

Brief analysis of significant changes implemented in the GST Act as per the recommendations of GST Council in 47th meeting

During the month of June-22, the 47th GST Council meeting was held wherein recommendations relating to changes in GST rates on supply of goods and services as well as changes related to GST law and procedure (changes in refund calculation, payment of interest) was suggested. Various other key issues were discussed and proposed to ensure ease of compliance.

CBIC vide different notification implemented the proposed changes with effective from 5th July'2022. as proposed in the GST council meeting. The changes are discussed in detailed manner below for ease of reference: -

Transfer of balance in electronic cash ledger between different GST Registration having same PAN:

Earlier the taxpayers were only eligible to transfer cash balances between inter head i.e. CGST, SGST and IGST and was not allowed to transfer the amount into different GST registration having same PAN.

In Finance Bill 2022, facility to transfer the available cash balance in the electronic cash ledger to the different registration of the taxpayer having same PAN was proposed.

A new facility has been inserted vide PMT-09 for transfer of available cash balance in electronic ledger between different GST Registration having same PAN. The above transfer is subject to the condition that there should not be any unpaid liability in the Electronic Liability Ledger of the transferor. This facility will help those taxpayers who have multiple registration and wish to transfer the excess cash ledger balance to its different registration for solving the cash flow issue by using the said amount for making payment of tax liability.

Change in the formula of Inverted duty structure refund calculation to extend benefit to more taxpayer ¹

Formula for calculation of refund under Rule 89(5) of the Central Goods and Services Tax Rules, 2017 ("the CGST Rules") has been amended to consider utilization of ITC on account of inputs and input services for payment of output tax on inverted rated supplies in the same ratio in which ITC has been availed on inputs and input services during the said tax period. This would help mainly those taxpayers who are having ITC on input services, which were remained un-utilized.

Earlier 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.**

Present 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* Net ITC/ITC on Input & Input Services)**

From the above it is evident that the word **tax payable on inverted rated supply of goods and services** for calculation of refund amount has been substituted with proportionate portion of tax liability

¹ Notification No. 14/2022-CT dated 5.7.2022

on inverted supply attributable to both goods and services, In other words, hitherto tax payable on inverted supply of goods was deducted from the formula leading to allowance of IDS refund mainly for goods. Proposed amendment whereby such deduction would be made for both goods and services on proportion of its credit, which would allow input services refund as well to certain extent.

It was clarified that where the taxpayer is required to make outward supplies under concessional rate notification even though the output and input goods are same, in that cases also the taxpayer is eligible to claim refund under Inverted Duty Structure subject to fulfillment of other conditions required to file the refund application.³

CBIC vide ² Circular clarified that the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the “**Net ITC**” for computation of refund of un-utilized ITC on account of zero-rated supplies or on account of inverted rated structure the CGST Rules, 2017.

Procedure for calculation of value of goods exported for the purpose of refund

Earlier the value of goods exported outside India was not specifically defined however now an explanation has been included towards ascertainment of value of goods exported.

The value of goods exported for the purpose of refund calculation as shall be Lower of the following:

- The Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form or,
- The value declared in tax invoice or bill of supply.

Manner of calculation of interest for delayed payment of tax liability:

A new **Rule 88B** has been inserted for providing the manner of calculation of interest liability on account of delay discharge of liability or excess

availment of input tax credit in their return. The following points shall be kept in mind:

- **Tax discharged in return after the due date** through debiting the electronic cash ledger **interest shall be calculated for the delay period of filling the return.**
- If **tax not discharged**, then **interest shall be calculated from the date when tax required to discharge to the date when the same is paid.**
- **Input tax credit wrongly availed and utilized** than **interest shall be calculated from the date of utilization to the date of reversal of credit.** If balance in electronic credit ledger follows below the input tax credit availed then input tax credit shall be constructed to be utilized.

In relation to ITC wrongly availed and utilized the Board had earlier proposed these in the Budget 2022 that interest on excess availment of ITC shall be charged only if the ITC availed and utilized.

The manner for calculating the date of utilization for the purpose of interest liability has been clarified. The date of utilization of ITC for the purpose of interest calculation shall be: -

- the date, on which the return is due to be furnished or the actual date of filing of the return, **whichever is earlier**, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return;

or

- the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases.

³ Circular No. 172/04/2022-GST dated 06.07.2022

Clarification on various issues relating to applicability of demand and penalty provisions in respect of transactions involving fake invoices:

In the present scenario there are many litigations pending in regard to transactions made without supply of any goods or services. Earlier there was no clarity on the captioned issues by the department which ultimately lead to unnecessary litigations.

