

GOVERNMENT OF ASSAM
OFFICE OF THE COMMISSIONER OF TAXES, ASSAM :: KAR BHAWAN
DISPUR, GUWAHATI-6

CIRCULAR NO. 88/2020-GST

Dated Dispur the 21st April, 2020.

Subject: Clarification on refund related issues – Reg.

No. CT/GST-15/2017/331.— Various representations have been received seeking clarification on some of the issues relating to GST refunds. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law in this regard across the field formations, the Commissioner of State tax, in exercise of its powers conferred by section 168 of the Assam Goods and Services Tax Act, 2017 (hereinafter referred to as “Assam GST Act”), hereby clarifies the issues detailed hereunder:

2. Bunching of refund claims across Financial Years

2.1 It may be recalled that the restriction on clubbing of tax periods across different financial years was put in *vide* para 11.2 of the Central Circular No. 37/11/2018-GST dated 15.03.2018. The said circular was rescinded being subsumed in the Master Central Circular on Refunds No. 125/44/2019-GST dated 18.11.2019 (State Circular No. 79/2019-GST dated 23.12.2019) and the said restriction on the clubbing of tax periods across financial years for claiming refund thus has been continued *vide* Paragraph 8 of the State Circular No. 79/2019-GST dated 23.12.2019 (Central Circular No. 125/44/2019-GST dated 18.11.2019), which is reproduced as under:

*“8. The applicant, at his option, may file a refund claim for a tax period or by clubbing successive tax periods. The period for which refund claim has been filed, however, cannot spread across different financial years. Registered persons having aggregate turnover of up to Rs. 1.5 crore in the preceding financial year or the current financial year opting to file **FORM GSTR-1** on quarterly basis, can only apply for refund on a quarterly basis or clubbing successive quarters as aforesaid. However, refund claims under categories listed at (a), (c) and (e) in para 3 above must be filed by the applicant chronologically. This means that an applicant, after submitting a refund application under any of these categories for a certain period, shall not be subsequently allowed to file a refund claim under the same category for any previous period. This principle / limitation, however, shall not apply in cases where a fresh application is being filed pursuant to a deficiency memo having been issued earlier.”*

2.2 Hon’ble Delhi High Court in Order dated 21.01.2020, in the case of M/s. Pitambra Books Pvt Ltd., *vide* para 13 of the said order has stayed the rigour of paragraph 8 of Central Circular No. 125/44/2019-GST dated 18.11.2019 and has also directed the Government to either open the online portal so as to enable the petitioner to file the tax refund electronically, or to accept the same manually within 4 weeks from the Order. Hon’ble

Delhi High Court *vide* para 12 of the aforesaid Order has observed that the **Circulars can supplant but not supplement the law. Circulars might mitigate rigours of law by granting administrative relief beyond relevant provisions of the statute, however, Central Government is not empowered to withdraw benefits or impose stricter conditions than postulated by the law.**

2.3 Further, same issue has been raised in various other representations also, especially those received from the merchant exporters wherein merchant exporters have received the supplies of goods in the last quarter of a Financial Year and have made exports in the next Financial Year i.e. from April onwards. The restriction imposed *vide* para 8 of the master refund circular prohibits the refund of ITC accrued in such cases as well.

2.4 On perusal of the provisions under sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 and sub-section (3) of section 54 of the Assam GST Act, there appears no bar in claiming refund by clubbing different months across successive Financial Years.

2.5 The issue has been examined and it has been decided to remove the restriction on clubbing of tax periods across Financial Years. Accordingly, State Circular No. 79/2019-GST dated 23.12.2019 (Central Circular No. 125/44/2019-GST dated 18.11.2019) stands modified to that extent i.e. the restriction on bunching of refund claims across financial years shall not apply.

3. Refund of accumulated input tax credit (ITC) on account of reduction in GST Rate

3.1 It has been brought to the notice of the Commissioner of State tax that some of the applicants are seeking refund of unutilized ITC on account of inverted duty structure where the inversion is due to change in the GST rate on the same goods. This can be explained through an illustration. An applicant trading in goods has purchased, say goods "X" attracting 18% GST. However, subsequently, the rate of GST on "X" has been reduced to, say 12%. It is being claimed that accumulation of ITC in such a case is also covered as accumulation on account of inverted duty structure and such applicants have sought refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the Assam GST Act.

3.2 It may be noted that refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the Assam GST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the Assam GST Act. It is hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the Assam GST Act would not be applicable in cases where the input and the output supplies are the same.

4. Change in manner of refund of tax paid on supplies other than zero rated supplies

4.1 State Circular No. 79/2019-GST dated 23.12.2019 (Central Circular No. 125/44/2019-GST dated 18.11.2019); in para 3, categorizes the refund applications to be filed in **FORM GST RFD-01** as under:

- a. Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;
- b. Refund of tax paid on export of services with payment of tax;
- c. Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;
- d. Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax;
- e. Refund of unutilized ITC on account of accumulation due to inverted tax structure;
- f. Refund to supplier of tax paid on deemed export supplies;
- g. Refund to recipient of tax paid on deemed export supplies;
- h. Refund of excess balance in the electronic cash ledger;
- i. Refund of excess payment of tax;**
- j. Refund of tax paid on intra-State supply which is subsequently held to be inter-State supply and vice versa;**
- k. Refund on account of assessment/provisional assessment/appeal/any other order;**
- l. Refund on account of "any other" ground or reason.**

4.2 For the refund of tax paid falling in categories specified at Sl. No. (i) to (l) above i.e. refund claims on supplies other than zero rated supplies, no separate debit of ITC from electronic credit ledger is required to be made by the applicant at the time of filing refund claim, being claim of tax already paid. However, the total tax would have been normally paid by the applicant by debiting tax amount from both electronic credit ledger and electronic cash ledger. At present, in these cases, the amount of admissible refund, is paid in cash even when such payment of tax or any part thereof, has been made through ITC.

