

**ANALYSIS OF VARIOUS CIRCULARS ISSUED BASIS
THE RECOMMENDATIONS OF THE 47TH GST
COUNCIL MEETING HELD ON 28/29 JUNE, 2022 @
CHANDIGARH**



**ADV ANKIT KANODIA
TEAM SKKA**

INTRODUCTION

The GST entrance throughout the course of recent months has seen a few changes and updates.

We all know the GST regime was structured to address the shortcomings of the previous tax regime and to make the market more competitive. Council met 18 times within a short span of nine months from its inception on 15th September 2016 to 30th June 2017 and made recommendations on all aspects of GST necessary for its launch.

The GST Council after almost six month of year 2022 met for the 47th meeting under the Chairmanship of Union Minister for Finance & Corporate Affairs Smt. Nirmala Sitharaman in Chandigarh on 28th and 29th day of June 2022.

On 5th July 2022, a series of Circulars were rolled out by CBIC to give effect to the recommendations of the 47th GST Council meeting.

Summary of the same is encapsulated in this presentation. Our Team at SKKA brings forth you weekly updates to ensure you business remains tax compliant.

Circular No. 171/03/2022-GST

The aggravation with any indirect tax regime is the issue of phony set-ups or missing sellers existing simply on papers to commit tax frauds and evaporate soon thereafter. Significant drives have been attempted to check and control the tax avoidance like Suspension of Registration in specific cases, Limit on benefiting ITC except if reflected in GSTR - 2B, etc.

This circular gives a representation of different situations of fake invoicing and gives explanation on the issues connecting with relevance of demand and penalty provisions.

☐ Case A

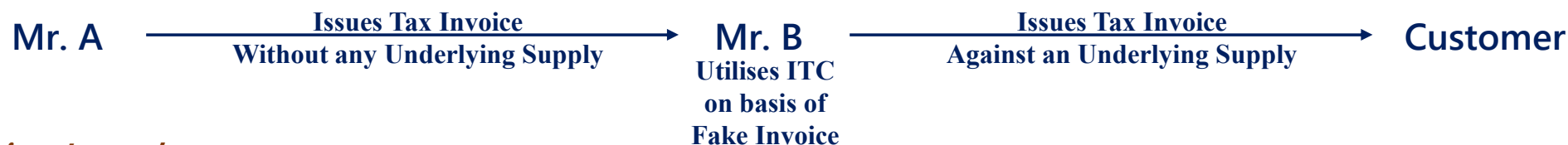


Clarification Issued –

As there is no supply involved, no procedures for demand and recovery under Section 73 or Section 74 can be made against Mr. A. Corrective move would be made by imposing penalty against Mr. A under section 122(1)(ii) for issuance of mere sham invoice.

Circular No. 171/03/2022-GST

☐ Case B



Clarification Issued –

Legal Proceedings would be started against Mr. B for recovery of inaccurate ITC in addition to penalty under Section 74 of the CGST Act, alongside appropriate interest according to Section 50.

Separate proceedings under Section 122 would not be initiated against Mr. B, as procedures have previously been started under Section 74.

☐ Case C



Clarification Issued –

Corrective action by imposition of penalty would be initiated against Mr. B both under section 122(1) (ii) and 122(1)(vii) of the CGST Act, for issuing merely fake invoices with practically no genuine stock of goods or benefits in form of services and additionally for taking/using ITC without real receipt of goods or services.

No proceedings in section 73 and 74 to be made as no fundamental "*supply*" present.

Circular No. 171/03/2022-GST

The circular explains that procedure under section 122(1A) can be started against any individual who has held the advantage of the transactions indicated specified therein or at whose instances such transactions were led.

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

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

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

Real move to be initiated against an individual will rely on the particular realities and conditions of the case which might include complex combination of above situations or even may not be covered by any of the above situations.

SKKA Comments –

Concerning the issue fake invoicing, procedures started under Section 73/74 were struck down because of absence of basic supplies. Thus, this circular would be a rule for the Officers taking care of such issues, to guarantee rightness and consistency of procedures against merely sham or rather fake invoicing.

Circular No. 172/04/2022-GST

Refund claimed by the recipients of supplies regarded as deemed export

- Ministry vide **Circular 147/03/2021-GST dated 12th March 2021** had given the amenity to the recipients of deemed export supplies to avail the tax paid on such supplies as ITC to assist them in applying for refund. Nonetheless, due to equivocalness in regard to the relevance of provision of blocked credits under section 17 on the availment of such ITC, government came up with this circular providing clarification.

Vide this recent circular, the Department has clarified that the ITC availed by the recipients of deemed exports ITC is not ITC as per chapter V of the CGST Act. In other words, the provisions of ITC including the blocked credit provisions would not apply to such ITC.

- Further, this Circular also sheds light on inclusion of such ITC in “Net ITC” used for computation of refund of unutilized ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.