After receiving various representations for seeking clarifications on the issues relating to **applicability of demand and penalty provisions in respect of such transactions involving fake invoices**. The CBIC vide circular³ clarified the issues. We have tabulated the clarification below for your reference: -

SL No.	Issues	Clarification
1	<p>Registered person issued tax invoice without making supply of goods & services</p> <p>Questions:</p> <ol style="list-style-type: none"> Whether such transaction will be covered as “supply”? Whether any demand and recovery can be made? Whether any penal action can be taken against registered person 	<ol style="list-style-type: none"> In the given case as the tax invoices raised without supply of goods & services it cannot be treated as Supply. There is no supply in regard to such tax invoice and therefore no tax liability arises for the said transactions, no demand & recovery is required to be made. The registered person shall be liable to penalty of Rs. 10,000 or tax evaded whichever is higher.
2	<p>Registered person has issued tax invoice without making any supply but avails the ITC and further passes to another registered person.</p> <p>Question:</p> <ol style="list-style-type: none"> Whether taxpayer liable for demand & recovery and Penal action Under Section 73 & 74 of the CGST Act 	<ol style="list-style-type: none"> No demand & recovery shall be made from taxpayer U/s 73 & 74 but the taxpayer is liable for penal action under section 122 of the CGST Act, for issuing invoices without any actual supply of goods or services as also for utilizing input tax credit without actual receipt of goods or services.

Any person who has retained the benefit of transactions and at whose instance such transactions are conducted, shall also be liable for penal action with an amount equivalent to the tax evaded or input tax credit availed or passed on.

It may also be noted that in such cases of wrongful or 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 shall be punishable under Section 132. The punishment shall be done in the following manner: -

- In cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund

wrongly taken exceeds five hundred lakh rupees, the taxpayer shall be punishable with imprisonment for maximum five years and with fine.

- In cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, the taxpayer shall be punishable with imprisonment for maximum three years and with fine.
- In the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised

³ Circular 171/03/2022-GST dated 06.07.2022

or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, the

taxpayer shall be punishable with imprisonment for maximum one year and with fine.

Introduction of Form PMT-03A for Re-credit of amount in electronic credit ledger:

A new facility has been introduced for the taxpayers to recredit the wrongly availed refund of unutilised Input Tax Credit. The above facility shall be given only in the following situation.

- Where any erroneous refund amount sanctioned to a taxpayer on account of accumulated ITC or on account of IGST paid on zero rated supply of goods or services, **and**
- the taxpayer has deposited the amount along with the interest & penalty by debiting electronic cash ledger.

If the above two conditions are satisfied by then the said amount shall be recredited to the electronic credit ledger of the taxpayer by proper officer through PMT-03A.

Further CBIC vide **circular**⁴ clarified the type of refund for which the facility of PMT-03A shall be used. For following category of refund applications, the above facility can be used by the taxpayer:

- Refund of unutilised ITC on account of export of goods/services without payment of tax
- Refund of unutilized ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without payment of tax
- Refund of unutilized ITC due to inverted tax structure.
- The persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies but availed the benefit of customs.

Moreover, CBIC also provide the procedure in which the amount shall be re-credited in the electronic credit ledger. The procedure is mentioned below: -

- The taxpayer at the time of making payment of vide DRC-03 mention the reason for making payment in the text box as the deposit of erroneous refund of unutilised ITC, or the deposit of erroneous refund of IGST obtained in contravention of the CGST Rules.
- Until the automatic facility in not incorporated in the GST portal, taxpayer shall make a written request to the jurisdiction officer that they paid back the refund amount through DRC-03.
- The officer on being satisfied pass an order of re-credit in FORM PMT-03A within 30days of receipt of request letter.

Clarification on Utilization of the amounts available in the electronic credit ledger and the Electronic cash ledger for payment of tax and other liabilities: -

There is many mis-interpretations by the taxpayers that whether the **balance available in the electronic credit ledger can be used for payment of any liability**. The above issues are faced by multiple taxpayers that whether they can use the balance of credit ledger to pay any other liability other than output tax.

To bring the uniformity CBIC now vide **Circular No. 172/04/2022-GST dated 06.07.2022 clarified that the balance available in the electronic credit ledger can only be utilized for payment of output tax**, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws. However, output tax does not include tax payable under reverse charge mechanism.

It was mentioned the electronic cash ledger cannot be used for making payment of any interest, penalty, fees or any other amount payable under the said acts. Similarly, electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.

⁴ Circular (174/06/2022-GST)

Automatic revocation of suspended registration on filing of all pending GST return⁵:

The suspended GST registration shall now be automatically restored on filing of all pending return

Other Miscellaneous changes:

- Limitation period for FY 2017-18 for issuance of an order in respect of other demands has been extended till 30th September, 2023
- Time period from 01.03.2020 to 28.02.2022 shall be excluded from calculation of the limitation period for filing refund claim by an

applicant as well as for issuance of demand/order (by proper officer) in respect of erroneous refunds.

- CBIC has extended the due date of filing CMP-08 for the quarter June 2022 till 31st July 2022.
- CBIC extend the waiver of late fee for delay in filing FORM GSTR-4 for FY 2021-22 by approximately four more weeks, i.e. till 28.07.2022.⁴
- CBIC has inserted UPI & IMPS facility in the GST portal for making of any payment.

⁵Notification No. 14/2022-CT dated 5.7.2022