would be based on only those invoices which are otherwise eligible for ITC. Accordingly, those invoices on which ITC is not available under any of the provision (say under sub-section (5) of section 17) would not be considered for calculating 20 per cent. of the eligible credit available.
3.	**FORM GSTR-2A** being a dynamic document, what would be the amount of input tax credit that is admissible to the taxpayers for a particular tax period in respect of invoices / debit notes whose details have not been uploaded by the suppliers?	The amount of input tax credit in respect of the invoices / debit notes whose details have not been uploaded by the suppliers shall not exceed 20% of the eligible input tax credit available to the recipient in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub- section (1) of section 37 **as on the due date of filing of the returns in FORM GSTR-1 of the suppliers for the said tax period**. The taxpayer may have to ascertain the same from his auto populated **FORM GSTR 2A as available on the due date of filing of FORM GSTR-1 under sub-section (1) of section 37.**
4.	How much ITC a registered tax payer can avail in his **FORM GSTR-3B** in a month in case the details of some of the invoices have not been uploaded by the suppliers under sub-section (1) of section 37.	Sub-rule (4) of rule 36 prescribes that the ITC to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37. The eligible ITC that can be availed is explained by way of illustrations, in a tabulated form, below. In the illustrations, say a taxpayer "R" receives 100 invoices (for inward supply of goods or services) involving ITC of Rs.

10 lakhs, from various suppliers during the month of Oct, 2019 and has to claim ITC in his **FORM GSTR-3B** of October, to be filed by 20th Nov, 2019.

	Details of suppliers' invoices for which recipient is eligible to take ITC	**20% of eligible credit where invoices are uploaded**	**Eligible ITC to be taken in GSTR-3B to be filed by 20th Nov.**
Case 1	Suppliers have furnished in **FORM GSTR-1** 80 invoices involving ITC of Rs. 6 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.	Rs.1,20,000/-	Rs. 6,00,000 (i.e. amount of eligible ITC available, as per details uploaded by the suppliers) + Rs.1,20,000 (i.e. 20% of amount of eligible ITC available, as per details uploaded by the suppliers) = Rs. 7,20,000/-
Case 2	Suppliers have furnished in **FORM GSTR-1** 80 invoices involving ITC of Rs. 7 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.	Rs. 1,40,000/-	Rs 7,00,000 + Rs. 1,40,000 = Rs. 8,40,000/-
Case 3	Suppliers have furnished in **FORM GSTR-1** 75 invoices	Rs. 1,70,000/-	Rs. 8,50,000/- + Rs.1,50,000/-* = Rs. 10,00,000 * The additional

<table>
<tr><td></td><td></td><td></td><td>having ITC of Rs. 8.5 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.</td><td></td><td>amount of ITC availed shall be limited to ensure that the total ITC availed does not exceed the total eligible ITC.</td></tr>
<tr><td>5.</td><td>When can balance ITC be claimed in case availment of ITC is restricted as per the provisions of rule 36(4)?</td><td colspan="4">The balance ITC may be claimed by the taxpayer in any of the succeeding months provided details of requisite invoices are uploaded by the suppliers. He can claim proportionate ITC as and when details of some invoices are uploaded by the suppliers provided that credit on invoices, the details of which are not uploaded (under sub-section (1) of section 37) remains under 20 per cent of the eligible input tax credit, the details of which are uploaded by the suppliers. Full ITC of balance amount may be availed, in present illustration by “R”, in case total ITC pertaining to invoices the details of which have been uploaded reaches Rs. 8.3 lakhs (Rs 10 lakhs /1.20). In other words, taxpayer may avail full ITC in respect of a tax period, as and when the invoices are uploaded by the suppliers to the extent Eligible ITC/ 1.2. The same is explained for Case No. 1 and 2 of the illustrations provided at Sl. No. 4 above as under:

<table>
<tr><td>Case 1</td><td>“R” may avail balance ITC of Rs. 2.8 lakhs in case suppliers upload details of some of the invoices for the tax period involving ITC of Rs. 2.3 lakhs out of invoices involving ITC of Rs. 4 lakhs details of which had not been uploaded by the suppliers. [Rs. 6 lakhs + Rs. 2.3 lakhs = Rs. 8.3 lakhs]</td></tr>
<tr><td>Case 2</td><td>“R” may avail balance ITC of Rs. 1.6 lakhs in case suppliers upload details of some of the invoices involving ITC of Rs. 1.3 lakhs out of outstanding invoices involving Rs. 3 lakhs. [Rs. 7 lakhs + Rs. 1.3 lakhs = Rs. 8.3 lakhs]</td></tr>
</table></td></tr>
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4. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. Hindi version will follow.

(Yogendra Garg)
Principal Commissioner (GST)

CBEC-20/16/04/18-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
****

New Delhi, Dated the 18th November, 2019

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/ Commissioners of Central Tax (All) / The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Sub: Clarification regarding optional filing of annual return under notification No. 47/2019-Central Tax dated 9th October, 2019 - regarding

Attention is invited to notification No. 47/2019-Central Tax dated 9th October, 2019 (hereinafter referred to as "the said notification") issued under section 148 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the said Act") providing for special procedure for those registered persons whose aggregate turnover in a financial year does not exceed two crore rupees and who have not furnished the annual return under sub-section (1) of section 44 of the said Act read with sub-rule (1) of rule 80 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "the CGST Rules").

2. Vide the said notification it is provided that the annual return shall be deemed to be furnished on the due date if it has not been furnished before the due date for the financial year 2017-18 and 2018-19, in respect of those registered persons. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the said Act, hereby clarifies the issues raised as below:–

a. As per proviso to sub-rule (1) of rule 80 of the CGST Rules, a person paying tax under section 10 is required to furnish the annual return in **FORM GSTR-9A.** Since the said notification has made it optional to furnish the annual return for FY 2017-18 and 2018-19 for those registered persons whose aggregate turnover in a financial year does not exceed two crore rupees, it is clarified that the tax payers under composition scheme, may, at their own option file **FORM GSTR-9A** for the said financial years before the due date. After the due date of furnishing the annual return for the year 2017-18 and 2018-19, the common portal shall not permit furnishing of **FORM GSTR-9A** for the said period.
b. As per sub-rule (1) of rule 80 of the CGST Rules, every registered person other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return as specified

under sub-section (1) of section 44 electronically in **FORM GSTR-9.** Further**,** the said notification has made it optional to furnish the annual return for FY 2017-18 and 2018-19 for those registered persons whose aggregate turnover in a financial year does not exceed two crore rupees. Accordingly, it is clarified that the tax payers, may, at their own option file **FORM GSTR-9** for the said financial years before the due date. After the due date of furnishing the annual return for the year 2017-18 and 2018-19, the common portal shall not permit furnishing of **FORM GSTR-9** for the said period.

3. Section 73 of the said Act provides for voluntary payment of tax dues by the taxpayers at any point in time. Therefore, irrespective of the time and quantum of tax which has not been paid or short paid, the taxpayer has the liberty to self-ascertain such tax amount and pay it through **FORM GST DRC-03.** Accordingly, it is clarified that if any registered tax payer, during course of reconciliation of his accounts, notices any short payment of tax or ineligible availment of input tax credit, he may pay the same through **FORM GST DRC-03.**

4. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board. Hindi version would follow.

(Yogendra Garg)
Principal Commissioner
y.garg@nic.in

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CBEC-20/16/04/18-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
****

New Delhi, Dated the 18th November, 2019

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/ Commissioners of Central Tax (All) / The Principal Director Generals/ Director Generals (All)

The Principal Chief Controller of Accounts (CBIC)

Madam/Sir,

Subject: Fully electronic refund process through FORM GST RFD-01 and single disbursement – regarding

After roll out of GST w.e.f. 01.07.2017, on account of the unavailability of electronic refund module on the common portal, a temporary mechanism had to be devised and implemented wherein applicants were required to file the refund application in **FORM GST RFD-01A** on the common portal, take a print out of the same and submit it physically to the jurisdictional tax office along with all supporting documents. Further processing of these refund applications, i.e. issuance of acknowledgement of the refund application, issuance of deficiency memo, passing of provisional/final order, payment advice etc. was also being done manually. In order to make the process of submission of the refund application electronic, Circular No. 79/53/2018-GST dated 31.12.2018 was issued wherein it was specified that the refund application in **FORM GST RFD-01A**, along with all supporting documents, shall be submitted electronically. However, various post submission stages of processing of the refund application continued to be manual.

2. The necessary capabilities for making the refund procedure fully electronic, in which all steps of submission and processing shall be undertaken electronically, have been deployed on the common portal with effect from **26.09.2019**. Accordingly, the Circulars issued earlier laying down the guidelines for manual submission and processing of refund claims need to be suitably modified and a fresh set of guidelines needs to be issued for electronic submission and processing of refund claims. With this objective and in order to ensure uniformity in the implementation of the provisions of law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby lays down the procedure for electronic submission and processing of refund applications in supersession of earlier Circulars viz. Circular No. 17/17/2017-GST dated 15.11.2017, 24/24/2017-GST dated 21.12.2017, 37/11/2018-GST dated 15.03.2018, 45/19/2018-GST dated 30.05.2018 (including corrigendum dated 18.07.2019), 59/33/2018-GST dated 04.09.2018,

70/44/2018-GST dated 26.10.2018, 79/53/2018-GST dated 31.12.2018 and 94/13/2019-GST dated 28.03.2019. However, the provisions of the said Circulars shall continue to apply for all refund applications filed on the common portal before 26.09.2019 and the said applications shall continue to be processed manually as prior to deployment of new system.

Filing of refund applications in FORM GST RFD-01

3. With effect from **26.09.2019**, the applications for the following types of refunds shall be filed in **FORM GST RFD 01** on the common portal and the same shall be processed electronically:

a. Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;
b. Refund of tax paid on export of services with payment of tax;
c. Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;
d. Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax;
e. Refund of unutilized ITC on account of accumulation due to inverted tax structure;
f. Refund to supplier of tax paid on deemed export supplies;
g. Refund to recipient of tax paid on deemed export supplies;
h. Refund of excess balance in the electronic cash ledger;
i. Refund of excess payment of tax;
j. Refund of tax paid on intra-State supply which is subsequently held to be inter-State supply and vice versa;
k. Refund on account of assessment/provisional assessment/appeal/any other order;
l. Refund on account of "any other" ground or reason.

4. The following modalities shall be followed for all refund applications filed in **FORM GST RFD-01** on the common portal with effect from **26.09.2019:**

a. **FORM GST RFD-01** shall be filled on the common portal by an applicant seeking refund under any of the categories mentioned above. This shall entail filing of statements/declarations/undertakings which are part of **FORM GST RFD-01** itself, and also uploading of other documents/invoices which shall be required to be provided by the applicant for processing of the refund claim. A comprehensive list of such documents is provided at **Annexure-A** and it is clarified that no other document needs to be provided by the applicant at the stage of filing of the refund application. The facility of uploading these other documents/invoices shall be available on the common portal where four documents, each of maximum 5MB, may be uploaded along with the refund application. Neither the refund application in **FORM GST RFD-01** nor any of the supporting documents shall be required to be physically submitted to the office of the jurisdictional proper officer.
b. The Application Reference Number (ARN) will be generated only after the applicant has completed the process of filing the refund application in **FORM GST RFD-01**, and has completed uploading of all the supporting documents/ undertaking/

statements/invoices and, where required, the amount has been debited from the electronic credit/cash ledger.

c. As soon as the ARN is generated, the refund application along with all the supporting documents shall be transferred electronically to the jurisdictional proper officer who shall be able to view it on the system. The application shall be deemed to have been filed under sub-rule (2) of rule 90 of the CGST Rules on the date of generation of the said ARN and the time limit of 15 days to issue an acknowledgement or a deficiency memo, as the case may be, shall be counted from the said date. This will obviate the need for an applicant to visit the jurisdictional tax office for the submission of the refund application and /or any of the supporting documents. Accordingly, the acknowledgement for the complete application **(FORM GST RFD-02)** or deficiency memo **(FORM GST RFD-03)**, as the case may be, would be issued electronically by the jurisdictional tax officer based on the documents so received from the common portal.

d. If a refund application is electronically transmitted to the wrong jurisdictional officer, he/she shall reassign it to the correct jurisdictional officer electronically as soon as possible, but not later than three working days, from the date of generation of the ARN. Deficiency memos shall not be issued in such cases merely on the ground that the applications were received electronically in the wrong jurisdiction.

e. It may be noted that the facility to reassign such refund applications is already available with the Commissioner or the officer(s) authorized by him.

5. The refund application in **FORM GST RFD-01** filed by all taxpayers, who have already been assigned to the Centre or the State tax authorities, shall be automatically forwarded by the common portal to the concerned authority. At the same time, there might be some migrated taxpayers, who have remained unassigned so far. The refund application in **FORM GST RFD-01** filed by such unassigned taxpayers shall be forwarded, for processing, by the common portal to the jurisdictional proper officer of the tax authority from which the taxpayer has originally migrated. Such officers will continue to process these applications up to the stage of issuance of final order in **FORM GST RFD-06** and the related payment order in **FORM GST RFD-05** even if the applicant is assigned to the counterpart tax authority while the refund claim is under processing. However, if such an applicant gets assigned to one of the tax authorities after generation of the ARN and a deficiency memo gets issued for the refund application submitted by him, then the re-submitted refund application, after correction of deficiencies, shall be treated as a fresh refund application and shall be forwarded to the jurisdictional proper officer of the tax authority to which the taxpayer has now been assigned, irrespective of which authority handled the initial refund claim and issued the deficiency memo.

