# Law and Provisions under CGST

# Chapter 20 – TRANSITIONAL PROVISIONS

With the introduction and implementation of GST, which subsumed multiple indirect taxes, there was also a need to clearly spell out provisions and arrangements to ensure smooth transition from the old tax regime to GST. This was needed especially to provide for carry forward of input tax credits (ITC), relating to pre-GST taxes that were available with the taxpayers on the day of roll out of GST, into GST regime (herein after referred to as transitional credits). Transitional credit provisions are important for both the Government and business. For business, these credits should be carried forward properly to give them benefit of taxes they had already paid on inputs or input services in the pre-GST regime. From the view point of the Government, the amount of admissible transitional credits will determine the extent of cash flow of GST revenue and hence in the interest of revenue, only admissible and eligible transitional credits should be carried forward into GST.

**20.0 Legal framework for Transitional provisions** - Transitional provisions are covered under Chapter XX of the CGST Act 2017 from Section 139 to Section 142:

| **Chapter XX of the CGST Act 2017 - Transitional provisions** | |
|---|---|
| **Section** | **Particulars** |
| Section 139 | Migration of existing taxpayers |
| Section 140 | Transitional arrangements for input tax credit |
| Section 141 | Transitional provisions relating to job work |
| Section 142 | Miscellaneous transitional provisions |

In addition, Rules have been prescribed from Rule 117 to 121 in Chapter XIV of CGST Rules 2017:

| **CGST Rules 2017 - Transitional provisions** | |
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| **Rules** | **Particulars** |
| Rule 117 | Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day |
| Rule 118 | Declaration to be made under clause (c) of sub-section (11) of section 142 |
| Rule 119 | Declaration of stock held by a principal and job-worker |
| Rule 120 | Details of goods sent on approval basis |
| Rule 120A | Revision of declaration in FORM GST TRAN-1 |
| Rule 121 | Recovery of credit wrongly availed |

| **Forms - Transitional provisions** | |
|---|---|
| **Form No.** | **Particulars** |
| **Form GST TRAN 1** | Transitional ITC / Stock Statement |
| **Form GST TRAN 2** | Transitional ITC/Stock Statement |
| **Form GST TRAN 3** | Return for Credit Transfer Documents |

## 20.1 Migration of existing taxpayers [Section 139]

| Section | | Particulars |
|---|---|---|
| **Section 139** | | **Migration of existing taxpayers having a valid Permanent Account Number** |
| **Section 139 (1)** | 01.07.2017 to till date | • On and from the appointed day,<br>• every person registered under any of the existing laws and having a valid Permanent Account Number<br>• shall be issued a certificate of registration on provisional basis,<br>• subject to such conditions and in such form and manner as may be prescribed,<br>• which unless replaced by a final certificate of registration under sub-section (2),<br>• shall be liable to be cancelled if the conditions so prescribed are not complied with. |
| **Section 139 (2)** | 01.07.2017 to till date | • The final certificate of registration shall be granted<br>• in such form and manner and subject to such conditions as may be prescribed. |
| **Section 139 (3)** | 01.07.2017 to till date | • The certificate of registration issued to a person under sub-section (1) shall be deemed to have not been issued if the said registration is cancelled in pursuance of an application filed by such person that he was not liable to registration under section 22 or section 24. |

### 20.1.1.1 Migration of persons registered under the existing law. [Rule 24]

| Rule | Particulars |
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| **Rule 24 (1) (a)** | Every person, other than a person deducting tax at source or an Input Service Distributor, registered under an existing law and having a Permanent Account Number issued under the provisions of the Income-tax Act, 1961 (Act 43 of 1961) shall enrol on the common portal by validating his e-mail address and mobile number, either directly or through a Facilitation Centre notified by the Commissioner. |
| **Rule 24(1) (b)** | Upon enrolment under clause (a), the said person shall be granted registration on a provisional basis and a certificate of registration in **FORM GST REG-25**, incorporating the Goods and Services Tax Identification Number therein, shall be made available to him on the common portal: |

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| **First Proviso** | **Provided that** a taxable person who has been granted multiple registrations under the existing law on the basis of a single Permanent Account Number shall be granted only one provisional registration under the Act: |
| **Second Proviso** | [1][*****] |