4.3.1 As this could lead to allowing unintended encashment of credit balances, this issue has been engaging attention of the Government. Accordingly, State notification is being issued corresponding to Central notification No.16/2020-Central Tax dated 23.03.2020, wherein sub-rule (4A) is being inserted in rule-86 of the Assam GST Rules, 2017 which reads as under:

*"(4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in **FORM GST PMT-03.**"*

4.3.2 Further, in the same notification, sub-rule (1A) is being inserted in rule 92 of the Assam GST Rules, 2017. The same is reproduced hereunder:

"(1A)Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the

*proper officer is satisfied that a refund under sub-section (5) of section 54 of the Act is due and payable to the applicant, he shall make an order in **FORM RFD-06** sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue **FORM GST PMT-03** re-crediting the said amount as Input Tax Credit in electronic credit ledger.”*

- 4.4 The combined effect the abovementioned changes is that any such refund of tax paid on supplies other than zero rated supplies will now be admissible proportionately in the respective original mode of payment i.e. in cases of refund, where the tax to be refunded has been paid by debiting both electronic cash and credit ledgers (other than the refund of tax paid on zero-rated supplies or deemed export), the refund to be paid in cash and credit shall be calculated in the same proportion in which the cash and credit ledger has been debited for discharging the total tax liability for the relevant period for which application for refund has been filed. Such amount shall be accordingly paid by issuance of order in **FORM GST RFD-06** for amount refundable in cash and **FORM GST PMT-03** to re-credit the amount attributable to credit as ITC in the electronic credit ledger.

5. Guidelines for refunds of Input Tax Credit under Section 54(3)

- 5.1 In terms of para 36 of State Circular No. 79/2019-GST dated 23.12.2019 (Central Circular No. 125/44/2019-GST dated 18.11.2019), the refund of ITC availed in respect of invoices not reflected in **FORM GSTR-2A** was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the Assam GST Rules, 2017 *vide* notification No. FTX.56/2017/Pt-III/340 dated 30.12.2019, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the **FORM GSTR-2A** of the applicant.
- 5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in **FORM GSTR-1** and are reflected in the **FORM GSTR-2A** of the applicant. Accordingly, para 36 of the State Circular No. 79/2019-GST dated 23.12.2019 (Central Circular No. 125/44/2019-GST dated 18.11.2019) stands modified to that extent.

6. New Requirement to mention HSN/SAC in Annexure ‘B’

- 6.1 References have also been received from the field formations that HSN wise details of goods and services are not available in **FORM GSTR-2A** and therefore it becomes very difficult to distinguish ITC on capital goods and/or input services out of total ITC for a relevant tax period. It has been recommended that a column relating to HSN/SAC Code should be added in the statement of invoices relating to inward supply as provided in **Annexure-B** of the State Circular No. 79/2019-GST dated 23.12.2019 (Central Circular

No. 125/44/2019-GST dated 18.11.2019) so as to easily identify between the supplies of goods and services.

- 6.2 The issue has been examined and considering that such a distinction is important in view of the provisions relating to refund where refund of credit on Capital goods and/or services is not permissible in certain cases, it has been decided to amend the said statement. Accordingly, **Annexure-B** of the State Circular No. 79/2019-GST dated 23.12.2019 (Central Circular No. 125/44/2019-GST dated 18.11.2019) stands modified to that extent.
- 6.3 **A suitably modified statement format is attached** for applicants to upload the details of invoices reflecting in their **FORM GSTR-2A**. The applicant is, in addition to details already prescribed, now required to mention HSN/SAC code which is mentioned on the inward invoices. In cases where supplier is not mandated to mention HSN/SAC code on invoice, the applicant need not mention HSN/SAC code in respect of such an inward supply.
7. This Circular is clarificatory in nature and not meant for any interpretation of provisions of the Act and rules.
8. Difficulties, if any, in implementation of the above instructions may be brought to the notice of the Commissioner at an early date.
9. This Circular shall be deemed to have been issued on 31st March, 2020.


Sd/= Anurag Goel,
Commissioner of State tax, Assam,
Dispur, Guwahati

Memo No. CT/GST-15/2017/331-A

Dated Dispur the 21st April, 2020.

Copy to :

1. The Commissioner & Secretary to the Government of Assam, Finance (Taxation) Department, Dispur, Guwahati-6 for favour of kind information.
2. The Commissioner of Central GST, Guwahati / Dibrugarh for information.
3. The Additional Commissioner of State tax (All) / Joint Commissioner of State tax (All) / Deputy Commissioner of State tax (All) / Assistant Commissioner of State tax (All) / Superintendent of State tax (All) / Inspector of State tax (All) for information and necessary action.
4. The Information Technology Officer, Office of the Commissioner of State tax, Assam for uploading it on the website of the Commissionerate for information of all concerned.


Commissioner of State tax, Assam,
Dispur, Guwahati

Annexure-B

Statement of invoices to be submitted with application for refund of unutilized ITC

| Sl. No. | GSTIN of the Supplier | Name of the Supplier | Invoice Details | | | Category of input supplies | Centr al Tax | State Tax | Integrated Tax | Cess | Eligible for ITC | Amount of eligible ITC | |
|---------|-----------------------|----------------------|-----------------|------|-------|-------------------------------------|--------------|-----------|----------------|------|------------------|------------------------|----|
| | | | Invo ice No. | Date | Value | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 |
| | | | | | | Inputs/Input Services/capital goods | HSN/SAC | | | | | Yes/No/Partially | |