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GORVERNMENT OF THE NCT OF DELHI
DEPARTMENT OF TRADE AND TAXES
(GST-POLICY BRANCH)
VYAPAR BHAWAN: I.P.ESTATE: NEW DELHI-02

No. F.3 (279)/Policy-GST/2019/487- 92 Dated: 4.11.2019

Circular No. 4/2019-20

(Ref. Circular no-108/27/2019 of Central tax)

Subject: **Clarification in respect of goods sent/taken out of India for exhibition or on consignment basis for export promotion - reg.**

Various representations have been received from the trade and industry regarding procedure to be followed in respect of goods sent / taken out of India for exhibition or on consignment basis for export promotion. Such goods sent / taken out of India crystallise into exports, wholly or partly, only after a gap of certain period from the date they were physically sent / taken out of India.

2. The matter has been examined and in view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across the field formations, the Commissioner, in exercise of its powers conferred under section 168(1) of the Delhi Goods and Services Tax Act, 2017 (hereinafter referred to as the "DGST Act") hereby clarifies various issues in succeeding paragraphs.

3. As per section 7 of the DGST Act, for any activity or transaction to be considered a supply, it must satisfy twin tests namely-

(i) it should be for a consideration by a person; and

(ii) it should be in the course or furtherance of business.

4. The exceptions to the above are the activities enumerated in Schedule I of the DGST Act which are treated as supply even if made without consideration. Further, sub-section (21) of section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the

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"IGST Act") defines "supply", wherein it is clearly stated that it shall have the same meaning as assigned to it in section 7 of the DGST Act.

5. Section 16 of the IGST Act deals with "Zero rated supply". The provisions contained in the said section read as under:

> 16. *(1) "zero rated supply" means any of the following* ***supplies*** *of goods or services or both, namely:—*
>
> *(a) export of goods or services or both; or*
>
> *(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.*

Therefore, it can be concluded that only such 'supplies' which are either 'export' or are 'supply to SEZ unit / developer' would qualify as zero-rated supply.

6. It is, accordingly, clarified that the activity of sending / taking the goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfy the tests laid down in Schedule I of the DGST Act (hereinafter referred to as the "specified goods"), do not constitute supply as the said activity does not fall within the scope of section 7 of the DGST Act as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as 'Zero rated supply' as per the provisions contained in section 16 of the IGST Act.

7. Since the activity of sending / taking specified goods out of India is not a supply, doubts have been raised by the trade and industry on issues relating to maintenance of records, issuance of delivery challan / tax invoice etc. These issues have been examined and the clarification on each of these points is as under: -

| Sl.No. | Issue | Clarification |
|---|---|---|
| 1. | Whether any records are required to be | The registered person dealing in specified goods shall maintain a record of such goods as per the format at |

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| | maintained by registered person for sending / taking specified goods out of India? | Annexure to this Circular. |
| 2. | What is the documentation required for sending / taking the specified goods out of India? | a) As clarified above, the activity of sending / taking specified goods out of India is not a supply.<br>b) The said activity is in the nature of "sale on approval basis" wherein the goods are sent / taken outside India for the approval of the person located abroad and it is only when the said goods are approved that the actual supply from the exporter located in India to the importer located abroad takes place. The activity of sending / taking specified goods is covered under the provisions of sub-section (7) of section 31 of the DGST Act read with rule 55 of Delhi Goods & Services Tax Rules, 2017 (hereinafter referred to as the "DGST Rules").<br>c) The specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the DGST Rules.<br>d) As clarified in paragraph 6 above, the activity of sending / taking specified goods out of India is not a zero-rated supply. That being the case, execution of a bond or LUT, as required under section 16 of the IGST Act, is not required. |
| 3. | When is the supply of specified goods sent / taken out of India said to take place? | a) The specified goods sent / taken out of India are required to be either sold or brought back within the stipulated period of six months from the date of removal as per the provisions contained in sub- |