Vide this Circular, it has been clarified that such ITC would not to be included in the “Net ITC” for computation of refund of unutilized ITC on account of zero-rated supplies or on account of inverted-rate structure.

Circular No. 172/04/2022-GST

Clarification on various issues of section 17(5) of the CGST Act

- Vide this recent clarification, ITC on the inward supplies covered in sub-clause (i), (ii) and (iii) of clause 17(5)(b) can be availed as long as they are **obligatory by employer to provide to its employees**.

It is clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act.

- The provision in sub-clause (i) of clause 17(5)(b) read as the services **“leasing, renting or hiring of motor vehicle, vessels or aircraft”**. CBIC hereby clarifies that the term “leasing” is not an independent inward supply that stands blocked. The term “leasing” stated above refers to the leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items.

Thus, it stands concluded that ITC is not blocked in the case of leasing other than leasing of motor vehicles, vessels and aircrafts.

Circular No. 172/04/2022-GST

Perquisites provided by employer to the employees as per contractual agreement

- CBIC vide this Circular brings clarity to the aspect that where the perquisites have been provided **under the employment contract** in lieu of the employment would be treated as neither as a supply of goods nor supply of services, thus getting covered under **Entry 1 of Schedule III** and carved out of extent of GST.

Utilization of amounts available in electronic credit ledger and cash ledger for payment of tax and other liabilities

CBIC vide this circular clarifies that :

- **Electronic Credit Ledger cannot** be used for making **payment of any interest, penalty, fees** or any other amount payable under provision of GST Laws. Amount available in Electronic Cash Ledger can only be made for payment towards tax, interest, penalty and fees or any other amount.
- **Payment of erroneous refund** sanctioned to the taxpayer, where such refund was sanctioned in cash cannot be made using Electronic Credit Ledger.

Circular No. 172/04/2022-GST

SKKA comments –

The ruling of Orissa high Court in the case of “Jyoti Construction v. Deputy Commissioner of CT & GST, Jajpur” held that Electronic Credit Ledger cannot be used to give the pre-deposit for the purpose of filing an appeal under GST and the payment under same should be done through cash ledger only.

Section 49(4) of CGST Act, 2017 clearly states that electronic credit ledger can be used for making payment of output tax only where Output Tax means the “tax chargeable on taxable supply of goods or services or both but excludes tax payable on reverse charge mechanism”.

Regardless of the fact that circular has not specifically clarified on the issue of whether payment of pre-deposit can be made through the electronic credit ledger or not, it can be so interpreted that payment of tax component in pre-deposit can be done through credit ledger, but payment of other tax heads of liability should be mandatorily made through cash ledger only.

Circular No. 173/05/2022-GST

Vide this Circular, Government is of the view that there may notwithstanding, be situations where however input and output goods are same, yet the output supplies are made under a concessional rate because of which the rate of tax on outputs is not exactly the rate of tax on inputs.

In such cases, as the rate of tax on outward supply is not same as rate of tax on inputs at a same point of time because of concessional notification, the credit accumulated by virtue of the equivalent is permissible for refund under the provision of clause (ii) of the first proviso to section 54(3) of the CGST Act.

Relying on the para 3.2 of **Circular No. 135/05/2020-GST dated 31.03.2020** where it was expressed **Inverted Duty Structure** Refund wouldn't be material in situations where the output and input supplies are something similar.

SKKA Comments –

With respect to this circular issued on 6th July 2022, government has herein clarified that the refund would be permissible in situations where rate on output supplies are reduced vide concessional notification and rate of tax on inputs remains same as earlier.

Circular No. 174/06/2022-GST

This circular prescribes the manner of re-credit in electronic credit ledger using FORM GST PMT-03A.

FORM PMT-03A enables the taxpayers to get re-credit of the amount of erroneous refund, paid back by them, in their electronic credit ledger by the taxpayer in following cases:

1. Refund of unutilized ITC due to inverted tax structure, zero-rated supply of goods/services to SEZ developer/Unit without payment of tax, export of goods/services without payment of tax, refund of IGST obtained in contravention of sub-rule (10) of rule 96.

Mechanism :

- The taxpayer is to deposit amount of erroneous refund along with applicable interest and penalty, through FORM GST DRC-03. Further reasons must be clearly mentioned in the text box.
- Further a written request, in format enclosed as Annexure-A, to be submitted to jurisdictional proper officer to re-credit the amount equivalent to the amount of refund thus paid back through FORM GST DRC-03, to electronic credit ledger.
- On satisfaction an order in FORM GST PMT-03A, within a period of 30 days from the date of receipt of request for re-credit of erroneous refund amount so deposited or from the date of payment of full amount of erroneous refund along with applicable interest, and penalty, wherever applicable, whichever is later.

