

SKKA IDT ALERT

33/2022 dt 18th November,2022

WEEKLY UPDATES

KEY HIGHLIGHTS:

1. **Circular 182/14/2022:** Guidelines for verifying the Transitional Credit considering the order of the Hon'ble Supreme Court in the Union of India vs. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709-32710/2018, order dated 22.07.2022 & 02.09.2022
2. **Circular 181/13/2022:** Clarification on Inverted Duty Structure Refund related issues.

INTRODUCTION

The GST entrance throughout the course of recent months has seen a few changes and updates. All the new updates are rolled out on a regular basis to help and assist the taxpayers in smooth and effective documentation of their GST returns.

Our Team at SKKA brings forth you weekly updates to ensure your business remains tax compliant.

A. GUIDELINES FOR VERIFICATION OF TRANSITIONAL CREDIT PURSUANT TO SC DECISION [GST CIRCULAR 182/14/2022]

Regardless of GST finishing a span of 5 years of its presence, its execution is yet tormented by many issues counting debates with respect to transitional credit. As of late, one such issue as for the carry forward of credit from the erstwhile regime was at last put to an end by the verdict of the Supreme Court in the instance of "*Union of India & Ors V. Filco Trade Center Pvt. Ltd & Anr*".

Pursuant to the direction by the Supreme Court, the GSTN has re-opened the portal permitting aggrieved registered taxpayers to file or revise TRAN-1 or 2 Forms for the period between 1 October 2022 to 30 November 2022. CBIC had hitherto issued guidelines on filing or revising of the forms by applicants highlighting procedural aspects regarding availment of credit. Considering that such transitional forms are required to be verified by the jurisdictional tax officers within 90 days, (i.e., between 1 December 2022 to 28 February 2023), CBIC comes forward with guidelines vide **Circular No. 182/14/2022 dated 10th November 2022** pertaining to verification of such credit claims ensuring homogeneity in enactment of the directions so issued by the Apex Court.

General Precepts:

Any reasoned order passed in the verification process should be in accordance with **PRINCIPLES OF NATURAL JUSTICE**

The verification and affirmation guidelines emanated in the circular clearly iterates that the SC keeps all questions of law open for filing & revision of Tran 1 or 2 forms. Thereby, clarifies that the facility introduced cannot be used for revising the returns already filed under the laws that prevailed earlier.

Verification Procedure

➤ ***Accessing the filed or revised transitional forms***

Jurisdictional tax officers can **access** the TRAN-1/TRAN-2 filed/revised by the applicant on their back-office systems.

Further, a **self-certified downloaded copy** of TRAN-1/TRAN-2 filed/revised by the applicant shall also be made available to the jurisdictional tax officer by the said applicant.

➤ ***Appropriate Jurisdictional tax officer for verification***

Where the applicant is under the **administrative control of central tax authorities**, verification will be done by the jurisdictional central tax officer by following the **guidelines given in Annexure I** of the Verification Guidelines.

Where the applicant is under the **administrative control of state tax authorities**, verification will be done by the jurisdictional state or union territory (UT) tax officer by following the **guidelines issued by the respective states or UTs**.

➤ ***Time Frame for verification***

The jurisdictional officers are required to commence the verification process immediately on availability of the filed or revised TRAN-1 or 2 Forms or receipt of the self-certified copy from the applicant, whichever is **earlier**.

➤ ***Role of Counterpart tax officer***

The jurisdictional tax officer and the counterpart tax officer shall verify the transitional credit claimed under the CGST or the SGST head by referring to the guidelines.

For this purpose, the jurisdictional tax officers should share a **list of GSTINs or ARNs** with the counterpart officer. Also, an **intimation should be made to the nodal officer** appointed for ensuring coordination between the central and state or UT tax authorities as per the prescribed mode

➤ ***Issuance of Verification Report***

In respect of verification done by the counterpart officer, after verification, he will prepare a **verification report**, in the format detailed in **Annexure-II** of this circular, specifying the amount of transitional credit which may be allowed to be credited to the electronic credit ledger of the applicant and the amount, which is liable for rejection, along with detailed reasons/ grounds on which the said amount is liable to be rejected.

Such duly signed verification report shall be sent by the counterpart officer to the jurisdictional tax officer at the earliest, though generally **not later than ten days from the date of receipt** of the request from the jurisdictional officer.