| | | |
|---|---|---|
| | | section (7) of section 31 of the DGST Act.<br>b) The supply would be deemed to have taken place, on the expiry of six months from the date of removal, if the specified goods are neither sold abroad nor brought back within the said period.<br>c) If the specified goods are sold abroad, fully or partially, within the specified period of six months, the supply is effected, in respect of quantity so sold, on the date of such sale. |
| 4. | Whether invoice is required to be issued when the specified goods sent / taken out of India are not brought back, either fully or partially, within the stipulated period? | a) When the specified goods sent / taken out of India have been sold fully or partially, within the stipulated period of six months, as laid down in sub-section (7) of section 31 of the DGST Act, the sender shall issue a tax invoice in respect of such quantity of specified goods which has been sold abroad, in accordance with the provisions contained in section 12 and section 31 of the DGST Act read with rule 46 of the DGST Rules.<br>b) When the specified goods sent / taken out of India have neither been sold nor brought back, either fully or partially, within the stipulated period of six months, as laid down in sub-section (7) of section 31 of the DGST Act, the sender shall issue a tax invoice on the date of expiry of six months from the date of removal, in respect of such quantity of specified goods which have neither been sold nor brought back, in accordance with the provisions contained in section 12 and section 31 of the DGST Act read with rule 46 of the DGST Rules. |
| 5. | Whether the refund | a) As clarified in para 5 above, the activity of |

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|---|---|---|
| | claims can be preferred in respect of specified goods sent / taken out of India but not brought back? | sending / taking specified goods out of India is not a zero-rated supply. That being the case, the sender of goods cannot prefer any refund claim when the specified goods are sent / taken out of India.<br>b) It has further been clarified in answer to question no. 3 above that the supply would be deemed to have taken place:<br>(i) on the date of expiry of six months from the date of removal, if the specified goods are neither sold nor brought back within the said period; or<br>(ii) on the date of sale, in respect of such quantity of specified goods which have been sold abroad within the specified period of six months.<br>c) It is clarified accordingly that the sender can prefer refund claim even when the specified goods were sent / taken out of India without execution of a bond or LUT, if he is otherwise eligible for refund as per the provisions contained in sub-section (3) of section 54 the DGST Act read with sub-rule (4) of rule 89 of the DGST Rules, in respect of zero rated supply of goods after he has issued the tax invoice on the dates as has been clarified in answer to the question no. 4 above. It is further clarified that refund claim cannot be preferred under rule 96 of CGST Rules as supply is taking place at a time after the goods have already been sent / taken out of India earlier. |

8. The above position is explained by way of illustrations below:

*Illustrations:*

*i) M/s ABC sends 100 units of specified goods out of India. The activity of merely sending / taking such specified goods out of India is not a supply. No tax invoice is required to be issued in this case but the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the DGST Rules. In case the entire quantity of specified goods is brought back within the stipulated period of six months from the date of removal, no tax invoice is required to be issued as no supply has taken place in such a case. In case, however, the entire quantity of specified goods is neither sold nor brought back within six months from the date of removal, a tax invoice would be required to be issued for entire 100 units of specified goods in accordance with the provisions contained in section 12 and section 31 of the DGST Act read with rule 46 of the DGST Rules within the time period stipulated under sub-section (7) of section 31 of the DGST Act.*

*ii) M/s ABC sends 100 units of specified goods out of India. The activity of sending / taking such specified goods out of India is not a supply. No tax invoice is required to be issued in this case but the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the DGST Rules. If 10 units of specified goods are sold abroad say after one month of sending / taking out and another 50 units are sold say after two months of sending / taking out, a tax invoice would be required to be issued for 10 units and 50 units, as the case may be, at the time of each of such sale in accordance with the provisions contained in section 12 and section 31 of the DGST Act read with rule 46 of the DGST Rules. If the remaining 40 units are not brought back within the stipulated period of six months from the date of removal, a tax invoice would be required to be issued for 40 units in accordance with the provisions contained in section 12 and section 31 of the DGST Act read with rule 46 of the DGST Rules. Further, M/s ABC may claim refund of accumulated input tax credit in accordance with the provisions contained in sub-section (3) of section 54 of the DGST Act read with sub-rule (4) of rule 89 of the DGST Rules in respect of zero-rated supply of 60 units.*

9. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of Policy Branch.

(H. Rajesh Prasad)
Commissioner, GST

No. F.3 (279)/Policy-GST/2019/487 - 92 Dated: 4.11.2019

Copy forwarded for information and necessary action to:

1. All Spl./Addl./Joint Commissioners, Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02.
2. Joint Director (IT), Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02 for uploading the circular on the website of the department.
3. The President/General Secretary, Sales Tax Bar Association (Regd.), Vyapar Bhawan I.P. Estate, New Delhi-02
4. All Assistant Commissioner/AVATOs Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02
5. PS to the Commissioner, VAT Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02
6. Guard File.