6. Any refund claim for a tax period may be filed only after furnishing all the returns in **FORM GSTR-1** and **FORM GSTR-3B** which were due to be furnished on or before the date on which the refund application is being filed. However, in case of a claim for refund filed by a

composition taxpayer, a non-resident taxable person, or an Input Service Distributor (ISD) furnishing of returns in **FORM GSTR-1** and **FORM GSTR-3B** is not required. Instead, the applicant should have furnished returns in **FORM GSTR-4(along with FORM GST CMP-08)**, **FORM GSTR-5** or **FORM GSTR-6**, as the case may be, which were due to be furnished on or before the date on which the refund application is being filed.

7. Since the functionality of furnishing of **FORM GSTR-2** and **FORM GSTR-3** remains unimplemented, it has been decided by the GST Council to sanction refund of provisionally accepted input tax credit. However, the applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of section 42 of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted electronically along with the refund claim.

8. The applicant, at his option, may file a refund claim for a tax period or by clubbing successive tax periods. The period for which refund claim has been filed, however, cannot spread across different financial years. Registered persons having aggregate turnover of up to Rs. 1.5 crore in the preceding financial year or the current financial year opting to file **FORM GSTR-1** on quarterly basis, can only apply for refund on a quarterly basis or clubbing successive quarters as aforesaid. However, refund claims under categories listed at (a), (c) and (e) in para 3 above must be filed by the applicant chronologically. This means that an applicant, after submitting a refund application under any of these categories for a certain period, shall not be subsequently allowed to file a refund claim under the same category for any previous period. This principle / limitation, however, shall not apply in cases where a fresh application is being filed pursuant to a deficiency memo having been issued earlier.

Deficiency Memos

9. It may be noted that if the application for refund is complete in terms of sub-rule (2), (3) and (4) of rule 89 of the CGST Rules, an acknowledgement in **FORM GST RFD-02** should be issued within 15 days of the filing of the refund application. The date of generation of ARN for **FORM GST RFD-01** is to be considered as the date of filing of the refund application. Sub-rule (3) of rule 90 of the CGST Rules provides for communication of deficiencies in **FORM GST RFD-03** where deficiencies are noticed within the aforesaid period of 15 days. It is clarified that either an acknowledgement or a deficiency memo should be issued within the aforesaid period of 15 days starting from the date of generation of ARN. Once an acknowledgement has been issued in relation to a refund application, no deficiency memo, on any grounds, may be subsequently issued for the said application.

10. After a deficiency memo has been issued, the refund application would not be further processed and a fresh application would have to be filed. Any amount of input tax credit/cash debited from electronic credit/ cash ledger would be re-credited automatically once the deficiency

memo has been issued. It may be noted that the re-credit would take place automatically and no order in **FORM GST PMT-03** is required to be issued. The applicant is required to rectify the deficiencies highlighted in deficiency memo and file fresh refund application electronically in **FORM GST RFD-01** again for the same period and this application would have a new and distinct ARN.

11. It is further clarified that once an application has been submitted afresh, pursuant to a deficiency memo, the proper officer will not serve another deficiency memo with respect to the application for the same period, unless the deficiencies pointed out in the original deficiency memo remain un-rectified, either wholly or partly, or any other substantive deficiency is noticed subsequently.

12. It is also clarified that since a refund application filed after correction of deficiency is treated as a fresh refund application, such a rectified refund application, submitted after correction of deficiencies, shall also have to be submitted within 2 years of the relevant date, as defined in the explanation after sub-section (14) of section 54 of the CGST Act.

Provisional Refund

13. Doubts get raised as to whether provisional refund would be given even in those cases where the proper officer prima-facie has sufficient reasons to believe that there are irregularities in the refund application which would result in rejection of whole or part of the refund amount so claimed. It is clarified that in such cases, the proper officer shall refund on a provisional basis ninety percent of the refundable amount of the claim (amount of refund claim less the inadmissible portion of refund so found) in accordance with the provisions of rule 91 of the CGST Rules. Final sanction of refund shall be made in accordance with the provisions of rule 92 of the CGST Rules.

14. It is further clarified that there is no prohibition under the law preventing a proper officer from sanctioning the entire amount within 7 days of the issuance of acknowledgement through issuance of **FORM GST RFD-06,** instead of grant of provisional refund of 90 per cent of the amount claimed through **FORM GST RFD-04**. If the proper officer is fully satisfied about the eligibility of a refund claim on account of zero-rated supplies, and is of the opinion that no further scrutiny is required, the proper officer may issue final order in **FORM GST RFD-06** within 7 days of the issuance of acknowledgement. In such cases, the issuance of a provisional refund order in **FORM GST RFD-04** will not be necessary.

15. Further, there are doubts on the procedure to be followed in situations where the final refund amount to be sanctioned in **FORM GST RFD-06** is less than the amount of refund sanctioned provisionally through **FORM GST RFD-04**. For example, consider a situation where an applicant files a refund claim of Rs.100/- on account of zero-rated supplies. The proper officer, after prima-facie examination of the application, sanctions Rs. 90 as provisional refund through **FORM GST RFD-04** and the same is electronically credited to his bank account. However, on detailed examination, it appears to the proper officer that only an amount of Rs. 70 is admissible as refund to the applicant. In such cases, the proper officer shall have to issue a show cause notice

to the applicant, in **FORM GST RFD-08**, under section 54 of the CGST Act, read with section 73 or 74 of the CGST Act, requiring the applicant to show cause as to why:

(a) the amount claimed of Rs. 30/- should not be rejected as per the relevant provisions of the law; and

(b) the amount of Rs. 20/- erroneously refunded should not be recovered under section 73 or section 74 of the CGST Act, as the case may be, along with interest and penalty, if any.

16. The proper officer for adjudicating the above case shall be the same as the proper officer for sanctioning refund under section 54 of the CGST Act. The above notice shall be adjudicated following the principles of natural justice and an order shall be issued, in **FORM GST RFD-06,** under section 54 of the CGST Act, read with section 73 or section 74 of the CGST Act, as the case may be. If the adjudicating authority decides against the applicant in respect of both points (a) and (b) above, then an amount of Rs. 70/- will have to be sanctioned in **FORM GST RFD-06**, and an amount of Rs. 20/-, along with interest and penalty, if any, shall be entered by the officer in the electronic liability register of the applicant through issuance of **FORM GST DRC-07**. Further, if the application pertains to refund of unutilized/accumulated ITC, then Rs. 30/-, i.e. the amount rejected, shall have to be re-credited to the electronic credit ledger of the applicant through **FORM GST PMT-03**. However, this re-credit shall be done only after the receipt of an undertaking from the applicant to the effect that he shall not file an appeal or in case he files an appeal, the same has been finally decided against the applicant. In such cases, it may be noted that **FORM GST RFD-08** and **FORM GST RFD-06**, are to be considered as show cause notice and adjudication order respectively, under both section 54 (for rejection of refund) and section 73/74 of the CGST Act as the case may be (for recovery of erroneous refund).

17. It is further clarified that no adjustment or withholding of refund, as provided under sub-sections (10) and (11) of section 54 of the CGST Act, shall be allowed in respect of the amount of refund which has been provisionally sanctioned. In cases where there is an outstanding recoverable amount due from the applicant, the proper officer, instead of granting refund on provisional basis, may process and sanction refund on final basis at the earliest and recover the amount from the amount so sanctioned.

Scrutiny of Application

18. In case of refund claim on account of export of goods without payment of tax, the Shipping bill details shall be checked by the proper officer through ICEGATE SITE (www.icegate.gov.in) wherein the officer would be able to check details of EGM and shipping bill by keying in port name, Shipping bill number and date. It is advised that while processing refund claims, information contained in Table 9 of **FORM GSTR-1** of the relevant tax period as well as that of the subsequent tax periods should also be taken into cognizance, wherever applicable. In this regard, Circular No. 26/26/2017−GST dated 29.12.2017 may be referred, wherein the procedure for rectification of errors made while filing the returns in **FORM GSTR-3B** has been provided. Therefore, in case of

discrepancies between the data furnished by the taxpayer in **FORM GSTR-3B** and **FORM GSTR-1**, the proper officer shall refer to the said Circular and process the refund application accordingly.

19. Detailed guidelines laid down in subsequent paragraphs of this Circular covering various types of refund claims may also be followed while scrutinizing refund claims for completeness and eligibility.

Re-crediting of electronic credit ledger on account of rejection of refund claim

20. In case of rejection of refund claim of unutilized/accumulated ITC due to ineligibility of the input tax credit under any provisions of the CGST Act and rules made thereunder, the proper officer shall have to issue a show cause notice in **FORM GST RFD-08**, under section 54 of the CGST Act, read with section 73 or 74 of the CGST Act, requiring the applicant to show cause as to why:

(a) the refund amount corresponding to the ineligible ITC should not be rejected as per the relevant provisions of the law; and

(b) the amount of ineligible ITC should not be recovered as wrongly availed ITC under section 73 or section 74 of the CGST Act, as the case may be, along with interest and penalty, if any.

21. The above notice shall be adjudicated following the principles of natural justice and an order shall be issued, in **FORM GST RFD-06,** under section 54 of the CGST Act, read with section 73 or section 74 of the CGST Act, as the case may be. If the adjudicating authority decides against the applicant in respect of both points (a) and (b) above, then **FORM GST RFD-06** shall have to be issued accordingly, and the amount of ineligible ITC, along with interest and penalty, if any, shall be entered by the officer in the electronic liability register of the applicant through issuance of **FORM GST DRC-07**. Alternatively, the applicant can voluntarily pay this amount, along with interest and penalty, as applicable, before service of the demand notice, and intimate the same to the proper officer in **FORM GST DRC-03** in accordance with sub-section (5) of section 73 or sub-section (5) of section 74 of the CGST Act, as the case may be, read with sub-rule (2) of rule 142 of the CGST Rules. In such cases, the need for serving a demand notice for recovery of ineligible ITC will be obviated. In any case, the proper officer shall order for the rejected amount to be re-credited to the electronic credit ledger of the applicant using **FORM GST PMT-03,** only after the receipt of an undertaking from the applicant to the effect that he shall not file an appeal or in case he files an appeal, the same is finally decided against the applicant.

22. In case of rejection of a claim for refund, on account of any reason other than the ineligibility of credit, the process described in **para 20 and 21** above shall be followed with the only difference that there shall be no proceedings for recovery of ineligible ITC under section 73 or section 74, as the case may be.

23. Consider an example where against a refund claim of unutilized/accumulated ITC of Rs.100/-, only Rs.80/- is sanctioned (Rs.15/- is rejected on account of ineligible ITC and Rs.5/- is

rejected on account of any other reason). As stated above, a show cause notice, in **FORM GST RFD-08** shall have to be issued to the applicant, requiring him to show cause as to why the refund claim amounting to Rs.20/-should not be rejected under the relevant provisions of the law and why the ineligible ITC of Rs. 15/- should not be recovered under section 73 or section 74, as the case may be, with interest and penalty, if any. If the said notice is decided against the applicant, Rs. 15/-, along with interest and penalty, if any, shall be entered by the officer in the electronic liability register of the applicant through issuance of **FORM GST DRC-07.** Further, Rs. 20/- would be re-credited through **FORM GST PMT-03** only after the receipt of an undertaking from the applicant to the effect that he shall not file an appeal or in case he files an appeal, the same is finally decided against the applicant.

24. Continuing with the above example, further assume that the applicant files an appeal against this order and the appellate authority decides wholly in the applicant's favour. It is hereby clarified in such a case the petitioner would file a fresh refund claim for the said amount of Rs. 20/- under the option of claiming refund "On Account of Assessment/Provisional Assessment/Appeal/Any other order".

Application for refund of integrated tax paid on export of services and supplies made to a Special Economic Zone developer or a Special Economic Zone unit

25. It has been represented that while filing the return in **FORM GSTR-3B** for a given tax period, certain registered persons committed errors in declaring the export of services on payment of integrated tax or zero-rated supplies made to a Special Economic Zone developer or a Special Economic Zone unit on payment of integrated tax. They have shown such supplies in the Table under column 3.1(a) instead of showing them in column 3.1(b) of **FORM GSTR-3B** whilst they have shown the correct details in Table 6A or 6B of **FORM GSTR-1** for the relevant tax period and duly discharged their tax liabilities. Such registered persons were earlier unable to file the refund application in **FORM GST RFD-01A** for refund of integrated tax paid on the export of services or on supplies made to a SEZ developer or a SEZ unit on the GST common portal because of an in-built validation check in the system which restricted the refund amount claimed (integrated tax/cess) to the amount of integrated tax/cess mentioned under column 3.1(b) of **FORM GSTR-3B** (zero rated supplies) filed for the corresponding tax period.

