

TAX FLASH NEWS

8 July 2022

Circulars to give effect to 47th GST Council decisions

The 47th GST Council meeting was held on 28-29 June 2022. Press release containing the major decision and the transactions for which clarification will be provided had been published earlier on 29 June 2022. Thereon, Central Government had issued notifications which comprised of measure for trade facilitation and Central Goods and Services Tax (Amendment) Rules, 2022. CBIC has now issued number of circulars to clarify various aspects of GST.

Gist of major clarifications

1. Furnishing of proper information in Form GSTR-3B¹

a. Inter-State supplies

- Details of inter-State supplies to unregistered persons, composition taxable persons and UIN holders shall be reported place of supply-wise in Table 3.2.
- Amendments to supplies rectified in Form GSTR-1 should also be given effect while reporting the figures in Table 3.2 of Form GSTR-3B.

b. ITC availed, reversal thereof and ineligible ITC

- Any reversal of ITC or any ITC which is ineligible under any provision of the CGST Act should not be part of "Net ITC Available" in Table 4(C) and accordingly, it should not get credited into the Electronic Credit Ledger of the registered person.
- Reversal of ITC of ineligible credit under section 17(5) or any other provisions of the CGST Act and rules thereunder is required to be made under Table 4(B) and not under Table 4(D) of Form GSTR-3B.

2. Demand and penalty in respect of transactions involving fake invoices²

- a. Registered person who issues tax invoice without actual supply will not be subjected to demand and recovery proceedings but will be subjected to penal action for issuing tax invoice without actual supply.
- b. Registered recipient who avails and utilizes ITC on the basis of tax invoice without receiving the supply will be liable for demand and recovery proceedings of ITC along with other penal action.

3. Refund claimed by the recipients of supplies regarded as deemed export³

- a. ITC availed by the recipient of deemed export supplies would not be subjected to apportionment and blocked credit under section 17 of the CGST Act, 2017.
- b. Since this ITC availed is not an ITC in terms of ITC provisions under the CGST Act, it is not to be included in the "Net ITC" for computation of refund of unutilised ITC on account of zero-rated supplies or on account of inverted duty structure.

² CBIC Circular No. 171/02/2022-GST dated 6 July 2022

³ CBIC Circular No. 172/02/2022-GST dated 6 July 2022

¹ CBIC Circular No. 170/02/2022-GST dated 6 July 2022

4. **Blocked credit under section 17(5) of CGST Act, 2017**

- a. Proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act (relating to availability of ITC where it is obligatory for an employer to provide the same to its employees) is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act.
- b. Availment of ITC is not barred in case of leasing, other than leasing of motor vehicles, vessels and aircrafts.

5. **Perquisites provided by employer to the employees**

Perquisites provided by the employer to the employee in terms of contractual agreement entered between them will not be subjected to GST when the same are provided in terms of employment contract.

6. **Utilisation of the amounts available in the electronic credit ledger (ECRL) and electronic cash ledger (ECL)**

- a. Any payment towards output tax, whether self-assessed or as a consequence of any proceedings can be made by utilization of amount available in ECRL.
- b. CRL cannot be used for payment of tax under RCM, interest, penalty, fees and payment of erroneous refund where such refund was sanctioned in cash.
- c. Amount available in the ECL may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the GST Laws.

7. **Refund under inverted duty structure where the supplier is supplying goods under some concessional notification⁴**

It is clarified that in cases where the rate of tax of output supply is less than the rate of tax on inputs due to concessional rate notification, the credit accumulated on account of the same is admissible for refund, subject to conditions.

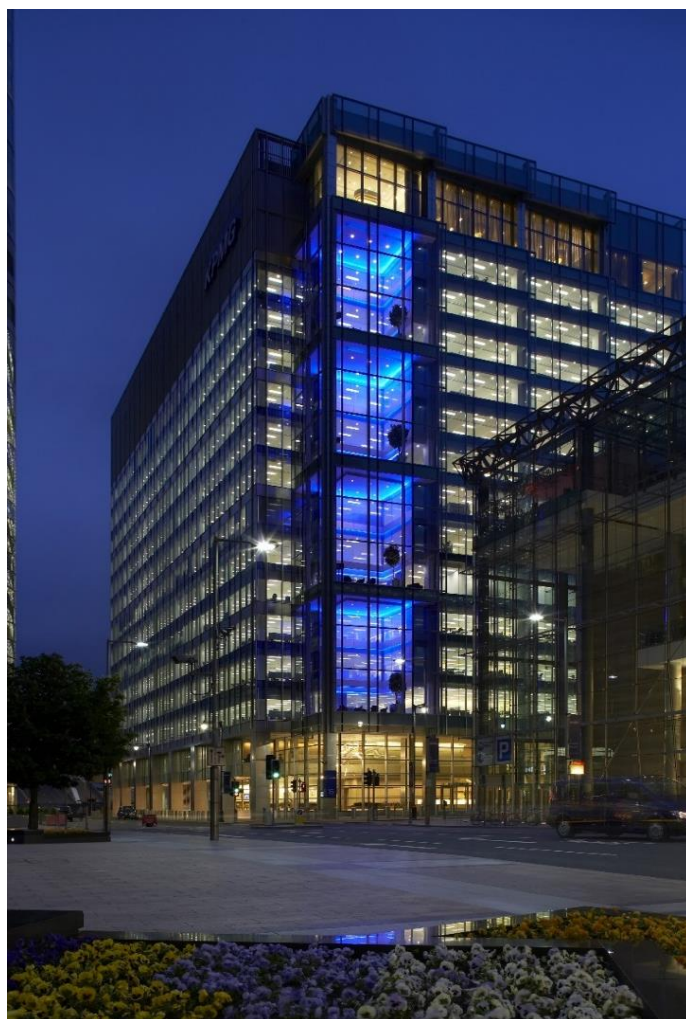
⁴ CBIC Circular No. 173/06/2022-GST dated 6 July 2022

8. **Procedure for re-credit of amount in ECRL⁵**

- a. Taxpayer shall deposit the amount of erroneous refund along with applicable interest and penalty, wherever applicable, through Form GST DRC-03 by debit of amount from ECL.
- b. Taxpayer shall make a written request to jurisdictional proper officer to re-credit the amount equivalent to the amount of refund paid back through Form GST DRC-03 to ECRL.
- c. Proper officer on being satisfied, shall re-credit an amount in ECRL by passing an order in Form GST PMT-03A.

Our comments

Some of the clarifications issued are very critical specifically related to returns which needs to be complied with while filing returns. The clarification issued on fake invoicing clearly highlights the intention of Government in dealing with such offence. Also the clarification on certain blocked credits, GST on perquisites and ITC availed by the recipient of deemed export supplies provides much needed relief to assesseees.



⁵ CBIC Circular No. 174/06/2022-GST dated 6 July 2022

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