(Vivek Mittal)
Assistant Commissioner (Policy)

(1) SCHE - 13/11/19
(2) SCT-V 13/11/19
(3) SCTT-III - 13.11.19
(4) SCTT-IV - 13/11/19
(5) SC 2nd/VA 13/11
(6) JC TT-I 13/11/19
(7) SCTT/Z-IX 13/11/19
(8) ACTT Z-XI 13/11/19

## ANNEXURE

## RECORD OF SPECIFIED GOODS SENT / TAKEN OUT OF INDIA AND BROUGHT BACK / SOLD ABROAD

| Folio No./Reference No. | Description of specified goods | Quantity unit (Nos./grams/piece etc.) | Value per unit | Total value of the specified goods | Date of removal from place of business | Delivery Challan No. & date | | Shipping Bill no. & Date | | Details of specified goods supplied (i.e. specified goods not brought back) | | Invoice no. & date | | Details of specified goods brought back | | Bill of Entry No. & Date | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | No. | Date | No | Date | Quantity | Value | No. | Date | Quantity | Value | No. | Date |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) | (13) | (14) | (15) | (16) | (17) | (18) |
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GORVERNMENT OF THE NCT OF DELHI
DEPARTMENT OF TRADE AND TAXES
(GST-POLICY BRANCH)
VYAPAR BHAWAN: I.P.ESTATE: NEW DELHI-02

No. F.3(384)/Policy-GST/2019/480-86

Circular No.3/2019-20 Dated: 4/11/2019

(Ref. Circular No.-79/53/2018 of Central Tax)

**Subject: Clarification on refund related issues – Reg.**

Various representations have been received seeking clarification on various issues relating to refund. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across field formations, the Commissioner, in exercise of its powers conferred by section 168 (1) of the Delhi Goods and Services Tax Act, 2017 (hereinafter referred to as "DGST Act"), hereby clarifies the issues detailed hereunder:

**Physical submission of refund claims with jurisdictional proper officer:**

2. Due to the non-availability of the complete electronic refund module, a work around was prescribed vide Circular No.02/2018-GST dated 11.01.2018(Ref Central Circular No 17/17/2017-GST dated 15.11.2017) and Circular No. 05/2018-GST dated 11.01.2018 (Ref Central Circular No 24/24/2017-GST dated 21.12.2017), wherein a taxpayer was required to file **FORM GST RFD-01A** on the common portal, generate the Acknowledgement Receipt Number (ARN), take print-outs of the same, and submit it physically in the office of the jurisdictional proper officer, along with all the supporting documents. It has been learnt that this requirement of physical submission of documents in the jurisdictional tax office is causing undue hardship to the taxpayers. Therefore, in order to further simplify the refund process, the following instructions, in partial modification of the aforesaid circulars, are issued:

a) All documents/undertaking/statements to be submitted along with the claim for refund in **FORM GST RFD-01A** shall be uploaded on the common portal at the time of filing of the refund application. Circular No. 59/33/2018-GST dated 04.09.2018 specified that instead of providing copies of all invoices, a statement of invoices needs to be submitted in a prescribed format and copies of only those invoices need to be submitted the details of which are not found in **FORM GSTR-2A** for the relevant period. It is now clarified that the said statement and these invoices, instead of being

submitted physically, shall be electronically uploaded on the common portal at the time of filing the claim of refund in **FORM GST RFD-01A**. Neither the application in **FORM GST RFD-01A**, nor any of the supporting documents, shall be required to be submitted physically in the office of the jurisdictional proper officer.

b) However, the taxpayer will still have the option to physically submit the refund application to the jurisdictional proper officer in **FORM GST RFD-01A**, along with supporting documents, if he so chooses. A taxpayer who still remains unallocated to the Central or State Tax Authority will necessarily have to submit the refund application physically. They can choose to do so before the jurisdictional proper officer of either the State or the Central tax authority as was earlier clarified vide Circular No. 02/2018-GST dated 11.01.2018

c) The ARN will be generated only after the claimant has completed the process of filing the refund application in **FORM GST RFD-01A**, 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.

d) 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 rule 90(2) of the Delhi Goods and Services Tax Rules, 2017 (hereinafter referred to as "DGST Rules") on the date of generation of the said ARN and the time limit of 15 days to issue an acknowledgement shall be counted from that date. This will obviate the need for a claimant to visit the jurisdictional tax office for the submission of the refund application. Accordingly, the acknowledgement for the complete application or deficiency memo, as the case may be, would be issued by the jurisdictional tax officer based on the documents so received electronically from the common portal. However, the said acknowledgement or deficiency memo shall continue to be issued manually for the time being.