26. In this regard, it is clarified that for the tax periods commencing from 01.07.2017 to 30.06.2019, such registered persons shall be allowed to file the refund application in **FORM GST RFD-01** on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of **FORM GSTR-3B** filed for the corresponding tax period.

Disbursal of refunds

27. Separate disbursement of refund amounts under different tax heads by different tax authorities, i.e. disbursement of Central tax, Integrated tax and Compensation Cess by Central tax

officers and disbursement of State tax by State tax officers, was causing undue hardship to the refund applicants. In order to facilitate refund applicants on this account, it has now been decided that for a refund application assigned to a Central tax officer, both the sanction order **(FORM GST RFD-04/06)** and the corresponding payment order **(FORM GST RFD-05)** for the sanctioned refund amount, under all tax heads, shall be issued by the Central tax officer only. Similarly, for refund applications assigned to a State/UT tax officer, both the sanction order **(FORM GST RFD-04/06)** and the corresponding payment order **(FORM GST RFD-05)** for the sanctioned refund amount, under all tax heads, shall be issued by the State/UT tax officer only.

28. The sanctioned refund amounts, as entered in the payment orders issued by the Central and State/UT tax officers, shall be disbursed through the Public Financial Management System (PFMS) of the Controller General of Accounts (CGA), Ministry of Finance, Government of India. On filing of a refund application in **FORM GST RFD-01**, the common portal shall generate a master file for the applicant containing the relevant details like name, GSTIN, bank account details etc. This master file shall be shared with PFMS for validation of the bank account details provided by the applicant in the refund application. Once the bank account is validated, PFMS will create a unique assessee code (combination of GSTIN + validated bank account number) for the applicant. This unique assessee code will be used by PFMS for all refund payments made to the applicant in the said bank account. Therefore, in order to avoid repeat validations and generation of multiple unique assessee codes for the same GSTIN, it shall be advisable for the applicants to enter the same bank account details in successive refund applications submitted in **FORM GST RFD-01**. In cases where an applicant wishes to avail the refund in a different bank account, which has not yet been validated, a new unique assessee code (comprising of GSTIN + new bank account) will be generated by PFMS after validation of the said bank account.

29. If the bank account details mentioned by an applicant in the refund application submitted in **FORM GST RFD-01** are invalidated, an error message shall be transmitted by PFMS to the common portal electronically and the common portal shall make the error message available to the applicant and the refund officers on their dashboards. On receiving such an error message, an applicant can:

a) rectify the invalidated bank account details by filing a non-core amendment in **FORM GST REG-14**; or
b) add a new bank account by filing a non-core amendment in **FORM GST REG-14**

30. The updated bank account details will be reflected in a drop-down menu on the dashboard. From this drop-down menu, the applicant can choose any bank account, including the ones rectified (option (a)) or newly added (option (b)), from the list of bank accounts available in his registration database. The chosen bank account details will again be sent to PFMS for validation. The proper officer will be able to issue the payment order in **FORM GST RFD-05** only after the selected bank account has been validated.

31. By following the above process, validation errors, if any, will generally be corrected before the issuance of payment order in **FORM GST RFD-05**. Therefore, there should generally not be any validation errors after issuance of a payment order in **FORM GST RFD-05**. However, in certain exceptional cases, it is possible that a validation error occurs after issuance of the payment order. In such cases, the said payment order will be invalidated by the common portal and a new payment order will have to be issued by the proper officer after following the rectification process described in **paras 29 and 30** above. The re-issued payment order will have a new reference number and shall contain the newly selected bank account details. However, there will be no change in either the original ARN or the sanction order number or the amount for which the payment order was originally issued.

32. It may be noted that the applicant, at the time of filing of refund application in **FORM GST RFD-01**, can select a bank account only from the list of bank accounts provided by him at the time of registration in **FORM GST REG-01,** or subsequently through filing a non-core amendment in **FORM GST REG-14**. The same account details will be auto-populated in the payment order issued in **FORM GST RFD-05**. Any change in these auto-populated bank account details shall not be allowed unless there is a validation error in relation to the same.

33. The disbursement status of the refund amount would be communicated by PFMS to the common portal. The common portal shall notify the same to the taxpayer by email/SMS. Such details shall also be available on the status tracking facility on the dashboard.

34. Section 56 of the CGST Act clearly states that if any tax ordered to be refunded is not refunded within 60 days of the date of receipt of application, interest at the rate of 6 per cent (notified vide notification No. 13/2017-Central Tax dated 28.06.2017) on the refund amount starting from the date immediately after the expiry of sixty days from the date of receipt of application (ARN) till the date of refund of such tax shall have to be paid to the applicant. It may be noted that any tax shall be considered to have been refunded only when the amount has been credited to the bank account of the applicant. Therefore, interest will be calculated starting from the date immediately after the expiry of sixty days from the date of receipt of the application till the date on which the amount is credited to the bank account of the applicant. Accordingly, all tax authorities are advised to issue the final sanction order in **FORM GST RFD-06** and the payment order in **FORM GST RFD-05** within 45 days of the date of generation of ARN, so that the disbursement is completed within 60 days.

35. The provisions relating to refund provide for partial as well as complete adjustment of refund against any outstanding demand under GST or under any existing law. It is hereby clarified that both partial or complete adjustment of sanctioned amount of refund against any outstanding demand under GST or under any existing law would be made in **FORM GST RFD-06**. Furthermore, sub-clause (b) of sub-section (6), sub-clause (a) of sub-section (7), sub-clause (a) of sub-section (8) and sub-clause (a) of sub-section (9) of Section 142 of the CGST Act provides for recovery of any tax, interest, fine, penalty or any other amount recoverable under the existing law as an arrear of tax under GST unless such amount is recovered under the existing law. It is hereby

clarified that adjustment of refund amount against any outstanding demand under the existing law can be done.

Guidelines for refunds of unutilized Input Tax Credit

36. Applicants of refunds of unutilized ITC, i.e. refunds pertaining to items listed at (a), (c) and (e) in **para 3** above, shall have to upload a copy of **FORM GSTR-2A** for the relevant period (or any prior or subsequent period(s) in which the relevant invoices have been auto-populated) for which the refund is claimed. The proper officer shall rely upon **FORM GSTR-2A** as an evidence of the accountal of the supply by the corresponding supplier(s) in relation to which the input tax credit has been availed by the applicant. Such applicants shall also upload the details of all the invoices on the basis of which input tax credit has been availed during the relevant period for which the refund is being claimed, in the format enclosed as **Annexure-B** along with the application for refund claim. Such availment of ITC will be subject to restriction imposed under sub-rule (4) in rule 36 of the CGST rules inserted vide Notification No. 49/2019-CT dated 09.10.2019. The applicant shall also declare the eligibility or otherwise of the input tax credit availed against the invoices related to the claim period in the said format for enabling the proper officer to determine the same. Self-certified copies of invoices in relation to which the refund of ITC is being claimed and which are declared as eligible for ITC in **Annexure – B**, but which are not populated in **FORM GSTR-2A,** shall be uploaded by the applicant along with the application in **FORM GST RFD 01**. It is emphasized that the proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are available in **FORM GSTR-2A** of the relevant period uploaded by the applicant.

37. In case of refunds pertaining to items listed at (a), (c) and (e) in **para 3** above, the common portal calculates the refundable amount as the least of the following amounts:

a) The maximum refund amount as per the formula in rule 89(4) or rule 89(5) of the CGST Rules [formula is applied on the consolidated amount of ITC, i.e. Central tax + State tax/Union Territory tax +Integrated tax];
b) The balance in the electronic credit ledger of the applicant at the end of the tax period for which the refund claim is being filed after the return in **FORM GSTR-3B** for the said period has been filed; and
c) The balance in the electronic credit ledger of the applicant at the time of filing the refund application.

After calculating the least of the three amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the applicant in the following order:

a) Integrated tax, to the extent of balance available;
b) Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/Union Territory tax, in this case).

38. The order of debit described above, however, is not presently available on the common portal. Till the time such facility is made available on the common portal, the taxpayers are advised to follow the order as explained above for all refund applications. However, for applications where this order is not adhered to by the applicant, no adverse view may be taken by the tax authorities. The above system validations are being clarified so that there is no ambiguity in relation to the process through which an application in **FORM GST RFD-01** is generated.

39. For all refund applications where refund of unutilized ITC of compensation cess is being claimed, the calculation of the refundable amount of compensation cess shall be done separately and the amount so calculated will be entirely debited from the balance of compensation cess available in the electronic credit ledger.

40. The third proviso to sub-section (3) of section 54 of the CGST Act states that no refund of input tax credit shall be allowed in cases where the supplier of goods or services or both avails of drawback in respect of Central tax. It is clarified that if a supplier avails of drawback in respect of duties rebated under the Customs and Central Excise Duties Drawback Rules, 2017, he shall be eligible for refund of unutilized input tax credit of Central tax/ State tax/ Union Territory tax / Integrated tax/ Compensation cess. It is also clarified that refund of eligible credit on account of State tax shall be available if the supplier of goods or services or both has availed of drawback in respect of Central tax.

Guidelines for refund of tax paid on deemed exports

41. Certain supplies of goods have been notified as deemed exports vide notification No. 48/2017-Central Tax dated 18.10.2017 under section 147 of the CGST Act. Further, the third proviso to rule 89(1) of the CGST Rules allows either the recipient or the supplier to apply for refund of tax paid on such deemed export supplies. In case such refund is sought by the supplier of deemed export supplies, the documentary evidences as specified in notification No. 49/2017-Central Tax dated 18.10.2017 are also required to be furnished which includes an undertaking that the recipient of deemed export supplies shall not claim the refund in respect of such supplies and shall not avail any input tax credit on such supplies. Similarly, in case the refund is filed by the recipient of deemed export supplies, an undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed in statement 5B for the tax period for which refund is being claimed and that he has not availed input tax credit on such invoices. The recipient shall also be required to declare that the supplier has not claimed refund with respect to the said supplies. The procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU) / Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit / Bio-Technology Parks (BTP) Unit under deemed export as laid down in Circular No. 14/14/2017-GST dated 06.11.2017 needs to be complied with.

Guidelines for claims of refund of Compensation Cess

42. Doubts have been raised whether a registered person is eligible to claim refund of unutilized input tax credit of compensation cess paid on inputs, where the zero-rated final product is not leviable to compensation cess. For instance, cess is levied on coal, which is an input for the manufacture of aluminium products, whereas cess is not levied on aluminium products. In this context, attention is invited to section 16(2) of the Integrated Goods and Services Tax Act, 2017 (hereafter referred to as the "IGST Act") which states that, subject to the provisions of section 17(5) of the CGST Act, credit of input tax may be availed for making zero rated supplies. Further, section 16 of the IGST Act has been *mutatis mutandis* made applicable to inter-State supplies under the Cess Act vide section 11 (2) of the Cess Act. Thus, it implies that input tax credit of Compensation Cess may be availed for making zero-rated supplies. Further, by virtue of section 54(3) of the CGST Act, the refund of such unutilized ITC shall be available. Accordingly, it is clarified that a registered person making zero rated supply of aluminium products under bond or LUT may claim refund of unutilized credit including that of compensation cess paid on coal. Such registered persons may also make zero-rated supply of aluminium products on payment of Integrated tax but they cannot utilize the credit of the compensation cess paid on coal for payment of Integrated tax in view of the proviso to section 11(2) of the Cess Act, which allows the utilization of the input tax credit of cess, only for the payment of cess on the outward supplies.

43. As regards the certain issues related to refund of accumulated input tax credit of compensation cess on account of zero-rated supplies made under Bond/Letter of Undertaking on which clarifications have been sought since GST roll out, the same have been examined and are clarified as below:

a) **Issue:** A registered person uses inputs on which compensation cess is leviable (e.g. coal) to export goods on which there is no levy of compensation cess (e.g. aluminium). For the period July, 2017 to May, 2018, no ITC is availed of the compensation cess paid on the inputs received during this period. ITC is only availed of the Central tax, State tax/Union Territory tax or Integrated tax charged on the invoices for these inputs. This ITC is utilized for payment of Integrated tax on export of goods. Vide Circular No. 45/19/2018-GST dated 30.05.2018, it was clarified that refund of accumulated ITC of compensation cess on account of zero-rated supplies made under Bond/Letter of Undertaking is available even if the exported product is not subject to levy of cess. After the issuance of this Circular, the registered person decides to start exporting under bond/LUT without payment of tax. He also decides to avail (through the return in **FORM GSTR-3B**) the ITC of compensation cess, paid on the inputs used in the months of July, 2017 to May, 2018, in the month of July, 2018. The registered person then goes on to file a refund claim for ITC accumulated on account of exports for the month of July, 2018 and includes the said accumulated ITC for the month of July, 2018. How should the amount of compensation cess to be refunded be calculated?