1 Omitted the second proviso "Provided further that a person having centralised registration under the provisions of Chapter V of the Finance Act, 1994 (32 of 1994) shall be granted only one provisional registration in the State or Union territory in which he is registered under the existing law." vide Notification No. 7/2017 – Central Tax dated 27th June, 2017 and shall be deemed to have come into force w.e.f. 22nd day of June, 2017.

| Rule | Particulars |
|---|---|
| **Rule 24 (2) (a)** | Every person who has been granted a provisional registration under sub-rule (1) shall submit an application electronically in **FORM GST REG–26**, duly signed or verified through electronic verification code, along with the information and documents specified in the said application, on the common portal either directly or through a Facilitation Centre notified by the Commissioner. |
| **Rule 24(2) (b)** | The information asked for in clause (a) shall be furnished within a period of three months or within such further period as may be extended by the Commissioner in this behalf. |
| **Rule 24(2) (c)** | If the information and the particulars furnished in the application are found, by the proper officer, to be correct and complete, a certificate of registration in FORM GST REG-06 shall be made available to the registered person electronically on the common portal. |

| Rule | Particulars |
|---|---|
| **Rule 24 (3)** | Where the particulars or information specified in sub-rule (2) have either not been furnished or not found to be correct or complete, the proper officer shall, after serving a notice to show cause in **FORM GST REG-27** and after affording the person concerned a reasonable opportunity of being heard, cancel the provisional |

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| | registration granted under sub-rule (1) and issue an order in **FORM GST REG-28**: |

| Rule | Particulars |
|---|---|
| [1][**Rule 24 (3A)** | Where a certificate of registration has not been made available to the applicant on the common portal within a period of **fifteen days from the date of the furnishing of information and particulars** referred to in clause (c) of sub-rule (2) and **no notice** has been issued under sub-rule (3) within the said period, the **registration shall be deemed to have been granted** and the said certificate of registration, duly signed or verified through electronic verification code, shall be made available to the registered person on the common portal. |
| **First Proviso** | **Provided that** the show cause notice issued in **FORM GST REG-27** can be withdrawn by issuing an order in **FORM GST REG- 20**, if it is found, after affording the person an opportunity of being heard, that **no such cause exists** for which the notice was issued.]<br><br>1 Inserted vide Notification No. 7/2017 – Central Tax dated 27th June, 2017 and shall be deemed to have come into force w.e.f. 22nd day of June, 2017. |

| Rule | Particulars |
|---|---|
| **Rule 24(4)** | **Every person** registered under any of the existing laws, who is **not liable to be registered** under the Act may, [1][on or before [2][31st March, 2018], at his option, **submit an application** electronically in **FORM GST REG-29** at the common portal for the **cancellation of registration granted** to him and the proper officer shall, after conducting such enquiry as deemed fit, cancel the said registration.<br><br>1 Substituted for the words, figures and letters "on or before 31st October, 2017", vide Notification No. 51/2017- Central Tax dated 28.10.2017. |

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| | | 2 Substituted for the figures, letters and word "31st December, 2017", vide Notification No. 03/2018- Central Tax dated 20.01.2018. |

### 20.1.2.1 Advisory for migration

The GST common portal would reopen for migration on 25th June 2017. Assessees were required to complete the migration process before 30th September 2017. DG Systems is constantly compiling the provisional Id requests and sending them to GSTN for creation of Provisional IDs and pursuing with GSTN for issuance of PIDs and resolution of problems faced by registered taxpayers of Central Excise and Service Tax. DG Systems would disseminate the Provisional IDs by or after 25th June 2017 to all the assessees whose Provisional IDs were cancelled due to not being activated by them. In the interim, following advisory is issued for the taxpayers and departmental officers for the frequently faced problems. Also, any difficulty faced by the taxpayers while completing the enrolment process on www.gst.gov.in needs to be taken up with the helpdesk of GSTN.