e) If a refund application is electronically transferred to the wrong jurisdictional officer, he/she shall reassign it to the correct jurisdictional officer electronically within a period of three days. In such cases, the application shall be deemed to have been filed under rule 90(2) of the DGST Rules only after it has been so reassigned. Deficiency memos shall not be issued in such cases merely on the ground that the applications

were received electronically in the wrong jurisdiction. Where the facility of electronic re-assignment is not available, the present arrangement shall continue.

f) It has already been clarified vide Circular No. 70/44/2018-GST dated 26.10.2018 that after the issuance of a deficiency memo, taxpayers would be required to submit the rectified refund application under the earlier Application Reference Number (ARN) only. It is further clarified that the rectified application, which is to be treated as a fresh refund application, will be submitted manually in the office of the jurisdictional proper officer.

3. It may be noted that the documents/statements/undertakings/invoices to be submitted along with the refund application in **FORM GST RFD-01A** are the same as have been prescribed under the DGST Rules and various Circulars issued on the subject from time to time. Only the method of submission of these documents/statements/undertakings/invoices is being changed from the physical mode to the electronic mode. It may also be noted that the other stages of processing of a refund claim submitted in **FORM GST RFD-01A** by the jurisdictional tax officer shall continue to be carried out manually for the time being, as is being presently done.

**Calculation of refund amount for claims of refund of accumulated Input Tax Credit (ITC) on account of inverted duty structure:**

4. Representations have been received stating that while processing the refund of unutilized ITC on account of inverted tax structure, the departmental officers are denying 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 DGST 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 DGST 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 DGST 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 help of the 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 DGST Act read with rule 89(5) of the DGST Rules, which prescribes the formula for the maximum refund amount permissible in such situations.

iii. Further assume that the claimant 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 claimant 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 DGST Rules which is Rs. 25/-.

**Disbursal of refund amounts after sanction:**

5. Section 56 of the DGST 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-State Tax dated 30.06.2017) 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 claimant. 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 claimant. 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 claimant. Accordingly, all tax authorities are advised to issue the final sanction orders in **FORM GST RFD-06** within 45 days of the date of generation of ARN, so that the disbursement is completed within 60 days by both Central and State Tax Authorities for CGST / IGST / UTGST / Compensation Cess and SGST respectively.

**Refund applications that have been generated on the portal but not physically received in the jurisdictional tax offices:**

6. There are a large number of applications for refund in **FORM GST RFD-01A** which have been generated on the common portal but have not yet been physically received in the jurisdictional tax offices. With the implementation of electronic submission of refund application, as detailed in para 2 above, this problem is expected to reduce. However, for the applications (except those relating to refund of excess balance in the electronic cash ledger) which have been generated on the common portal before the issuance of this Circular and which have not yet been physically received in the jurisdictional offices (list of all applications pertaining to a particular jurisdictional office which have been generated on the common portal, if not already available, may be obtained from DG-Systems), the following guidelines are laid down:

a) All refund applications in which the amount claimed is less than the statutory limit of Rs. 1,000/- should be rejected and the amount re-credited to the electronic credit ledger of the applicant through the issuance of **FORM GST RFD-01B**.

b) For all applications wherein an amount greater than Rs. 1000/- has been claimed, a list of applications which have not been received in the jurisdictional tax office within a period of 60 days starting from the date of generation of ARN may be compiled. A communication may be sent to all such claimants on their registered email ids, informing that the application needs to be physical submitted to the jurisdictional tax office within 15 days of the date of the email. The contact details and the address of the jurisdictional officer may also be provided in the said communication. The claimant may be further informed that if he/she fails to physically submit the

application within 15 days of the date of the email, the application shall be summarily rejected and the debited amount, if any, shall be re-credited to the electronic credit ledger.

7. For the applications generated on the common portal before the issuance of this Circular in relation to refund of excess balance from the electronic cash ledger which have not yet been received in the jurisdictional office, the amount debited in the electronic cash ledger in such applications may be re-credited through **FORM GST RFD-01B** provided that there are no liabilities in the electronic liability register. The said amount shall be re-credited even though the return in **FORM GSTR-3B**, as the case may be for the relevant period has not been filed.

8. For the refund applications generated on the common portal after the issuance of this Circular, and for the refund applications generated on the common portal before the issuance of this Circular and which have been physically received in the jurisdictional tax offices before the issuance of this Circular, the existing guidelines, as modified by this Circular may be followed.