Clarification: In the instant case, refund on account of compensation cess is to be recomputed as if the same was available in the respective months in which the refund of unutilized credit of Central tax/State tax/Union Territory tax/Integrated tax was claimed on account of exports made under LUT/Bond. If the aggregate of these recomputed amounts of refund of compensation cess is less than or equal to the eligible refund of compensation cess calculated in respect of the month in which the same has actually been claimed, then the aggregate of the recomputed refund of compensation cess of the respective months would be admissible. However, the recomputed amount of eligible refund (of compensation cess) in respect of past periods, as aforesaid, would not be admissible in respect of consignments exported on payment of Integrated tax. This process would be applicable for application(s) for refund of compensation cess (not claimed earlier) in respect of the past period.

b) **Issue:** A registered person uses coal for the captive generation of electricity which is further used for the manufacture of goods (say aluminium) which are exported under Bond/Letter of Undertaking without payment of duty. Refund claim is filed for accumulated Input Tax Credit of compensation cess paid on coal. Can the said refund claim be rejected on the ground that coal is used for the generation of electricity which is an intermediate product and not the final product which is exported and since electricity is exempt from GST, the ITC of the tax paid on coal for generation of electricity is not available?

Clarification: There is no distinction between intermediate goods or services and final goods or services under GST. Inputs have been clearly defined to include any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Since coal is an input used in the production of aluminium, albeit indirectly through the captive generation of electricity, which is directly connected with the business of the registered person, input tax credit in relation to the same cannot be denied.

c) **Issue:** A registered person avails ITC of compensation cess (say, of Rs. 100/-) paid on purchases of coal every month. At the same time, he reverses a certain proportion (say, half i.e. Rs. 50/-) of the ITC of compensation cess so availed on purchases of coal which are used in making zero rated outward supplies. Both these details are entered in the **FORM GSTR-3B** filed for the month as a result of which an amount of Rs. 50/- only is credited in the electronic credit ledger. The reversed amount (Rs. 50/-) is then shown as a 'cost' in the books of accounts of the registered person. However, the registered person declares Rs. 100/- as 'Net ITC' and uses the same in calculating the maximum refund amount which works out to be Rs. 50/- (assuming that export turnover is half of total turnover). Since both the balance in the electronic credit ledger at the end of the tax period for which the claim of refund is being filed and the balance in the electronic credit ledger at the time of filing the refund claim is Rs. 50/- (assuming that no other debits/credits have happened),

the common portal will proceed to debit Rs. 50/- from the ledger as the claimed refund amount. The question is whether the proper officer should sanction Rs. 50/- as the refund amount or Rs. 25/- (i.e. half of the ITC availed after adjusting for reversals)?

Clarification: ITC which is reversed cannot be held to have been 'availed' in the relevant period. Therefore, the same cannot be part of refund of unutilized ITC on account of zero-rated supplies. Moreover, the reversed ITC has been accounted as a cost which would have reduced the income tax liability of the applicant. Therefore, the same amount cannot, at the same time, be refunded to him/her in the ratio of export turnover to total turnover. However, if the said reversed amount is again availed in a later tax period, subject to the restriction under section 16(4) of the CGST Act, it can be refunded in the ratio of export turnover to total turnover in that tax period in the same manner as detailed in **para 37** above. This is subject to the restriction that the accounting entry showing the said ITC as cost is also reversed.

Clarifications on issues related to making zero-rated supplies

44. Export of goods or services can be made without payment of Integrated tax under the provisions of rule 96A of the CGST Rules. Under the said provisions, an exporter is required to furnish a bond or Letter of Undertaking (LUT) to the jurisdictional Commissioner before effecting zero rated supplies. A detailed procedure for filing of LUT has been specified vide Circular No. 8/8/2017 –GST dated 4.10.2017. It has been brought to the notice of the Board that in some cases, such zero-rated supplies were made before filing the LUT and refund claims for unutilized input tax credit got filed. In this regard, it is emphasized that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made. The delay in furnishing of LUT in such cases may be condoned and the facility for export under LUT may be allowed on ex post facto basis taking into account the facts and circumstances of each case.

45. Rule 96A (1) of the CGST Rules provides that any registered person may export goods or services without payment of Integrated tax after furnishing a LUT / bond and that he would be liable to pay the tax due along with the interest as applicable within a period of fifteen days after the expiry of three months or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the goods are not exported out of India. The time period in case of services is fifteen days after the expiry of one year or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange. It has been reported that the exporters have been asked to pay Integrated tax where the goods have been exported but not within three months from the date of the issue of the invoice for export. In this regard, it is emphasized that exports have been zero rated under the IGST Act and as long as goods have actually been exported even after a period of three months, payment of Integrated tax first and claiming refund at a subsequent date should not be insisted upon. In such cases, the

jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services.

46. It is learnt that some field formations are asking for a self-declaration with every refund claim to the effect that the applicant has not been prosecuted. The facility of export under LUT is available to all exporters in terms of notification No. 37/2017- Central Tax dated 04.10.2017, except to those who have been prosecuted for any offence under the CGST Act or the IGST Act or any of the existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees. Para 2(d) of the Circular No. 8/8/2017-GST dated 04.10.2017, mentions that a person intending to export under LUT is required to give a self-declaration at the time of submission of LUT that he has not been prosecuted. Persons who are not eligible to export under LUT are required to export under bond. It is clarified that this requirement is already satisfied in case of exports under LUT and asking for self–declaration with every refund claim where the exports have been made under LUT is not warranted.

47. It has also been brought to the notice of the Board that in certain cases, where the refund of unutilized input tax credit on account of export of goods is claimed and the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, refund claims are not being processed. The matter has been examined and it is clarified that the zero-rated supply of goods is effected under the provisions of the GST laws. An exporter, at the time of supply of goods declares that the goods are meant for export and the same is done under an invoice issued under rule 46 of the CGST Rules. The value recorded in the GST invoice should normally be the transaction value as determined under section 15 of the CGST Act read with the rules made thereunder. The same transaction value should normally be recorded in the corresponding shipping bill / bill of export. During the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill / bill of export should be examined and the lower of the two values should be taken into account while calculating the eligible amount of refund.

48. It is clarified that the realization of consideration in convertible foreign exchange, or in Indian rupees wherever permitted by Reserve Bank of India, is one of the conditions for export of services. In case of export of goods, realization of consideration is not a pre-condition. In rule 89 (2) of the CGST Rules, a statement containing the number and date of invoices and the relevant Bank Realization Certificates (BRC) or Foreign Inward Remittance Certificates (FIRC) is required in case of export of services whereas, in case of export of goods, a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices is required to be submitted along with the claim for refund. It is therefore clarified that insistence on proof of realization of export proceeds for processing of refund claims related to export of goods has not been envisaged in the law and should not be insisted upon.

49. As per section 16(2) of the IGST Act, credit of input tax may be availed for making zero rated supplies, notwithstanding that such supply is an exempt supply. In terms of section 2 (47) of

the CGST Act, exempt supply includes non-taxable supply. Further, as per section 16(3) of the IGST Act, a registered person making zero rated supply shall be eligible to claim refund when he either makes supply of goods or services or both under bond or letter of undertaking (LUT) or makes such supply on payment of Integrated tax. However, in case of zero-rated supply of exempted or non-GST goods, the requirement for furnishing a bond or LUT cannot be insisted upon. It is thus, clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of Integrated tax; LUT/bond is not required. Such registered persons exporting non-GST goods shall comply with the requirements prescribed under the existing law (i.e. Central Excise Act, 1944 or the VAT law of the respective State) or under the Customs Act, 1962, if any. Further, the exporter would be eligible for refund of unutilized input tax credit of Central tax, State tax, Union Territory tax, Integrated tax and compensation cess in such cases.

Refund of transitional credit

50. Refund of unutilized input tax credit is allowed in two scenarios mentioned in sub-section (3) of section 54 of the CGST Act. These two scenarios are zero rated supplies made without payment of tax and inverted tax structure. In sub-rule (4) and (5) of rule 89 of the CGST Rules, the amount of refund under these scenarios is to be calculated using the formulae given in the said sub-rules. The formulae use the phrase 'Net ITC' and defines the same as "input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both". It is clarified that as the transitional credit pertains to duties and taxes paid under the existing laws viz., under Central Excise Act, 1944 and Chapter V of the Finance Act, 1994, the same cannot be said to have been availed during the relevant period and thus, cannot be treated as part of 'Net ITC' and thus no refund of such unutilized transitional credit is admissible.

Restrictions imposed by sub-rule (10) of rule 96 of the CGST Rules

51. Sub-rule (10) of rule 96 of the CGST Rules, restricted exporters from availing the facility of claiming refund of Integrated tax paid on exports in certain scenarios. It was intended that exporters availing benefit of certain notifications would not be eligible to avail the facility of such refund. However, representations were received requesting that exporters who have received capital goods under the Export Promotion Capital Goods Scheme (hereinafter referred to as "EPCG Scheme"), should be allowed to avail the facility of claiming refund of the Integrated tax paid on exports. GST Council, in its 30th meeting held in New Delhi on 28th September, 2018, accorded approval to the proposal of suitably amending the said sub-rule along with sub-rule (4B) of rule 89 of the CGST Rules prospectively in order to enable such exporters to avail the said facility. Notification No. 54/2018 – Central Tax dated the 9th October, 2018 was issued to carry out the changes recommended by the GST Council. In addition, notification No. 39/2018- Central Tax dated 4th September, 2018 was rescinded vide notification No. 53/2018 – Central Tax dated the 9th October, 2018.

52. The net effect of these changes is that any exporter who himself/herself imported any inputs/capital goods in terms of notification Nos. 78/2017-Customs and 79/2017-Customs both dated 13.10.2017, before the issuance of the notification No. 54/2018 – Central Tax dated 09.10.2018, shall be eligible to claim refund of the Integrated tax paid on exports. Further, exporters who have imported inputs in terms of notification Nos. 78/2017-Customs dated 13.10.2017, after the issuance of notification No. 54/2018 – Central Tax dated 09.10.2018, would not be eligible to claim refund of Integrated tax paid on exports. However, exporters who are receiving capital goods under the EPCG scheme, either through import in terms of notification No. 79/2017-Customs dated 13.10. 2017 or through domestic procurement in terms of notification No. 48/2017-Central Tax, dated 18.10.2017, shall continue to be eligible to claim refund of Integrated tax paid on exports and would not be hit by the restrictions provided in sub-rule (10) of rule 96 of the CGST Rules.

Clarification on calculation of refund amount for claims of refund of accumulated ITC on account of inverted tax structure

53. Sub-section (3) of section 54 of the CGST Act provides that refund of any unutilized ITC may be claimed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies). Further, sub-section (59) of section 2 of the CGST Act defines inputs as any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Thus, inputs do not include services or capital goods. Therefore, clearly, the intent of the law is not to allow refund of tax paid on input services or capital goods as part of refund of unutilized input tax credit. It is clarified that both the law and the related rules clearly prevent the refund of tax paid on input services and capital goods as part of refund of input tax credit accumulated on account of inverted tax structure.

54. There have been instances where while processing the refund of unutilized ITC on account of inverted tax structure, some of the tax authorities denied the refund of ITC of GST paid on those inputs which are procured at equal or lower rate of GST than the rate of GST on outward supply, by not including the amount of such ITC while calculating the maximum refund amount as specified in rule 89(5) of the CGST Rules. The matter has been examined and the following issues are clarified:

a) Refund of unutilized ITC in case of inverted tax structure, as provided in section 54(3) of the CGST Act, is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability. Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89(5) of the CGST Rules, the term "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax.

b) The calculation of refund of accumulated ITC on account of inverted tax structure, in cases where several inputs are used in supplying the final product/output, can be clearly understood with the help of following example:

i. Suppose a manufacturing process involves the use of an input A (attracting 5 per cent GST) and input B (attracting 18 per cent GST) to manufacture output Y (attracting 12 per cent GST).

ii. The refund of accumulated ITC in the situation at (i) above, will be available under section 54(3) of the CGST Act read with rule 89(5) of the CGST Rules, which prescribes the formula for the maximum refund amount permissible in such situations.

iii. Further assume that the applicant supplies the output Y having value of Rs. 3,000/- during the relevant period for which the refund is being claimed. Therefore, the turnover of inverted rated supply of goods and services will be Rs. 3,000/-. Since the applicant has no other outward supplies, his adjusted total turnover will also be Rs. 3,000/-.

iv. If we assume that Input A, having value of Rs. 500/- and Input B, having value of Rs. 2,000/-, have been purchased in the relevant period for the manufacture of Y, then Net ITC shall be equal to Rs. 385/- (Rs. 25/- and Rs. 360/- on Input A and Input B respectively).

v. Therefore, multiplying Net ITC by the ratio of turnover of inverted rated supply of goods and services to the adjusted total turnover will give the figure of Rs. 385/-.

vi. From this, if we deduct the tax payable on such inverted rated supply of goods or services, which is Rs. 360/-, we get the maximum refund amount, as per rule 89(5) of the CGST Rules which is Rs. 25/-.

Refund of TDS/TCS deposited in excess

55. Tax deducted in accordance with the provisions of section 51 of the CGST Act or tax collected in accordance with the provisions of section 52 of the CGST Act is required to be paid while discharging the liability in **FORM GSTR 7** or **FORM GSTR 8**, as the case may be, by the deductor or the collector, as the case may be.