| Sr No. | Issue | Advisory |
|---|---|---|
| **1** | Provisional Id is awaited | Assessee needs to send a request to cbecmitra.helpdesk@icegate.gov.in and mention CE/ST registration number, PAN number, legal name as on PAN, trade name of assessee, state. DG Systems will compile the list and send to GSTN for issuance of PID. The Provisional IDs would be distributed among assesses only after being provided by GSTN to DG Systems, CBEC. |
| **2** | RC cancelled | Assessee needs to send a request to cbecmitra.helpdesk@icegate.gov.in to reactivate the cancelled Provisional ID and mention the old Provisional ID issued earlier. |
| **3** | Centralised registrations: Provisional ID has not been issued for all the states. | PID will be issued to all addresses mentioned in Registration Certificate of ST. If all the premises are not mentioned in the ST2/RC, then RC needs to be amended to include all these premises. Assessee need to apply for fresh GST registration on www.gst.gov.in after appointed date for those states which addresses are not added in RC. Same goes for new premises that would be set up anywhere else. |
| **4** | Unable to submit enrolment form with Digital Signature | Even if the Assessee is unable to submit the form, they may only complete the form and save it on www.gst.gov.in. ARN number of saved forms will be emailed to them after 15th June 2017 subject to validation of information supplied on GST common portal. |
| **5** | Provisional Id issued against wrong state / Assessee amended the state after the | Assessee needs to write to cbecmitra.helpdesk@icegate.gov.in mentioning the state for which PID is required and mention CE/ST registration number, provisional ID, PAN number, legal name as on PAN, trade name of assessee, state. DG |

| | | |
|---|---|---|
| | issuance of provisional Id | Systems will compile the list andsend to GSTN for issuing new ID. The ID issued for the old state would be CANCELLED. |
| **6** | Provisional Id issued against a different registration number (e.g. PID issued against AAAAA1234MST001 which is not in use instead of AAAAA1234MST002 which is used by assesse) | • Assessee needs to check his jurisdiction for the registration number against which the PID is issued on www.easiestcbec.gov.in -> assesssee code based search. Then apply to the concerned Range Superintendent to reset the password for the registration. Then access the old registration number and obtain the PID and password.<br>• Alternately, the Assessee may obtain the PID and Password from the concerned jurisdictional officer as same has also been shared with them through the Zonal Chief Commissioner Office.<br>• The Assessee then has to mention all his registered premises as additional premises in the enrolment form. |
| **7** | Provisional Id activated by assesse but not completed migration by filling up enrolment form. | Assessee needs to complete the enrolment by completely filling up enrolment form and save it on www.gst.gov.in. ARN number of saved forms will be emailed to them after 15th June 2017 subject to validation of information supplied on GST common portal. |
| **8** | 'No record found' when searched by RC/ ST2 number on www.gst.gov.in under link "check registration status" | Search using PAN instead of registration number. Still, if the result is not found, please write to cbecmitra.helpdesk@icegate.gov.in with all details such as registration number, PAN number, legal name as on PAN, business name, state for generation of PID. |
| **9** | Provisional Id is already mapped against a different user. | Complaints need to be registered with GSTN help desk on 0124-4688999 or helpdesk@gst.gov.in |

### 20.1.3.1 Departmental Notifications – Time limit to forego registration

Notification No. 3 /2017 - Central Tax dated 19th June 2017 notified rule 24(4) of CGST Rules 2017 to be effective from 22nd June 2017 as - "Every person registered under any of the existing laws, who is not liable to be registered under the Act may, **within a period of thirty days from the appointed day**, at his option, submit an application electronically in FORM GST REG-29 at the common portal for the cancellation of registration granted to him and the proper officer shall, after conducting such enquiry as deemed fit, cancel the said registration."

Notification No. 17 /2017 - Central Tax dated 27th July 2017 extended the time period to submit an application electronically in FORM GST REG-29 at the common portal for the cancellation of registration granted to him with effect from 22nd July, 2017, by substituting the words "within a period of thirty days from the appointed day", the words and figures "on or before 30th September, 2017".

Notification No. 36 /2017 - Central Tax dated 29th September 2017 further extended the time period to submit an application electronically in FORM GST REG-29 at the common portal for the cancellation of registration granted to him with effect from 29th September 2017, by substituting for the figures, letters and word, "30th September", the figures, letters and word "31st October".

Notification No. 51 /2017 - Central Tax dated 28th October 2017 further extended the time period to submit an application electronically in FORM GST REG-29 at the common portal for the cancellation of registration granted to him with effect from 29th September 2017, by substituting for the words, figures and letters "on or before 31st October, 2017", the words, figures and letters "**on or before 31st December, 2017**".

Notification No. 03 /2018 - Central Tax dated 23rd January 2018 further extended the time period to submit an application electronically in FORM GST REG-29 at the common portal for the cancellation of registration granted to him with effect from 29th September 2017, by substituting for the figures, letters and word "31st December, 2017", the figures, letters and word "31st March, 2018".