SKKA Comments –

Earlier, there was no mechanism to reclaim credit of ITC in Electronic Credit Ledger on account of Erroneous refund. This is a welcome move for the industry, wherein introduction of PMT-03A Jurisdictional Officer would enable re-credit directly to the ECL, based on the amount paid back through FORM GST DRC03.

Circular No. 175/07/2022-GST

This circular specifies the Procedure for calculation of Refund of unutilized ITC ,on account of Export of Electricity.

Filing Of Refund Claim :

The applicant would be required to file application for Refund under “Any Other” Head in GST RFD-01. In remark column of the application, the taxpayer would enter “Export of electricity- without payment of tax (accumulated ITC)”.

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The applicant would be required to furnish/upload the details:

1. Statement 3A of FORM GST RFD-01: details of calculation of refund amount.
2. Statement 3B of FORM GST RFD-01 (in pdf format) : This will contain number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement.
3. The copy of the relevant agreement(s) detailing the tariff per unit for the electricity exported.
4. The copy of statement of scheduled energy for electricity exported by the Generation Plants.

Circular No. 175/07/2022-GST

Relevant Date For Filing Refund :

- Section 54(1) of CGST Act 2017, specifies the time limit for application of refund i.e 2 years from the relevant date. Since it was difficult to determine the specific date on which a specific unit of electricity passes through the frontier the **relevant date** to be considered is the **last date of the month in which the electricity has been exported as per monthly Regional Energy Account (REA)**.
- Turnover of Export of Electricity: Energy exported during the period of refund * tariff per unit of electricity (as specified in the agreement).
- It is even clarified that the quantum of Electricity exported can be determined as per the monthly REA (Regional Energy account) issued by RPC(Regional Power Committee) Secretariat; the same can be downloaded from latter's website.
- Even, the quantum of electricity exported as specified in the **statement of scheduled energy** exported and on **invoice** should be same. In case of any discrepancies the Lower of the two would be considered for the purpose of Refund computation.
- The turnover of electricity supplied domestically would be excluded while calculating the adjusted total turnover as electricity has been wholly exempted from the levy of GST.

Circular No. 175/07/2022-GST

- If the proper officer is satisfied with the completeness of application and eligibility shall request the applicant, in writing, if required, to debit the said amount from the electronic credit ledger through FORM GST DRC-03. Subsequently, on receiving proof of debit by officer, refund and payment order shall be issued.

SKKA Comments –

Power generating units were facing the problem in filing application for refund application. With regards to this government has amended CGST Rules and issued circular to provide for refund of unutilized Input Tax Credit on account of Export of Electricity.

Circular No. 176/08/2022-GST

Rule 95A relating to Refund of taxes to the retail outlets established in departure area of an International Airport beyond immigration counters making tax free supply to an outgoing international tourist has been omitted w.e.f 1st July 2019.

The said rule 95A has been omitted, retrospectively w.e.f. 01.07.2019, vide notification No. 14/2022-Central Tax, dated 05.07.2022. Further, Circular No. 106/25/2019-GST dated 29.06.2019 in relation to Rule 95 A has been subsequently withdrawn.

SKKA Comments:

Duty free stores are retail outlets at departure area of international airports . Earlier Duty-Free shops were eligible to claim refund of the taxes paid on inward supplies in FORM GST RFD-10B in terms of rule 95A of CGST Rules 2017. Relevant circular and notification in relation to DFS has been withdrawn; since now supplies from Duty Free Shops (DFS) at international terminal to outgoing international passengers are treated as Exports.

CONCLUSION

With provision of online compliances and payments, the framework of GST has become more accountable. The one nation, one tax system aims to improve India's competitiveness in global markets. GST law though a new law has already seen several litigations on the process part of the law wherein the departmental officers have passed orders confirming tax demand, rejecting refund claims, cancelling registrations, all without following the due process of law and thereby leading to violation of principles of natural justice.

Being GST-compliant, organizations can experience the merits of having a unified tax system and easy input credits. Notwithstanding compliance challenges, it's clear that noncompliance is vastly more expensive and far riskier to an organization.

The 47th GST Council Meeting held at Chandigarh addressed GST taxation matters via its clarifications. Several recommendations will be issued in near time as Circulars & Notifications by the Central Board of Indirect Taxes (CBIC) to clarify and notify such matters in GST Law.

Compiled by: Priyanka Ojha & Eshita Jain – Articled Assistants duly assisted by Adv Ankit Kanodia.

THANK YOU!



**39A, Jorapukur Square Lane(Behind Girish Park),
Room # 202, Kolkata- 700006, WB, INDIA**

T | 033-7960-9924

E | info@skkassociates.com

W | www.skkassociates.com



Advocate Ankit Kanodia

LLM, LLB, FCA, CS, B.Com(H), CIDT- ICAI

Indirect Tax Litigation & Consultancy

**39A, Jorapukur Square Lane(Behind Girish Park),
Room # 205, Kolkata- 700006, WB, INDIA.**

T | 098315 43580

E | ankit@advocateak.com