**Issues related to refund of accumulated Input Tax Credit of Compensation Cess:**

9. Several representations have been received requesting clarifications on 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. These issues 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. aluminum). 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 CGST, SGST/UTGST or IGST charged on the invoices for these inputs. This ITC is utilized for payment of IGST 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 CGST/SGST/UTGST/IGST 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. Further, 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 IGST. This process would be applicable for application 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 system 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 claimant. 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 dGST 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 9(a) above. This is subject to the restriction that the accounting entry showing the said ITC as cost is also reversed.

**Non-consideration of ITC of GST paid on invoices of earlier tax period availed in subsequent tax period:**

10. 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 2017, may be declared in the **FORM GSTR-3B** filed for a subsequent month, say September 2017. This is inevitable in cases where the supplier raises an invoice, say in August, 2017, and the goods reach the recipient's premises in September, 2017. Since GST law mandates that ITC can be availed only after the goods are received, the recipient can only avail the ITC on such goods in the **FORM GSTR-3B** filed for the month of

September, 2017. However, it has been observed that field officers are excluding such invoices from the calculation of refund of unutilized ITC filed for the month of September, 2017.

11. In this regard, it is clarified that 'Net ITC' as defined in rule 89(4) of the DGST 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 DGST 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, 2017, 'availed' in September, 2017 cannot be excluded from the calculation of the refund amount for the month of September, 2017.

**Misinterpretation of the meaning of the term "inputs":**

12. 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 claimant.

13. In relation to the above, it is clarified that the input tax credit of the GST paid on inputs shall be available to a registered person as long as he/she uses or intends to use such inputs for the purposes of his/her business and there is no specific restriction on the availment of such ITC anywhere else in the GST Act. The GST paid on 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 DGST Act. Further, capital goods have been clearly defined in section 2(19) of the DGST 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.

**Refund of accumulated ITC of input services and capital goods arising on account of inverted duty structure:**

14. Section 54(3) of the DGST 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, section 2(59) of the DGST 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. Accordingly, in order to align the DGST Rules with the DGST Act, notification No. 26/2018-State Tax dated 02.09.2019 was issued wherein it was stated that the term Net ITC, as used in the formula for calculating the maximum refund amount under rule 89(5) of the DGST Rules, shall mean input tax credit availed on **inputs** during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both. In view of the above, 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 duty structure.

15. All previous Circulars/Instructions issued on the subject stand modified accordingly. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

16. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Policy Branch. Trade and Taxes Department, Government of NCT of Delhi.

(H. Rajesh Prasad)
Commissioner, GST

No. F.3(284)/Policy-GST/2019/480-86 Dated: 4/11/2019

Copy forwarded for information and necessary action to:

1. All Spl./Addl./Joint Commissioners, Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02.

2. Special Commissioner (PR), Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02 for wide publicity of the contents of this circular.
3. Joint Director (IT), Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02 for uploading the circular on the website of the department.
4. The President/General Secretary, Sales Tax Bar Association (Regd.), Vyapar Bhawan I.P. Estate, New Delhi-02
5. All Assistant Commissioner/AVATOs Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02
6. PS to the Commissioner, VAT Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02
7. Guard File.

Vivek mittal
Assistant Commissioner (Policy)

1) DC-HQ-I - 13/11/19
2) SCTT-V 13/11/19
3) SCTT-III - 13.11.19
4) SCTT-IV 13/11/19
5) SC 2-VI/VII 13/11
6) JCTT-2-E 19/11/19
7) JCTT-2-IX 13/11/19
8) ACTT (P)/2-XI - 13/11/19

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
DEPARTMENT OF TRADE AND TAXES
POLICY (GST) Branch
VYAPAR BHAVAN:I.P.ESTATE:NEW DELHI-02

F. No. 3(250 )/Policy-GST/2019/ 1161-67 Dated: 11 /03/ 2019

# Circular No. 01/2019-GST
# (Ref: Central Circular No. 77/51 /2018-GST)

**Subject: Denial of composition option by tax authorities and effective date thereof - Reg.**

Rule 6 of the Delhi Goods and Services Tax Rules, 2017 (hereinafter referred to as the "DGST Rules") deals with the validity of the composition levy. As per the said rule, the option exercised by a registered person to pay tax under the composition scheme shall remain valid so long as he satisfies the conditions mentioned in section 10 of the Delhi Goods and Services Tax Act, 2017 (hereinafter referred to as the "DGST Act") and the DGST Rules. The rule lays down the procedure for withdrawal from the composition scheme by a taxpayer who intends to withdraw from the said scheme and also the procedure for denial of option to the taxpayer to pay tax under the said scheme where he has contravened the provisions of the DGST Act or the DGST Rules.