**20.1.3.2 Departmental Notifications – Special procedure for completing migration of taxpayers who received provisional IDs but could not complete the migration process.**

Central Government vide Notification No. 31 /2018 - Central Tax dated 6th August 2018 provided special procedure to be followed by the persons who did not file the complete **FORM GST REG 26** of the Central Goods and Services Tax Rules, 2017 but received only a Provisional Identification Number (PID) till the 31st December, 2017 to apply for Goods and Services Tax Identification Number (GSTIN).

**Procedure to be followed for registration**

(i)**.** The details as per the Table below should be furnished by such taxpayers to the jurisdictional nodal officer of the Central Government or State Government on or before the 31st August, 2018.

**Table**

| | | |
|---|---|---|
| 1 | Provisional ID | |
| 2 | Registration Number under the earlier law (Taxpayer Identification Number (TIN)/Central Excise/Service Tax Registration number) | |
| 3 | Date on which token was shared for the first time | |
| 4 | Whether activated part A of the aforesaid FORM GST REG-26 | Yes/No |
| 5 | Contact details of the taxpayer | |
| 5(a) | Email id | |
| 5(b) | Mobile | |
| 6 | Reason for not migrating in the system | |
| 7 | Jurisdiction of Officer who is sending the request | |

(ii) On receipt of an e-mail from the Goods and Services Tax Network (GSTN), such taxpayers should apply for registration by logging onto https://www.gst.gov.in/) in the "Services" tab and filling up the application in FORM GST REG-01 of the Central Goods and Services Tax Rules, 2017.

(iii) After due approval of the application by the proper officer, such taxpayers will receive an email from GSTN mentioning the Application Reference Number (ARN), a new GSTIN and a new access token.

(iv) Upon receipt, such taxpayers are required to furnish the following details to GSTN by email, on or before the 30th September, 2018, to migration@gstn.org.in:–

(a) New GSTIN;

(b) Access Token for new GSTIN;

(c) ARN of new application;

(d) Old GSTIN (PID).

(v) Upon receipt of the above information from such taxpayers, GSTN shall complete the process of mapping the new GSTIN to the old GSTIN and inform such taxpayers.

(vi) Such taxpayers are required to log onto the common portal www.gstn.gov.in using the old GSTIN as "First Time Login" for generation of the Registration Certificate.

**Such taxpayers shall be deemed to have been registered with effect from the 1st July, 2017.**

Further, Notification No. 67 /2018 - Central Tax dated 31st December 2018 amended Notification No. 31 /2018 - Central Tax dated 6th August 2018 namely:

In the said notification, in paragraph 2 ,-

(i) in clause (i), for the figures, letters and word "31st August, 2018", the figures, letters and word "31st January, 2019" shall be substituted;

(ii) in clause (iv), for the figures, letters and word "30th September, 2018", the figures, letters and word "28th February, 2019" shall be substituted.

For further details on provisional registration refer to **Chapter 9** on Registration.

### 20.2. Transitional arrangements for input tax credit [Section 140]

**20.2.1 The amount of CENVAT credit [1][of eligible duties] carried forward in the return relating to the period ending with the day immediately preceding the appointed day, to be carried forward in ECL.**

| Section | | Particulars |
|---|---|---|
| **Section 140 (1)** | 01.07.2017 to till date | • A registered person,<br>• other than a person opting to pay tax under section 10,<br>• shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit [1][of eligible duties] carried forward in the return |

| | | |
|---|---|---|
| | | • relating to the period ending with the day immediately preceding the appointed day,<br>• furnished by him under the existing law [2][within such time and ] in such manner as may be prescribed:<br><br>1 Inserted with effect from the 1st day of July, 2017 vide clause (a) of Section 28 of the Central Goods and Services Tax (Amendment) Act, 2018 and shall always be deemed to have been inserted which comes into force vide Notification No. 02/2019 – Central Tax dated 29th January, 2019.<br>2 Inserted and shall be deemed to have been inserted with effect from the 1st day of July, 2017, vide clause (a) of Section 128 of the Finance Act, 2020 NO. 12 of 2020 dated 27th March, 2020 which comes into force on 18th May 2020, by Notification No. 43/2020 – Central Tax dated 16th May, 2020. |
| **First Proviso** | 01.07.2017 to till date | **Provided that** the registered person shall not be allowed to take credit in the following circumstances, namely:—<br><br>(i) where the said amount of credit is not admissible as input tax credit under this Act; or<br>(ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or<br>(iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government. |

**20.2.2.1 Departmental Clarifications - Directions under Section 168 of the CGST Act regarding non-transition of CENVAT credit under section 140 of CGST Act or non-utilization thereof in certain cases- Circular No. 33/07/2018-GST dated 23rd Feb., 2018**

In exercise of the powers conferred under section 168 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "Act"), for the purposes of uniformity in implementation of the Act, the Central Board of Excise and Customs hereby directs the following.