56. It has been reported that, there are instances where taxes so deducted or collected is deposited under the wrong head (e.g. an amount deducted as Central tax is deposited as Integrated tax/State tax), thereby creating excess balance in the cash ledger of the deductor or the collector as the case may be. Doubts have been raised on the fate of this excess balance of TDS/TCS in the cash ledger of the deductor or the collector. It is clarified that such excess balance may be claimed by the tax deductor or the collector as the excess balance in electronic cash ledger. In this case, the common portal would debit the amount so claimed as refund. However, in case where tax deducted or collected in excess is also paid while discharging the liability in **FORM GSTR 7** or **FORM GSTR 8**, as the case may be, and the said amount has been credited to the electronic cash ledger of the deductee, the deductee can adjust the same while discharging his output liability or he can claim refund of the same under the category "refund of excess balance in the electronic cash ledger".

Debit of electronic credit ledger using FORM GST DRC-03

57. Various representations have been received seeking clarifications on certain refund related issues, the solutions to which involve debiting the electronic credit ledger using **FORM GST DRC-03**. These issues are clarified as under:

Sl. No.	Issue	Clarification
1	Certain registered persons have reversed, through return in **FORM GSTR-3B** filed for the month of August, 2018 or for a subsequent month, the accumulated input tax credit (ITC) required to be lapsed in terms of notification No. 20/2018-Central Tax (Rate) dated 26.07.2018 read with circular No. 56/30/2018-GST dated 24.08.2018 (hereinafter referred to as the "said notification"). Some of these registered persons, who have attempted to claim refund of accumulated ITC on account of inverted tax structure for the same period in which the ITC required to be lapsed in terms of the said notification has been reversed, are not able to claim refund of accumulated ITC to the extent to which they are so eligible. This is because of a validation check on the common portal which prevents the value of input tax credit in Statement 1A of **FORM GST RFD-01A**from being higher than the amount of ITC availed in **FORM GSTR-3B** of the relevant period minus the value of ITC reversed in the same period. This results in registered persons being unable to claim the full amount of refund of accumulated ITC on account of inverted tax structure to which they might be otherwise eligible. What is the solution to this problem?	a) As a one-time measure to resolve this issue, refund of accumulated ITC on account of inverted tax structure, for the period(s) in which there is reversal of the ITC required to be lapsed in terms of the said notification, is to be claimed under the category "any other" instead of under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure" in **FORM GST RFD-01A**. It is emphasized that this application for refund should relate to the same tax period in which such reversal has been made. b) The application shall be accompanied by all statements, declarations, undertakings and other documents which are statutorily required to be submitted with a "refund claim of unutilized ITC on account of accumulation due to inverted tax structure". On receiving the said application, the proper officer shall himself calculate the refund amount admissible as per rule 89(5) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules"), in the manner detailed in **para 37** above. After calculating the admissible refund amount, as described above, and scrutinizing the application

Sl. No.	Issue	Clarification
		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 taxpayer, in writing, to debit the said amount from his 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**. c) All refund applications for unutilized ITC on account of accumulation due to inverted tax structure for subsequent tax period(s) shall be filed in **FORM GST RFD-01** under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure".
2	The clarification at Sl. No. 1 above applies to registered persons who have already reversed the ITC required to be lapsed in terms of the said notification through return in **FORM GSTR-3B**. What about those registered persons who are yet to perform this reversal?	It is hereby clarified that all those registered persons required to make the reversal in terms of the said notification and who have not yet done so, may reverse the said amount through **FORM GST DRC-03** instead of through **FORM GSTR-3B**.
3	What shall be the consequence if any registered person reverses the amount of credit to be lapsed, in terms the said notification, through the return in **FORM GSTR-3B** for any month subsequent to August, 2018 or through **FORM GST DRC-03** subsequent to the due date of filing of the return in **FORM GSTR-3B** for the month of August, 2018?	a) As the registered person has reversed the amount of credit to be lapsed in the return in **FORM GSTR-3B** for a month subsequent to the month of August, 2018 or through **FORM GST DRC-03** subsequent to the due date of filing of the return in **FORM GSTR-3B** for the month of August, 2018, he shall be liable to pay interest under sub-section (1) of section 50

Sl. No.	Issue	Clarification
		of the CGST Act on the amount which has been reversed belatedly. Such interest shall be calculated starting from the due date of filing of return in **FORM GSTR-3B** for the month of August, 2018 till the date of reversal of said amount through **FORM GSTR-3B** or through **FORM GST DRC-03**, as the case may be. b) The registered person who has reversed the amount of credit to be lapsed in the return in **FORM GSTR-3B** for any month subsequent to August, 2018 or through **FORM GST DRC-03** subsequent to the due date of filing of the return in **FORM GSTR-3B** for the month of August, 2018 would remain eligible to claim refund of unutilized ITC on account of accumulation due to inverted tax structure w.e.f. 01.08.2018. However, such refund shall be granted only after the reversal of the amount of credit to be lapsed, either through **FORM GSTR-3B** or **FORM GST DRC-03,** along with payment of interest, as applicable.
4	How should a merchant exporter claim refund of input tax credit availed on supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017,	a) Rule 89(4B) of the CGST Rules provides that where the person claiming refund of unutilized input tax credit on account of zero-rated supplies without payment of tax has received supplies on which the supplier has availed the benefit of the said notifications, the refund of input tax credit, availed in respect of such inputs received under the said notifications for export of goods, shall be granted. b) This refund of accumulated ITC under rule 89(4B) of the CGST Rules shall

Sl. No.	Issue	Clarification
	published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321(E), dated the 23rd October, 2017 (hereinafter referred to as the "said notifications")?	be applied under the category "any other" instead of under the category "refund of unutilized ITC on account of exports without payment of tax" in **FORM GST RFD-01** and shall be accompanied by all supporting documents required for substantiating the refund claim under the category "refund of unutilized ITC on account of exports without payment of tax". After scrutinizing 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 taxpayer, in writing, to debit the said amount from his 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**.

Refund of Integrated Tax paid on Exports

58. The refund of Integrated tax paid on goods exported out of India is governed by rule 96 of the CGST Rules. The shipping bill filed by an exporter is deemed to be an application for refund in such cases, but the same is deemed to have been filed only when the export manifest or export report is filed and the applicant has filed the return in **FORM GSTR-3B** for the relevant period duly indicating the integrated tax paid on goods exported in Table 3.1(b) of **FORM-GSTR-3B** . In addition, the exporter is expected to furnish the details of the exported goods in Table 6A of **FORM GSTR-1** of the relevant period. Only where the common portal is able to validate the consistency of the details so entered by the applicant, the relevant information regarding the refund claim is forwarded to Customs Systems. Upon receipt of the information from the common portal regarding furnishing of these details, the Customs Systems processes the claim for refund and an amount equal to the Integrated tax paid in respect of such export is electronically credited to the bank account of the applicant.

Clarifications on other issues

59. Notification No. 40/2017 – Central Tax (Rate) and notification No. 41/2017 – Integrated Tax (Rate) both dated 23.10.2017 provide for supplies for exports at a concessional rate of 0.05% and 0.1% respectively, subject to certain conditions specified in the said notifications. It is clarified that the benefit of supplies at concessional rate is subject to certain conditions and the said benefit is optional. The option may or may not be availed by the supplier and / or the recipient and the goods may be procured at the normal applicable tax rate. It is also clarified that the exporter will be eligible to take credit of the tax @ 0.05% / 0.1% paid by him. The supplier who supplies goods at the concessional rate is also eligible for refund on account of inverted tax structure as per the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act. It may also be noted that the exporter of such goods can export the goods only under LUT / bond and cannot export on payment of Integrated tax.

60. Sub-section (14) of section 54 of the CGST Act provides that no refund under subsection (5) or sub-section (6) of section 54 of the CGST Act shall be paid to an applicant, if the amount is less than one thousand rupees. In this regard, it is clarified that the limit of rupees one thousand shall be applied for each tax head separately and not cumulatively.

61. Presently, ITC is reflected in the electronic credit ledger on the basis of the amount of the ITC availed on self-declaration basis in **FORM GSTR-3B** for a particular tax period. It may happen that the goods purchased against a particular tax invoice issued in a particular month, say August 2018, may be declared in the **FORM GSTR-3B** filed for a subsequent month, say September 2018. This is inevitable in cases where the supplier raises an invoice, say in August, 2018, and the goods reach the recipient's premises in September, 2018. Since GST law mandates that ITC can be availed only after the goods have been received, the recipient can only avail the ITC on such goods in the **FORM GSTR-3B** filed for the month of September, 2018. However, it has been reported that tax authorities are excluding such invoices from the calculation of refund of unutilized ITC filed for the month of September, 2018. In this regard, it is clarified that "Net ITC" as defined in rule 89(4) of the CGST Rules means input tax credit availed on inputs and input services during the relevant period. Relevant period means the period for which the refund claim has been filed. Input tax credit can be said to have been "availed" when it is entered into the electronic credit ledger of the registered person. Under the current dispensation, this happens when the said taxable person files his/her monthly return in **FORM GSTR-3B**. Further, section 16(4) of the CGST Act stipulates that ITC may be claimed on or before the due date of filing of the return for the month of September following the financial year to which the invoice pertains or the date of filing of annual return, whichever is earlier. Therefore, the input tax credit of invoices issued in August, 2019, "availed" in September, 2019 cannot be excluded from the calculation of the refund amount for the month of September, 2019.

62. It has been represented that on certain occasions, departmental officers do not consider ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, as part of Net ITC on the grounds that these are not directly consumed in the

manufacturing process and therefore, do not qualify as input. There are also instances where stores and spares charged to revenue are considered as capital goods and therefore the ITC availed on them is not included in Net ITC, even though the value of these goods has not been capitalized in his books of account by the applicant. It is clarified that the ITC of the GST paid on inputs, including inward supplies of stores and spares, packing materials etc., shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the CGST Act. Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.

63. It is requested that suitable trade notices may be issued to publicize the contents of this circular. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Yogendra Garg)
Principal Commissioner
y.garg@nic.in

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Annexure-A

List of all statements/declarations/undertakings/certificates and other supporting documents to be provided along with the refund application

Sl. No.	Type of Refund	Declaration/Statement/Undertaking/Certificates to be filled online	Supporting documents to be additionally uploaded
1	Refund of unutilized ITC on account of exports without payment of tax	Declaration under second and third proviso to section 54(3)	Copy of GSTR-2A of the relevant period
		Undertaking in relation to sections 16(2)(c) and section 42(2)	Statement of invoices (Annexure-B)
		Statement 3 under rule 89(2)(b) and rule 89(2)(c)	Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period
		Statement 3A under rule 89(4)	BRC/FIRC in case of export of services and shipping bill (only in case of exports made through non-EDI ports) in case of goods
2	Refund of tax paid on export of services made with payment of tax	Declaration under second and third proviso to section 54(3)	BRC/FIRC /any other document indicating the receipt of sale proceeds of services
		Undertaking in relation to sections 16(2)(c) and section 42(2)	Copy of GSTR-2A of the relevant period
		Statement 2 under rule 89(2)(c)	Statement of invoices (Annexure-B)
			Self-certified copies of invoices entered in Annexure-A whose details are not found in GSTR-2A of the relevant period
			Self-declaration regarding non-prosecution under sub-rule (1) of rule 91 of the CGST Rules for availing provisional refund
3	Refund of unutilized ITC on account of Supplies made to SEZ units/developer without payment of tax	Declaration under third proviso to section 54(3)	Copy of GSTR-2A of the relevant period
		Statement 5 under rule 89(2)(d) and rule 89(2)(e)	Statement of invoices (Annexure-B)
		Statement 5A under rule 89(4)	Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period
		Declaration under rule 89(2)(f)	Endorsement(s) from the specified officer of the SEZ regarding receipt of goods/services for authorized operations under second proviso to rule 89(1)
		Undertaking in relation to sections 16(2)(c) and section 42(2)	
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	
4	Refund of tax paid on supplies made to SEZ	Declaration under second and third proviso to section 54(3)	Endorsement(s) from the specified officer of the SEZ regarding receipt of goods/services for authorized operations under second proviso to rule 89(1)

Sl. No.	Type of Refund	Declaration/Statement/Undertaking/Certificates to be filled online	Supporting documents to be additionally uploaded
	units/developer with payment of tax	Declaration under rule 89(2)(f)	Self-certified copies of invoices entered in Annexure-A whose details are not found in GSTR-2A of the relevant period
		Statement 4 under rule 89(2)(d) and rule 89(2)(e)	Self-declaration regarding non-prosecution under sub-rule (1) of rule 91 of the CGST Rules for availing provisional refund
		Undertaking in relation to sections 16(2)(c) and section 42(2)	
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	
5	Refund of ITC unutilized on account of accumulation due to inverted tax structure	Declaration under second and third proviso to section 54(3)	Copy of GSTR-2A of the relevant period
		Declaration under section 54(3)(ii)	Statement of invoices (Annexure-B)
		Undertaking in relation to sections 16(2)(c) and section 42(2)	Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period
		Statement 1 under rule 89(5)	
		Statement 1A under rule 89(2)(h)	
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	
6	Refund to supplier of tax paid on deemed export supplies	Statement 5(B) under rule 89(2)(g)	Documents required under Notification No. 49/2017-Central Tax dated 18.10.2017 and Circular No. 14/14/2017-GST dated 06.11.2017
		Declaration under rule 89(2)(g)	
		Undertaking in relation to sections 16(2)(c) and section 42(2)	
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	
7	Refund to recipient of tax paid on deemed export supplies	Statement 5(B) under rule 89(2)(g)	Documents required under Circular No. 14/14/2017-GST dated 06.11.2017
		Declaration under rule 89(2)(g)	
		Undertaking in relation to sections 16(2)(c) and section 42(2)	