➤ ***Passing of Order***

After considering the facts of the case, including verification report received from the counterpart officer, submissions made by the applicant and the comments, if any, of the counterpart officer on the same, the jurisdictional tax officer shall proceed to pass a **reasoned order, preferably within a period of fifteen days from the date of personal hearing, specifying the amount of transitional credit allowed** to be transferred to the electronic credit ledger of the applicant and upload a pdf copy of the said order, on the common portal for crediting the amount of allowed transitional credit to the electronic credit ledger of the applicant.

Such order shall be passed within a period of 90 days from 01.12.2022 i.e., up to 28.02.2023.

GSTN will also issue a separate advisory for entering the details on the portal by the tax officers.

CBIC also clarifies description of entries in TRAN-1 (Form) Table along with the indicative checks for verification describing the entries attracting following provisions of the CGST Act –

- I. Sections 140(1), (4)(a) and (9) of the Central Goods and Services Tax Act, 2017 (CGST Act)
- II. Section 140(2) of the CGST Act
- III. Sections 140(3), (4)(b), (6) and (7) of the CGST Act
- IV. Proviso to section 140 (3) and rule 117(4) of the Central Goods and Services Tax Rules, 2017 (CGST Rules)
- V. Sections 140(5) and (7) of the CGST Act
- VI. Section 140(8) of the CGST Act
- VII. Section 142 (11)(c) of the CGST Act read with rule 118 of the CGST Rules

To Examine:

- Credit which is being claimed through TRAN-1 or 2 Forms is not taken by means of Form GSTR-3B.
- Clarifications with respect to disputed and blocked credit may also be referred during the verification process.

SKKA Remarks:

Post the judgment of the Apex Court in Filco Trade, the CBIC had issued Circular for the benefit of the assessee as to how to file the TRAN 1 again in the window given during 01.10.2022 to 30.11.2022. With this Circular, CBIC has appraised the field formations as to the modalities for verification of the filed TRAN 1 with the intent to bring similarity in the process adopted by CGST and SGST officers.

**B. CLARIFICATION ON INVERTED DUTY STRUCTURE (IDS) REFUND [CIRCULAR
181/13/2022]**

While the nation is yet adjusting to the new indirect tax system, even a slight change in the current infuses susceptibility and, in some cases, bother into the panorama.

To resolve the inconsistency wherein a supplier pays a greater rate of tax on its input supplies but discharges a lower rate of tax on its output supplies, the Law under GST allows for a refund of accumulated unutilized Input Tax Credit (ITC). Accordingly, the taxpayers are eligible to claim refund of unutilized ITC accumulated due to the IDS, basis the formula prescribed under Rule 89(5) of CGST Rules.

The Gujarat High Court in “**VKC Footsteps India Private Limited vs. Union of India**”, while managing the test to confront Rule 89(5) expressed that, when section 54(3) permits the refund of 'any' unutilized ITC, the limitation put under Rule 89(5), to confine the refund just to credit of duty paid on inputs and not on input services is going beyond what the legislation in itself permits and in like manner held not to be passable. Though the Court shunned down understanding or re-examining the regulation under IDS, be that as it may, the Court encouraged the Committee to take a strategic decision by re-evaluating the computation.

Pushing the same to its results to make it operative, CBIC released beneficial Notification No. 14/2022 (CT) dated 05-07-2022 making the amendment in IDS Refund formula by considering the deduction of output tax in proportion to the “Inputs” only.

Pre-Amendment Formula:

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Amended Formula:

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services x (Net ITC ÷ ITC availed on inputs and input services)

CBIC further came up with a clarification to the above notification enunciating that same would be applicable prospectively and not with retrospective effect stating that refund applications filed before 05-07-2022 will be dealt as per the formula as it existed before the amendment mentioned supra.

SKKA Remarks:

This circular would create distress in mind for those taxpayers who have claimed refund for the period whose time limit is yet to expire as the prospective amendment would have been of favor to them.

SKKA COMMENTS:

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. 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.

Penned by: Ms. Priyanka Ojha – Article Assistant



CONNECT WITH US

39A, Jorapukur Square Lane(Behind Girish Park),

Room # 202, Kolkata- 700006, WB, INDIA

T | [033-7960-9924](tel: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](tel:09831543580)

E | ankit@advocateak.com