2. Non-utilization of Disputed Credit carried forward

2.1 Where in relation to a certain CENVAT credit pertaining to which a show cause notice was issued under rule 14 of the CENVAT Credit Rules, 2004, which has been adjudicated and where in the last adjudication order or the last order-in-appeal, as it existed on 1st July, 2017, it was held that such CENVAT credit is not admissible, then such CENVAT credit (herein and after referred to as "disputed credit"), credited to the electronic credit ledger in terms of sub-

section (1), (2), (3), (4), (5) (6) or (8) of section 140 of the Act, shall not be utilized by a registered taxable person to discharge his tax liability under this Act or under the IGST Act, 2017, till the order-in-original or the last order-in-appeal, as the case may be, holding that disputed credit as inadmissible is in existence.

2.2 During the period, when the last order-in-original or the last order-in-appeal, as the case may be, holding that disputed credit as inadmissible is in operation, if the said disputed credit is utilised, it shall be recovered from the tax payer, with interest and penalty as per the provisions of the Act.

3. Non-transition of Blocked Credit

3.1 In terms of clause (i) of sub-section (1) of section 140 of the Act, a registered person shall not take in his electronic credit ledger, amount of CENVAT credit as is carried forward in the return relating to the period ending with the day immediately preceding the appointed day which is not eligible under the Act in terms of sub-section (5) of section 17 (hereinafter referred to as „blocked credit"), such as, telecommunication towers and pipelines laid outside the factory premises.

3.2 If the said blocked credit is carried forward and credited to the electronic credit ledger in contravention of section 140 of the Act, it shall not be utilized by a registered taxable person to discharge his tax liability under this Act or under the IGST Act, 2017, and shall be recovered from the tax payer with interest and penalty as per the provisions of the Act.

4. In all cases where the disputed credit as defined in terms of para 2.1 or blocked credit under para 3.1 is higher than Rs. ten lakhs, the taxpayers shall submit an undertaking to the jurisdictional officer of the Central Government that such credit shall not be utilized or has not been availed as transitional credit, as the case may be. In other cases of transitional credit of an amount lesser than Rs. ten lakhs, the directions as above shall apply but the need to submit the undertaking shall not apply.

**20.2.2.2 Departmental Clarifications - Clarification regarding procedure for recovery of arrears under the existing law and reversal of inadmissible input tax credit-- Circular No. 42/16/2018-GST dated 13th April, 2018**

Kind attention is invited to the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) relating to the recovery of arrears of central excise duty /service tax and CENVAT credit thereof, CENVAT credit carried forward erroneously and related interest, penalty or late fee payable arising as a result of the proceedings of assessment, adjudication, appeal etc. initiated before, on or after the appointed date under the provisions of the existing law. In this regard, representations have been received seeking clarification on the procedure for recovery of such arrears in the GST regime.

2. The issues have been examined and to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168 (1) of the Central Goods and Services Tax Act, 2017, (hereinafter referred to as the "CGST Act") hereby specifies the procedure to be followed for recovery of arrears arising out of proceedings under the existing law.

3. **Legal provisions relating to the recovery of arrears of central excise duty and service tax and CENVAT credit thereof arising out of proceedings under the existing law (Central Excise Act, 1944 and Chapter V of the Finance Act, 1994)**

i) **Recovery of arrears of wrongly availed CENVAT Credit**: In case where any proceeding of appeal, review or reference relating to a claim for CENVAT credit had been initiated, whether before, on or after the appointed day, under the existing law, any amount of such credit becomes recoverable, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under theCGST Act [Section 142(6)(b) of the CGST Act refers].

ii) **Recovery of CENVAT Credit carried forward wrongly**: CENVAT credit of central excise duty/service tax availed under the existing law may be carried forward in terms of transitional provisions as per section 140 of the CGST Act subject to the conditions prescribed therein. Any credit which is not admissible in terms of section 140 of the CGST Act shall not be allowed to be transitioned or carried forward and the same shall be recovered as an arrear of tax under section 79 of the CGST Act.