Sl. No.	Type of Refund	Declaration/Statement/Undertaking/Certificates to be filled online	Supporting documents to be additionally uploaded
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	
8	Refund of excess payment of tax	Statement 7 under rule 89(2)(k)	
		Undertaking in relation to sections 16(2)(c) and section 42(2)	
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	
9	Refund of tax paid on intra-state supply which is subsequently held to be an inter-state supply and vice versa	Statement 6 under rule 89(2)(j)	
		Undertaking in relation to sections 16(2)(c) and section 42(2)	
10	Refund on account of assessment / provisional assessment / appeal / any other order	Undertaking in relation to sections 16(2)(c) and section 42(2)	Reference number of the order and a copy of the Assessment / Provisional Assessment / Appeal / Any Other Order
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	Reference number/proof of payment of pre-deposit made earlier for which refund is being claimed
11	Refund on account of any other ground or reason	Undertaking in relation to sections 16(2)(c) and section 42(2)	Documents in support of the claim
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	

Annexure-B

Statement of invoices to be submitted with application for refund of unutilized ITC

Sr. No.	GSTIN of the Supplier	Name of the Supplier	Invoice Details			Type	Central Tax	State Tax/ Union Territory Tax	Integrated Tax	Cess	Eligible for ITC	Amount of eligible ITC	Whether invoices included in GSTR-2A Y/N
			Invoice No.	**Date**	**Value**	Inputs/Input Services/capital goods					Yes/No/Partially		
1	2	3	4	5	6	7	8	9	10	11	12	13	14

F. No. 354/150/2019-TRU
Government of India
Ministry of Finance
Department of Revenue
Tax Research Unit
****

North Block, New Delhi,
Dated the 22nd November, 2019

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioner of Central Tax (All) / The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject– Clarification on scope of the notification entry at item (id), related to job work, under heading 9988 of Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017-reg.

I am directed to say that doubts have been raised with regard to scope of the notification entry at item (id) under heading 9988 of Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017 inserted with effect from 01-10-2019 to implement the recommendation of the GST Council to reduce rate of GST on all job work services, which earlier attracted 18 % rate, to 12%. It has been stated that the entry at item (id) under heading 9988 of Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017 inserted with effect from 01-10-2019, prescribes 12% GST rate for all services by way of job work. This makes the entry at item (iv) which covers "manufacturing services on physical inputs owned by others" with GST rate of 18%, redundant.

2. The matter has been examined. The entries at items (id) and (iv) under heading 9988 read as under:

(3)	(4)	(5)
(id) Services by way of job work other than (i), (ia), (ib) and (ic) above;	6	-
(iv) Manufacturing services on physical inputs (goods) owned by others, other than (i), (ia), (ib), (ic), (id), (ii), (iia) and (iii) above.	9	-

3. Job work has been defined in CGST Act as under.

*"Job work means any treatment or processing undertaken by a person on goods belonging to another **registered** person and the expression 'job worker' shall be construed accordingly."*

4. In view of the above, it may be seen that there is a clear demarcation between scope of the entries at item (id) and item (iv) under heading 9988 of Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017. Entry at item (id) covers only job work services as defined in section 2 (68) of CGST Act, 2017, that is, services by way of treatment or processing undertaken by a person on goods belonging to another **registered** person. On the other hand, the entry at item (iv) specifically excludes the services covered by entry at item (id), and therefore, covers only such services which are carried out on physical inputs (goods) which are owned by persons other than those registered under the CGST Act.

5. Difficulty if any, in the implementation of this Circular may be brought to the notice of the Board.

Yours Faithfully,

(Shashikant Mehta)
OSD, TRU
Email: shashikant.mehta@gov.in
Tel: 011 2309 5547

(VI) ADVANCE RULINGS

1. 18% GST on licensing services for right to use minerals during 07/2017 to 12/2018

Case Name : **In re M/s Penguin Trading and Agencies Limited (GST AAAR Odisha)**
Appeal Number : Order No. 03/ODISHA-AAAR/2019-20
Date of Judgement/Order : 05/11/2019

The Applicant has referred to Advance Ruling in the case of M/s Pioneer Partners, wherein the Haryana Authority for Advance Ruling held that "The services for the right to use minerals including its exploration and evaluation, as per Sr. No 257 of the annexure appended to Notification No 11/2017-CT (Rate) dtd. 28.06.2017 is included in group 99733 under heading 9973. Hence it attracts the same rate of tax as on supply of the like goods involving transfer of title in goods. The Applicant has also referred to Advance Ruling in the case of M/s NMDC limited, wherein the Chhattisgarh Authority for Advance Ruling held that "The royalty paid by M/s NMDC in respect of mining lease is classifiable under sub heading 997337; 'Licensing services for the right to use minerals including its exploration and evaluation covered under entry no 17 of Notification No 11/2017-CT (Rate) dtd. 28.06.2017 attracting GST at the rate as applicable for the supply of like goods involving transfer of title in goods, under reverse charge basis.
We are not inclined to follow the aforesaid rulings of AAR, since they have passed their rulings without properly appreciating the consequences of amendments made vide notification no. 27/2018-Central Tax (Rate) dated 31.12.2018. The said rulings were passed without taking into cognizance, proposal and decision of GST council, consequent upon which the said notification was issued. Therefore, we are of the firm view that the interpretation which defeats the intention of the legislature should be avoided.
In view of our aforementioned findings, we hereby order that licensing services for the right to use minerals including its exploration and evaluation received by the Applicant is taxable @ 18 % [9 % CGST and 9 % OGST] during 07/2017 to 12/2018. Thus, the reference from the Odisha Authority for Advance Ruling stands disposed of accordingly.

2. Fusible interlining cloth classifiable under Heading 5903: AAR West Bengal

Case Name : **In re Sadguru Seva Paridhan Pvt Ltd (AAR West Bengal)**
Appeal Number : Advance Ruling Order No. 33/WBAAR/2019-20
Date of Judgement/Order : 11/11/2019

Chapter Note 2(a)(4) to Chapter 59 says that fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments are excluded from Heading 5903 and are usually covered in Chapter 50 to 55, 58 or 60, depending on the materials used. At the same time, according to the Explanatory Notes to the HSN Code, textile fabrics which are spattered by spraying with visible

particles of thermoplastic material and are capable of providing a bond to other fabrics or materials on the application of heat and pressure are classifiable under Heading 5903. According to **Circular No. 433/66/98-CX-6 dated 27/11/1998** of CBEC, such classification should be treated as an exception to Chapter Note 2(a)(4) to Chapter 59. It appears from the production process described in para no. 3.2 that fusible interlining cloth satisfies the conditions for placing it in the category of the above exception.
Nowhere in its Application or submissions – written or oral – the Applicant takes the view that **Circular No. 433/66/98-CX-6 dated 27/11/1998** of CBEC has erred in treating fusible interlining cloth as a category of textile fabric that is spattered by spraying with visible particles of thermoplastic material and is capable of providing a bond to other fabrics or materials on the application of heat and pressure. In the absence of any such submission, it is reasonable to agree with the view expressed by CBEC in **Circular No. 433/66/98-CX-6 dated 27/11/1998** that fusible interlining cloth is classifiable under Heading 5903.

3. Supply of goods through PDS is not exempt: AAR West Bengal

Case Name : **In re Dipeet Agarwal (GST AAR West Bengal)**
Appeal Number : Advance Ruling Order No.31/WBAAR/2019-20
Date of Judgement/Order : 11/11/2019

Supply of goods through PDS is not exempt under **Notification No. 2/2017 – CT (Rate) dated 28/06/2017**, as amended from time to time (reference to which includes reference to State Notification No. 1126 – FT dated 28/06/2017) or any other notification. Activities or transactions of the Applicant are not included in Schedule III either. The Applicant is, therefore, liable to pay GST at the applicable rate on his supplies of goods through PDS.

4. Protein Powder with Vitamins and Minerals classifiable under HS code 3004

Case Name : **In re M/s Newtramax Healthcare (GST AAR Himachal Pradesh)**
Appeal Number : Order No. 30201-30203
Date of Judgement/Order : 15/11/2019

The applicant is a registered person engaged in manufacture and supply of Pharmaceutical formulations. He has obtained loan licence to manufacture for sale or distribution of drugs specified in schedule C and schedule C1 of the drugs and cosmetics Act, 1940.

RULING

We are of the considered opinion that all the goods being manufactured by the applicant which are mentioned (including the goods mentioned at Sr. No. 20 and 21) in the drug license issued to the applicant by the competent authority and have the labels as per the standards prescribed under the Drugs and Cosmetics Act, 1940 can be classified under HS code 3004.

5. GST Payable by security Agency on payment received for bonus of security personnel deployed

Case Name : **In re Ex-servicemen Resettlement Society (GST AAR West Bengal)**
Appeal Number : Order No. 35/WBAAR/2019-20
Date of Judgement/Order : 29/11/2019

Employer's contribution to EPF, ESI etc. and payment of Bonus at the Government approved rate are, therefore, components of the Applicant's expenditure. It is entitled to pass this liability to the recipient, who, in terms of the Agreement, is apparently ready to bear that liability. Such an agreement, however, does not create a master and servant relationship between the recipient of the service and the security personnel [Security Agencies Association vs Union of India; (2013) 58 VST 295 (Kerala)]. Payment received from the recipient on account of the bonus paid or payable to the persons deployed as security personnel is not, therefore, guided by Para 1 of Schedule III. The Applicant is, therefore, liable to pay GST on the portion of the payment received on account of the bonus paid or payable to the persons it deploys as security personnel.

(VII) COURT ORDERS/ JUDGEMENTS

1. HC allows revision of claim of Transitional Credit (Form TRAN-1)

Case Name : **Adfert Technologies Pvt. Ltd. Vs Union of India & Ors. (Punjab & Haryana High Court)**
Appeal Number : CWP No. 30949 of 2018
Date of Judgement/Order : 04/11/2019

We find that on the introduction of GST regime, Government granted opportunity to registered persons to carry forward unutilized credit of duties/taxes paid under different erstwhile taxing statues. GST is an electronic based tax regime and most of people of India are not well conversant with electronic mechanism. Most of us are not able to load simple forms electronically whereas there were a number of steps and columns in TRAN-1 forms thus possibility of mistake cannot be ruled out. Various reasons assigned by Petitioners seem to be plausible and we find ourselves in consonance with the argument of Petitioners that unutilized credit arising on account of duty/tax paid under erstwhile Acts is vested right which cannot be taken away on procedural or technical grounds. The Petitioners who were registered under Central Excise Act or VAT Act must be filing their returns and it is one of the requirements of Section 140 of CGST Act, 2017 to carry forward unutilized credit. The Respondent authorities were having complete record of already registered persons and at present they are free to verify fact and figures of any Petitioner thus inspite of being aware of complete facts and figures, the Respondent cannot deprive Petitioners from their valuable right of credit.

We are not in agreement with the cited judgment by the Revenue of Hon'ble Gujrat High Court in **Willowood Chemicals case (*Supra***) as the Gujrat High Court itself in subsequent judgments and Delhi High Court in a number of judgments (as noticed hereinabove) have permitted petitioners (therein) to file TRAN-I Forms even after 27.12.2017. We also find that the Sub Rule (1A) added/inserted to Rule 117 w.e.f. 10.09.2018 has not been noticed in the said cited judgment by the Revenue, which goes to the roots of findings recorded by the Hon'ble Gujrat High Court. Thus all the petitions deserve to succeed and are hereby **allowed**.

Accordingly, we direct Respondents to permit the Petitioners to file or revise where already filed incorrect TRAN-1 either electronically or manually statutory Form(s) TRAN-1 on or before 30 November 2019. The Respondents are at liberty to verify genuineness of claim of Petitioners but nobody shall be denied to carry forward legitimate claim of CENVAT/ITC on the ground of non-filing of TRAN-I by 27.12.2017.