2. In this connection, doubts have been raised as to the date from which withdrawal from the composition scheme shall take effect in a case where the composition taxpayer has exercised such option to withdraw. Doubts have also been raised regarding the effective date of denial of the option to pay tax under the composition scheme where action has been initiated by the tax authorities to deny such option to the composition taxpayer. Further, clarification has been sought regarding the follow up action to be taken by the tax authorities when the composition option is denied to the taxpayer retrospectively. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of the law across field formations, the Commissioner, in exercise of the powers conferred by section 168 (1) of the DGST Act, hereby clarifies the issues raised as below.

3. Sub-rule (2) of rule 6 of the DGST Rules provides that the composition taxpayer shall pay tax under sub-section (1) of section 9 of the DGST Act as a normal taxpayer from

the day he ceases to satisfy any of the conditions of the composition scheme and shall issue tax invoice for every taxable supply made thereafter. Sub-rule (3) of rule 6 of the DGST Rules provides that the registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in **FORM GST CMP-04** on the common portal. He shall file intimation for withdrawal from the scheme in **FORM GST CMP-04** within seven days of the occurrence of such event.

4. As per sub-rule (4) of rule 6 of the DGST Rules, where the proper officer has reasons to believe that the registered person was not eligible to pay tax under section 10 of the DGST Act or has contravened the provisions of the DGST Act or the DGST Rules, he may issue a notice to such person in **FORM GST CMP-05** to show cause as to why the option to pay tax under section 10 of the DGST Act shall not be denied. Upon receipt of the reply to the show cause notice from the registered person in **FORM GST CMP-06**, the proper officer shall, in accordance with the provisions of sub-rule (5) of rule 6 of the DGST Rules, issue an order in **FORM GST CMP-07** within a period of thirty days of the receipt of such reply, either accepting the reply, or denying the option to pay tax under section 10 of the DGST Act from the date of the option or from the date of the event concerning such contravention, as the case may be.

5. It is clarified that in a case where the taxpayer has sought withdrawal from the composition scheme, the effective date shall be the date indicated by him in his intimation/application filed in **FORM GST CMP-04** but such date may not be prior to the commencement of the financial year in which such intimation/application for withdrawal is being filed. If at any stage it is found that he has contravened any of the provisions of the DGST Act or the DGST Rules, action may be initiated for recovery of tax, interest and penalty. In case of denial of option by the tax authorities, the effective date of such denial shall be from a date, including any retrospective date as may be determined by tax authorities, but shall not be prior to the date of contravention of the provisions of the DGST Act or the DGST Rules. In such cases, as provided under sub-section (5) of section 10 of the DGST Act, the proceedings would have to be initiated under the provisions of section 73 or section 74 of the DGST Act for determination of tax, interest and penalty for the period starting from the date of contravention of provisions till the date of issue of order in **FORM GST CMP-07.** It is also clarified that the registered person shall be liable to pay tax under section 9 of the DGST Act from the date of issue of the order in **FORM GST CMP-07**. Provisions of section 18(1)(c) of the DGST Act shall apply for claiming credit on inputs held

in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the date immediately preceding the date of issue of the order.

4. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

5. Difficulties, if any, faced in implementation of the above instructions may be brought to the notice of the Policy Branch.

**(H.Rajesh Prasad)**
**Commissioner (GST)**

**F. No. 3(250 )/Policy-GST/2019/** 1161-67 Dated: 11 /02/ 2019

**Copy forwarded for information and necessary action to:**

1) All Spl./Addl./Joint Commissioners, Department of Trade and Taxes, GNCT of Delhi, Vyapar Bhawan, I.P.Estate, New Delhi-02.
2) Special Commissioner (PR), Department of Trade and Taxes, GNCT of Delhi, Vyapar Bhawan, I.P.Estate, New Delhi-02 for wide publicity of the contents of this circular.
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5) All Assistant Commissioners/GSTOs, Department of Trade and Taxes, GNCT of Delhi, Vyapar Bhawan, I.P. Estate, New Delhi-02. through Zonal Incharges.
6) PS to the Commissioner, GST, Department of Trade and Taxes, GNCT of Delhi Vyapar Bhawan, I.P. Estate, New Delhi-02.
7) Guard File.

**(Sadanand Sah)**
**Assistant Commissioner (Policy)-V**