iii) **Recovery of arrears of central excise duty and service tax:** a. Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable, the same shall, unless recovered under the existing law,be recovered as an arrear of tax under the CGST Act [Section 142(8)(a)of the CGST Act refers]. b. If due to any proceedings of appeal, review or reference relating to output duty or tax liability initiated, whether before, on or after the appointed day, under the existing law, any amount of output duty or tax becomes recoverable, the same shall, unless recovered under the existing law,be recovered as an arrear of tax under the CGST Act [Section 142(7)(a)of the CGST Act refers].

iv) **Recovery of arrears due to revision of return under the existing law**: Where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [Section 142(9)(a)of the CGST Act refers].

4. In view of the above legal provisions, recovery of central excise duty/ service tax and CENVAT credit thereof arising out of the proceedings under the existing law, unless recovered under the existing law, and that of inadmissible transitional credit,is required to be made as an arrear of tax under the CGST Act.The following procedure is hereby prescribed for the recovery of arrears:

**4.1 Recovery of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law and inadmissible transitional credit:**

(a) The CENVAT credit of central excise duty or service tax wrongly carried forward as transitional credit shall be recovered as central tax liability to be paid through the utilization of amounts available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

(b) The arrears ofcentral excise duty, service tax or wrongly availed CENVAT credit thereof under the existing lawarising out of any of the situations discussed in para 3 above, shall, unless recovered under the existing law, be recovered as central tax liability to be paid through the utilization of amounts available in the electronic credit ledger or electronic cash ledger of

the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

**4.2 Recovery of interest, penalty and late fee payable**:

(a) The arrears of interest, penalty and late fee in relation to CENVAT credit wrongly carried forward, arising out of any of the situations discussed in para 3 above, shall be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in electronic cash ledgerof the registered person and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

(b) The arrears of interest, penalty and late fee in relation to arrears of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law arising out of any of the situations discussed in para 3 above, shall, unless recovered under the existing law, be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in the electronic cash ledger of the registered person and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

**4.3 Payment of central excise duty & service tax on account of returns filed for the past period:** The registered person may file Central Excise / Service Tax return for the period prior to 1st July, 2017 by logging onto www.aces.gov.in and make payment relating to the same through EASIEST portal (cbec-easiest.gov.in), as per the practice prevalent for the period prior to the introduction of GST. However, with effect from 1st of April, 2018, the return filing shall continue on www.aces.gov.in but the payment shall be made through the ICEGATE portal. As the registered person shall be automatically taken to the payment portal on filing of the return, the user interface remains the same for him.

**4.4 Recovery of arrears from assessees under the existing law in cases where such assessees are not registered under the CGST Act, 2017:** Such arrears shall be recovered in cash, under the provisions of the existing law and the payment of the same shall be made as per the procedure mentioned in para 4.3 supra.

**20.2.2.3 Departmental Clarifications - Recovery of arrears of wrongly availed CENVAT credit under the existing law and inadmissible transitional credit- Circular No. 58/32/2018-GST dated 4th September, 2018**

Various representations have been received seeking clarification on the process of recovery of arrears of wrongly availed CENVAT credit under the existing law and CENVAT credit wrongly carried forward as transitional credit in the GST regime. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act'), hereby specifies the process of recovery of the said arrears and inadmissible transitional credit in the succeeding paragraphs.

2. The Board vide Circular No. 42/16/2018-GST dated 13th April, 2018, has clarified that the recovery of arrears arising under the existing law shall be made as central tax liability to be paid through the utilization of the amount available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

3. Currently, the functionality to record this liability in the electronic liability register is not available on the common portal. Therefore, it is clarified that as an alternative method, taxpayers may reverse the wrongly availed CENVAT credit under the existing law and inadmissible transitional credit through Table 4(B)(2) of FORM GSTR-3B. The applicable interest and penalty shall apply on all such reversals which shall be paid through entry in column 9 of Table 6.1 of FORM GSTR-3B.

**20.2.2.4 Departmental Clarifications - Central Goods and Services Tax (Amendment) Act, 2018- Clarification regarding section 140(1) of the CGST Act, 2017 - Circular No. 87/06/2019-GST dated 2nd Jan, 2019**

Sub-section (a) of section 28 of the CGST (Amendment) Act, 2018 (No. 31 of 2018) provides that section 140(1) of the CGST Act, 2017 be amended with retrospective effect to allow transition of CENVAT credit under the existing law viz. Central Excise and Service Tax law, only in respect of “eligible duties”. In this regard, doubts have been expressed as to whether the expression “eligible duties” would include CENVAT credit of Service Tax within its scope or not.