2. Open GST Portal to allow Form TRAN-1 filing electronically or Accept Manually: HC

Case Name : **M/s Arora & Co Vs Union of India & Ors. (Delhi High Court)**
Appeal Number : W.P.(C) 6331/2019 & CM No. 26983/2019
Date of Judgement/Order : 06/11/2019

The nature of reliefs sought in the present petition and the facts disclosed herein is fully covered by the decision of this Court in ***M/s Blue Bird Pure Pvt. Ltd*** (supra) decided on 22.07.2019, wherein the Court had directed the respondents to either open the online portal or to enable the petitioner to file the rectified TRAN-1 electronically or accept the same manually. The said decision has also been followed by us in ***M/s Aadinath Industries & Anr vs Union of India***, **P. (C) 9775/2019**, decided on 20.09.2019; ***Lease Plan India Private Limited vs Government of National Capital Territory of Delhi and Ors***, **W.P.(C) 3309/2019**, decided on 13.09.2019; **Godrej & Boyce Mfg. Co. Ltd. *Through its Branch Commercial Manager vs Union of India,* W.P.(C) 8075/2019, decided on 15.10.2019.**
The factual position in the present case is not any different and thus, we allow the present petition and direct the respondents to either open the online portal so as to enable the petitioner to file the Form TRAN-1 electronically, or to accept the same manually on or before 20.11.2019.

3. Presence of lawyers cannot be allowed during examination by GST officers

Case Name : **Sudhir Kumar Aggarwal Vs Directorate General of GST Intelligence (Delhi High Court)**
Appeal Number : W.P.(CRL) 2686/2019
Date of Judgement/Order : 06/11/2019

Delhi High Court has held that presence of lawyer cannot be allowed at the time of questioning or examination of a person by the officers under the GST provisions. The Court observed that officers under GST law are not police officers and have been conferred power to summon any person whose attendance they consider necessary to give evidence or to produce a document . Regarding the apprehensions of petitioner being physically assaulted or manhandled, the Court was of the opinion that it is well settled law that no investigation officer has a right to use any method which is not approved by law to extract information from a witness/suspect during examination. Supreme Court's decision in Pool Pandi v. Superintendent, Central Excise, was relied upon.

4. Mere admitted liability not enough to invoke Section 79 provision of CGST Act

Case Name : **M/s V.N. Mehta & Company Vs Assistant Commissioner (Madras High Court)**
Appeal Number : WP No. 26187 of 2019
Date of Judgement/Order : 08/11/2019

It is seen that except issuing the proceedings under Section 79, no other proceedings was ever issued against the petitioner determining their tax etc., liability, amounting to Rs.53,28,645/- as claimed in the impugned proceedings. Section 79 of the CGST Act, 2017 contemplates that any amount payable by a person to the Government under any of the provisions of the said Act or the Rules made there under is not paid, the

proper officer shall proceed to recover the amount by one or more of the modes referred to therein. Therefore, it is evident that the term “amount payable by a person” is to mean that such liability arises only after determination of such amount in a manner known to law.

It is evident that the statement said to have been given on 19.06.2019 claims to be so called admission by the petitioner, is not available before the Revenue anymore and on the other hand, it is for them to determine the tax liability by resorting to the procedures in accordance with law, instead of issuing the impugned proceedings straightaway under Section 79 based on the so called admission which is subsequently retracted. Therefore, I find that the impugned proceedings issued under Section 79 is not sustainable.

No doubt, the first respondent sought to rely upon Section 83 to contend that the first respondent is entitled to make the provisional attachment. Perusal of Section 83 would show that the such provisional attachment can be resorted to only when proceedings are pending under any of the provisions viz., Section 62, 63, 64, 67, 73 and 74.

In this case, as admitted by the learned counsel appearing for the first respondent, no such proceedings are pending as on today under any of the above provisions. Therefore, I am of the view that Section 83 also would not come to the rescue of the respondent to sustain the impugned proceedings. Thus, I find that the impugned proceedings are not maintainable. Accordingly, the writ petition is allowed and the impugned proceedings is set aside.

Recovery Proceedings under Section 79 cannot be initiated directly without determination of tax liability

The present writ challenges the proceedings initiated against the petitioner directing recovery of certain amount from the account maintained by the petitioner. Such recovery was ordered on account of tax, cess, interest & penalty payable by the petitioner as it had failed to pay the same. The petitioner claimed that the proceedings had been initiated straightaway, without framing assessment or initiating proceedings to determine the tax, cess, interest or penalty as claimed. It was claimed that Section 79 of the CGST Act cannot be invoked to recover the sum if such sum is an arrear payable by the petitioner. It was also claimed that though a statement had been obtained from the petitioner to the effect that it had availed ITC on the strength of invoices issued by fake units, such statement had later been retracted.

Decision of the High Court

It is seen that except issuing proceedings u/s 79, no other proceedings were ever initiated against the petitioner determining its tax liability as was sought to be recovered – Section 79 of the Act contemplates that any amount payable by a person to the Govt under any of the provisions of the Act and Rules made there under is not paid, the proper officer could recover the amount by one or more modes. Hence, it is evident that the term amount payable by a person is to mean that such liability arises only after determining such amount in a manner known to law. In this case, the relevant authority relied on the so-called admission made by the petitioner in its statement. Considering relevant excerpts from the petitioner’s statement, it is seen that some parts of the statement contradict each other.

Besides, the statement was retracted as well. Hence such statement which purports to be an admission is not available to the Revenue – It is also for the Revenue to determine the tax liability by resorting to procedures as per law rather than issuing the proceedings straightaway u/s 79, based on such statement later retracted. Hence the proceedings initiated u/s 79 is unsustainable. Moreover, provisional attachment u/s 83 can be resorted to only if proceedings are pending u/s 62, 63, 64, 67, 73 & 74. No proceedings are pending under any such provisions. Hence Section 83 is of no avail to the Revenue. Thus the proceedings are not maintainable and merit being set aside.

5. Arbitrary and illegal detention under GST not to be resorted to: HC

Case Name : **Alfa Group Vs. The Assistant State Tax Officer (Kerala High Court)**
Appeal Number : WP(C). No. 30798 of 2019
Date of Judgement/Order : 18/11/2019

There is no provision under the GST Act which mandates that the goods shall not be sold at prices below the MRP declared thereon. Further, there is nothing in Ext.P2 order that shows that, on account of the alleged wrong classification of the goods there was any difference in the rate of tax that was adopted by the assessee.
In my view when the **statutory scheme of the GST Act is such as to facilitate a free movement of goods, after self assessment by the assessees concerned, the respondents cannot resort to an arbitrary and statutorily unwarranted detention of goods in the course of transportation. Such action on the part of department officers can erode public confidence in the system of tax administration in our country and, as a consequence, the country's economy itself.**
Under such circumstances, I quash Ext.P2 detention order and direct the respondents to forthwith release the goods belonging to the petitioner on the petitioner producing a copy of this judgment before the said authority. I also direct the Commissioner, Kerala State Taxes Department, Thiruvananthapuram to issue suitable instructions to the field formations so that such unwarranted detentions are not resorted to in future.

6. Enable assessee to file rectified TRAN -1 Form: Kerala HC to GST Dept

Case Name : **The South Indian Bank Limited Vs Union of India (Kerala High Court)**
Appeal Number : WP (C).No. 21008 of 2019
Date of Judgement/Order : 18/11/2019

It is not in dispute in the instant case that the input tax credit accumulated in the account of the petitioner was validly taken during the pre-GST period. The returns filed by the petitioner during the relevant period have all been accepted by the revenue authorities and, in the absence of a requirement to migrate to the GST regime, the petitioner would have been able to distribute the credit to its various branches through the input service distribution mechanism that was in place prior to the introduction of the GST Act. Although the petitioner has since obtained a registration as an input service distributor under the GST Act, the non-availability of the details of the purchase invoices, on the strength of which the input credit was availed, virtually prevents the

petitioner from pursuing the Form GST TRAN -1 already filed by it before the 5 respondent. I note, however, that if the petitioner is permitted to file individual Form GST TRAN-1 in respect of each of the recipient branches, then the accumulated credit could be distributed to its various branches without having to furnish details of the invoices, on the strength of which the credit was taken during the relevant time before the introduction of GST. In effect, this procedure would facilitate the transfer of credit in a situation where the accumulation of credit as also the entitlement of the petitioner to distribute the credit to its various branches is not in dispute. I also take note of the decision of the Delhi High Court in **Blue Bird Pure Pvt.Ltd. V. Union of India and Others [(2019) 68 GSTR 340(Delhi)],** where, taking note of the contention of the respondents regarding the technical difficulty in permitting assessees to transfer accumulated credit to the GST regime, it was observed that the Department should either open the online portal so as to enable the assessee to file rectified TRAN -1 Form electronically or accept manually filed TRAN-1 Form with correction before a specified date so as to render justice to the assessees.

In the instant case, as already noted, the availlment of credit by the petitioner, and its entitlement to distribute the credit to its various branches is not disputed. I am therefore of the view that the 5 respondent should either permit the petitioner to file a rectified TRAN-1 Form electronically in favour of each of its branches in the country, or accept manually filed TRAN -1 Form with the appropriate corrections, on or before 30.12.2019. The time limit specified above shall be strictly adhered to, so that the petitioner will be able to distribute the accumulated credit to its branches immediately thereafter.

7. Form GST TRAN-1 can be revised only once within the specified period

Case Name : **Ingersoll-Rand Technologies And Services Private Limited Vs UOI (Allahabad High Court)**
Appeal Number : Writ Tax No. 1120 of 2019
Date of Judgement/Order : 21/11/2019

A conjoint reading of the Rule 117 and 120A of **CGST Rules, 2017** clearly reveals that every registered person who has submitted a declaration electronically in FORM G.S.T. T.R.A.N-1 within the period specified in Rule 117 or Rule 118 or Rule 119 or Rule 120 is allowed to revise such declaration once and submit the revised declaration in FORM G.S.T. T.R.A.N-1 electronically on the common portal, **"within the period specified in the said rules or such further period as may be extended by the Commissioner in this behalf."** This further period – as may be extended by the Commissioner – which is provided under Rule 120-A, therefore, cannot go beyond the time-frame provided under Rule 117 of the Uttar Pradesh Goods & Services Tax Rules, 2017. The period of extension has been statutorily circumscribed at 90 days and that too is possible only on the recommendation of the Council.

If we are to assume that the Commissioner while exercising his powers under Rule 120-A of the Uttar Pradesh Goods & Services Tax Rules, 2017 can extend the time period for the purpose of filing of a revised declaration by a registered person in FORM

G.S.T. T.R.A.N-1 for an unlimited or an indefinite period, it would simply mean that any registered person can avail the benefit of filing a revised declaration in FORM G.S.T. T.R.A.N-1 for an unlimited or indefinite period of time after submitting a declaration electronically in FORM G.S.T. T.R.A.N- 1 under Rule 117 of the Uttar Pradesh Goods & Services Tax Rules, 2017. That surely could not have been the purpose and intention of the legislature.

In such circumstances as stated above, a writ in the nature of mandamus, as prayed for, cannot be granted by this Court. However, it is open to the Council to take a decision in the matter in the light of the writ petitioner's letter dated 28th March, 2019.

8. GSTR-1 Return filing amounts to determination of tax : HC

Case Name : **Kabeer Reality Private Limited Vs Union of India (Madhya Pradesh HC)**
Appeal Number : Writ Petition No. 15645/2019
Date of Judgement/Order : 21/11/2019

The petitioner has certainly not paid the GST. It is noteworthy to mention that GSTR 1 is declaration of tax liability and GSTR-3B is evidence of actual payment. The petitioner has stated that GSTR-1 cannot be termed or classified as self assessed liability, it is only a declaration made for limited purpose. The said issued stands concluded on account of notification dated 09.10.2019 bearing **No. 49/2019**, wherein an amendment has been made in Rule 61 of the GST Rules with retrospective effect and filing of GSTR-3B has been made compulsory

Statutory provision of law makes it very clear that it was mandatory for the petitioner to file GSTR-3B Return. Not only this, bare perusal of the statutory provision as contained under Section 79 of the Act of 2017 and procedure adopted by the respondents reveal that the procedure contemplated under Chapter 15 of the Act of 2017 has been followed as Section 79 (1)(c) falls in Chapter 15 of the Act of 2017 and the same has rightly been invoked.

Notices were issued to the tenants, however, notice sent to the petitioner was received unserved and the amount is payable by the petitioner to the Government under the provision of Act of 2017 and respondents have rightly proceeded ahead in the matter by taking appropriate steps for recovering the government dues. The petitioner has contended that in absence of tax determination under Section 73, no recovery could have been ordered in the manner and method it has been done in the present case.

This Court is of the considered opinion that the tax determination has already been done in the present case, as the petitioner itself has quantified its tax liability under the GSTR-1 Returns. The petitioner's contention that in absence of determination of tax under Section 73 no recovery can be made, is unfounded and in fact Section 73 has got no application in the facts and circumstances of the present case.

It has also been contended by the petitioner that the order /notice dated 08.07.2019 is violative of Section 78 of the Act of 2017. The petitioner's contention is certainly

erroneous, as there is no dispute about the quantum of tax liability, action is not being taken in furtherance of any order (adjudicating order). Revenue is simply pressing upon for actual payment as being declared by the petitioner itself under GSTR-1. The petitioner has to paythe tax liability assessed by himself by filing appropriate form / challan, which he has not complied with, and thus, the claim of the petitioner that Section 79 of the Act of 2017 can be invoked only after Section 78 of the Act of 2017, is erroneous.

In the present case, there is no necessity to determine the taxable person, as the liability has been self assessed by the petitioner itself. So far as the determination of taxable person in the present case is concerned, the case of revenue rests on the GSTR declaration made by the petitioner itself, and therefore, there was no need of determination of taxable person. Since the liability has already been quantified by the petitioner itself, only attempts are being made for recovering revenue dues under Section 79 (1)(c) of the Act of 2017. It was the petitioner itself, who did not receive the notice issued by the Department, and now, at this juncture cannot blame the Department.

The petitioner appears to be a chronic defaulter. Earlier also on 17.03.2018, the petitioner has requested the Commissioner for grant of installment, the same document is also on record and the the respondents have rightly issued notice by taking shelter of Section 79 (1) (c) of the Act of 2017 to the tenants of the petitioner.

In the considered opinion of this Court, the tax is being recovered from the petitioner after following due process of law. The petitioner cannot escape his liability of payment of GST under Act of 2017, especially when he has filed GSTR-1 and has quantified the tax payable by him while submitting the GSTR-1.
This Court does not find any reason to interfere with the action taken by the respondents / Department in the matter.

9. HC allows GST TRAN-1 filing as system of Taxpayer was down

Case Name : **Mrinal Ghosh Vs Union of India & Ors (Calcutta High Court)**
Appeal Number : W.P. No. 9821(W) of 2018
Date of Judgement/Order : 21/11/2019

On facts, case of petitioner is that it could not attempt to file GST TRAN –1 form on GST portal because his own system was down. On 9t January, 2018, deadline having expired on 27 December, 2017, petitioner said so to Revenue. Petitioner then has obtained a report, upon forensic examination of his system, having provided password, which report confirms petitioner’s contention. Less said about the instructions, in context of such facts, as being removed from them, the better.

The writ petition is allowed. Concerned respondents in Revenue will allow petitioner to file GST TRAN – 1 form to enable him to obtain credit accrued in his favour prior to the transition, on his stock as on 30th June, 2017.

10. HC should not have entertained writ challenging Goods Seized under GST: SC

Case Name : **State of Uttar Pradesh and Ors. Vs Kay Pan Fragrance Pvt. Ltd. (Supreme Court of India)**
Appeal Number : Civil Appeal No. 8941/2019
Date of Judgement/Order : 22/11/2019

In the first place, we find force in the submission canvassed by the State that a complete mechanism is predicated in the Act and the Rules for release and disposal of the seized goods and for which reason, the High Court ought to have been loathe to entertain the Writ Petitions questioning the seizure of goods and to issue directions for its release.

For the sake of consistency, we have no hesitation in observing that the High Court in all such cases ought to have relegated the assessees before the appropriate Authority for complying with the procedure prescribed in Section 67 of the Act read with Rules as applicable for release (including provisional release) of seized goods.

There is no reason why any other indulgence need be shown to the assessees, who happen to be the owners of the seized goods. They must take recourse to the mechanism already provided for in the Act and the Rules for release, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum (even upto the total value of goods involved), respectively, as may be prescribed or on payment of applicable taxes, interest and penalty payable, as the case may be, as predicated in Section 67 (6) of the Act. In the interim orders passed by the High Court which are subject matter of assail before this Court, the High Court has erroneously extricated the assessees concerned from paying the applicable tax amount in cash, which is contrary to the said provision.

In our opinion, therefore, the orders passed by the High Court which are contrary to the stated provisions shall not be given effect to by the authorities. Instead, the authorities shall process the claims of the concerned assessee afresh as per the express stipulations in Section 67 of the Act read with the relevant rules in that regard. In terms of this order, the competent authority shall call upon every assessee to complete the formality strictly as per the requirements of the stated provisions disregarding the order passed by the High Court in his case, if the same deviates from the statutory compliances. That be done within four weeks without any exception.

We reiterate that any order passed by the High Court which is contrary to the stated provisions need not be given effect to in respect of all the cases referred in the affidavit by the State Government before this Court and fresh cases which may have been filed or likely to be filed before the High Court in connection with the subject matter of these appeals, by all concerned and are deemed to have been set aside/modified in terms of this order.

In view of this order, all the Writ Petitions pending before the High Court, list whereof has been furnished in the affidavit are deemed to have been disposed of accordingly.

We have passed this common order to cover all cases of seizure during the relevant period, to obviate inconsistency in application of Law and also to do away with multiple appeals required to be filed by the State/ assessee to assail the unstatable orders/directions passed by the High Court in subject writ petition(s) referred to in the affidavit filed by the State before this Court.

Accordingly, the appeals are disposed of in the afore -stated terms. All pending applications are also disposed of.

11. HC explains Law of search & seizure of Goods under GST, Customs Act & CrPC

Case Name : **Md. Tajal Hussain Vs State of Assam (Guwahati High Court)**
Appeal Number : Case No. : WA 297/2019
Date of Judgement/Order : 25/11/2019

The appellant took the stand that under Section 67 of the Assam Goods and Services Tax Act, 2017 (for short, AGST Act 2017), the search and seizure can be made only upon the proper officer, being not below the rank of Joint Commissioner, having reason to believe that tax input credit has been claimed in excess of the entitlement under the Act or there has been an evasion of tax payable under the Act. Accordingly, it was the contention that the search and seizure made by the police officials of the Jalukbari Police Station and then go ahead with the investigation and thereafter lodge an ejahar alleging evasion of GST dues, would be an aberration of the established procedure of law.

The learned Single Judge in the judgment dated 25.10.2019 arrived at its conclusion that the police authorities of Assam would have the jurisdiction to investigate certain offences under the Indian Penal Code, if made out, even though such offences may also be offences under the GST Acts or the Customs Act subject to the provisions of Section 26 of the General Clauses Act that no one will be liable to be punished twice for the same offence. The learned Single Judge was also of the view that although the trucks containing the areca nuts were seized essentially for fraud and forgery, their investigative role would primarily be confined to forgery of documents and cannot investigate whether there was any violation of the Customs Act. Accordingly, it was held that as regards the violation of the Customs Act, it would be appropriate for the police to hand over the investigation to the Customs authority so far as it relates to the allegations of smuggling. Similarly for the violation of the taxation laws under the AGST Act, it was held that the police authorities would have no jurisdiction and power to investigate such violation and the same would be governed by the provisions of the GST Acts under which a separate procedure for investigation is provided for. However in paragraph-53 of the judgment it was also provided that even if the statutes permit independent and separate investigation, but if such investigations involved coercive actions, similar to as contemplated under the CrPC, the investigations ought to be undertaken simultaneously, or else there would be a distinct possibility of infraction of the fundamental rights under Articles 14, 21 and 22. Further, as the documents produced revealed the commission of the principal offence under the Customs Act, it would be appropriate to hand over the investigation to the authorities under the

customs department for further investigation under the Customs Act along with the seized goods and trucks. It was held that the initial seizure of the areca nuts and the trucks by the police authorities of Assam cannot be said to be without authority. Accordingly, it was concluded that no case for interference was made out for acceding to the prayer in the writ petitions for a declaration that the detention of the trucks containing the areca nuts was illegal and unsustainable.

Being aggrieved, the intra-court appeals have been preferred.

The core contention of Dr. Ashok Saraf, learned senior counsel for the appellants is that Section 67 of the GST Acts provides for the power of inspection, search and seizure for any claim for input tax credit in excess of the entitlements under the Act or for any contravention of the provisions of the Act or the Rules made thereunder to evade tax. In view of such specific provision for inspection, search and seizure and the further provisions in the Acts itself providing for the procedure to be followed by the authorities under the GST Act, the refusal of the learned Single Judge in the judgment dated 25.10.2019 to declare the detention and seizure to be illegal, in respect of the offences under the GST Acts would be unsustainable.

Similarly, for the alleged violation of the provisions under the Customs Act, Section 100 provides for the power to search the suspected persons and Section 110 provides for the power of seizure and confiscation of any goods that may be involved in such violations. Thereafter, the Customs Act itself provide for the complete procedure as to how the matter is to be proceeded with.

On behalf of the police authorities of Assam, it had been reiterated that the ejahar itself discloses certain offences of fraud and forgery under the Indian Penal Code and after the ejahar was lodged on 03.09.2019, the goods in question were seized under the law on 04.09.2019. It being so, no case has been made out by the appellants for a declaration that the detention and seizure of the trucks containing the areca nuts are liable to be declared to be illegal and unsustainable.

A reading of Section 67(1) shows that where the proper officer not below the rank of Joint Commissioner has reasons to believe that there is any violation or evasion of tax under the GST Acts, he may authorize in writing any other officer of the department to inspect any of the places of business of the taxable person. Under Section 67(2) where the proper officer either pursuant to an inspection carried out under Section 67(1) or otherwise has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under the Acts, are secreted in any place, he may authorize in writing any other officer to search and seize such goods, documents, books or things. Provisions of Section 67 of the AGST Act contains a clear provision that prior to any inspection, or as a matter prior to any search and seizure, a recording of reasons by the proper officer for such belief is a requirement of the law and only thereupon the process for search, seizure or confiscation can be undertaken. Both sections 100 and 101 of the Customs Act provide that if the proper officer or the officer of the Customs empowered by a general or a special order of the Principal Commissioner of Customs or Commissioner of Customs has reasons to believe that any person has secreted

about his person any of the goods or documents liable for confiscation, such officer may search that person. Upon such search, the person concerned may be arrested under Section 104 and the goods, documents, things etc may be seized under Section 110 of the Act or confiscated under Section 111.

A reading of Sections 100 and 101 of the Customs Act shows that if the proper officer or the empowered officer has reasons to believe that a person to whom the provision applies has secreted about his person any goods or documents liable for confiscation, a search may be conducted and pursuant thereto the subsequent actions be taken which may result in arrest, seizure or confiscation. Provisions of Section 100 and 101 of the Customs Act also contains a clear provision that prior to any search, arrest, seizure or confiscation, the proper officer or the empowered officer is required to have a reason to believe that the person concerned was involved in violation of any of the provisions of the Customs Act, and only upon the existence of such reasons to believe, the process for search, arrest, seizure or confiscation can be undertaken.

From the provisions of Section 67 of the AGST Act and 100 and 101 of the Customs Act, a process for search, seizure, confiscation etc for violating any of the provisions of the AGST Act or the Customs Act can only be initiated upon having reasons to believe by the proper or appropriate officer that a person concerned was involved in violation of any of the provisions of the GST Acts or the Customs Act.

In the instant case, the documents made available on record so far as it relates to violation of the provisions of the AGST Act are not being relied upon by the respondents to indicate any such violation of the provisions of the AGST Act. What is contended is that some such documents are either fraudulent or it contains forged signatures resulting in offences under Sections 120(B)/420/467/471 of the IPC.

Accordingly, we are of the view that if the authorities under the AGST Act of the State of Assam are of the view that the appellants are required to be proceeded with or prosecuted under the AGST Act, it would be appropriate to invoke the provisions of Section 67 of the AGST Act and proceed accordingly. But without invoking the provisions of Section 67 of the AGST Act and following the procedure prescribed therein, it would be inappropriate to allow the police authorities of Assam to continue with the detention and the seizure of the trucks containing the areca nuts on the plea that the appellants have violated some or any of the provisions under the AGST Act.

But again as per the order dated 03.09.2019, it is also the allegation that the appellants, or some of them, were involved in fraud and forgery as regards certain documents related to the GST. If the police authorities of Assam are of the view that the appellants are required to be proceeded with or prosecuted for such fraud or forgery simpliciter, which on its own may be an offence under Sections 120(B)/420/467/471 of the IPC, it would be for the police authorities to proceed against them strictly by following the required procedure prescribed under the CrPC and bring such investigation to its logical end.

But as regards the stand of the police authorities of Assam that they have the power to seize any property under Section 102 of the CrPC, it again has to be circumscribed

that any seizure effected by invoking Section 102(1) of the CrPC would have to be subjected to the procedure prescribed under Section 102(3), i.e. to forthwith submit a report of the seizure to the Magistrate having jurisdiction over the matter. Without such procedure being undertaken, any detention of the trucks containing the areca nuts and their resultant seizure would have to be said to be without authority and jurisdiction. In the event the seizures are being followed up with submission of reports to the Magistrate having jurisdiction, it would be subjected to the procedures under the CrPC, including that of Section 451.

12. Monitor Redressal of GSTN Network Grievances: HC instructs GSTN

Case Name : **Sales Tax Bar Association (Regd) & Anr. Vs Union of India & Ors. (Delhi High Court)**
Appeal Number : W.P. (C) 9575/2017 & C.M. No. 38987/2017
Date of Judgement/Order : 28/11/2019

Till the constitution of Public Grievance Committees (PGCs), we direct that the Chairman and the CEO, GSTN shall be responsible to monitor, and they shall ensure the rederessal of all grievances relating to the GSTN, including IT related grievances in the working of the GSTN network, and to comply with our orders, as well as the aspects on which agreements have been reached and assurances have been given by the respondents. A status report shall be filed by the Chairman and the CEO, GSTN on the next date with regard to the grievances tickets raised; grievances/tickets addressed and resolved, and; outstanding grievances/tickets.