In exercise of powers conferred under section 168 of the Central Goods and Services Act (hereinafter referred to as “Act”), for the purposes of uniformity in the implementation of the Act, the Central Board of Indirect Taxes and Customs has issued Circular No. 87/06/2019-GST dated 2nd January, 2019 to direct the following:

The CENVAT credit of service tax paid under section 66B of the Finance Act, 1994 was available as transitional credit under section 140(1) of the CGST Act and that legal position has not changed due to amendment of section 140(1) on account of following reasons:

i) The amendment in provisions of section 140(1) and the explanations to section 140 need to be read harmoniously such that neither any provision of the amendment becomes otiose nor does the legislative intent of the amendment get defeated.

ii) The intention behind the amendment of section 140(1) to include the expression "eligible duties” has been indicated in the “Rationale/ Remarks” column (at Sl. No. 37) of the draft proposals for amending the GST law which was uploaded in the public domain for comments. It is clear that the transition of credit of taxes paid under section 66B of the Finance Act, 1994 was never intended to be disallowed under section 140(1) and therefore no such remark was present in the document.

iii) Under tax statutes, the word “duties" is used interchangeably with the word “taxes” and in the present context, the two words should not be read in a disharmonious manner.

Thus, expression "eligible duties” in section 140(1) which are allowed to be transitioned would cover within its fold the duties which are listed as "eligible duties” at sl. no. (i) to (vii) of explanation 1, and “eligible duties and taxes” at sl. no. (i) to (viii) of explanation 2 to section 140, since the expression “eligible duties and taxes” has not been used elsewhere in the Act.

The expression “eligible duties” under section 140(1) does not in any way refer to the condition regarding goods in stock as referred to in Explanation 1 to section 140 or to the condition regarding inputs and input services in transit, as referred to in Explanation 2 to section 140.

Further, **it has been decided not to notify the clause (i) of sub-section (b) of section 28 and clause (i) of sub-section (c) of section 28 of CGST (Amendment) Act, 2018 which link Explanation 1 and Explanation 2 of section 140 to section 140(1). This would ensure that the credit allowed to be transitioned under section 140(1) is not linked to credit of goods in stock, as provided under Explanation 1, and credit of goods and services in transit, as provided under Explanation 2.**

No transition of credit of cesses, including cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975, would be allowed in terms of Explanation 3 to section 140, inserted vide sub-section (d) of section 28 of CGST Amendment Act, 2018 which shall become effective from the date the same is notified giving it retrospective effect.

**20.2.2.5 Departmental Clarifications - Guidelines for filing/revising TRAN-1/TRAN-2 in terms of order dated 22.07.2022 & 02.09.2022 of Hon'ble Supreme Court in the case of Union of India vs. Filco Trade Centre Pvt. Ltd.- Circular No.180/12/2022-GST dated 9th September, 2022**

Attention is invited to the directions issued by Hon'ble Supreme Court vide order dated 22.07.2022 in the matter of Union of India vs. Filco Trade Centre Pvt. Ltd. , SLP(C) No. 32709-32710/2018. The operative portion of the order reads as follows: —

> 1. Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.
>
> 2. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).
>
> 3. GSTN has to ensure that there are no technical glitch during the said time.
>
> 4. The concerned officers are given 90 days thereafterto verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.
>
> 5. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.
>
> 6. If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims. The Special Leave Petitions are disposed of accordingly. Pending applications, if any, also stand disposed of."

2. Subsequently, in Miscellaneous Application No.1545-1546/2022 in SLP(C) No. 32709-32710/2018, Hon'ble Supreme Court vide order dated 2nd September, 2022 has inter-alia ordered as follows:

> "The time for opening the GST Common Portal is extended for a further period of four weeks from today."

3. In accordance with the directions of Hon'ble Supreme Court, the facility for filing TRAN-1/ TRAN-2 or revising the earlier filed TRAN-1/TRAN-2 on the common portal by an aggrieved registered assessee (hereinafter referred to as the applicant') will be made available by GSTN during the period from 01.10.2022 to 30.11.2022. In order to ensure uniformity in implementation of the directions of Hon'ble Supreme Court, the Board in exercise of powers conferred under section 168(1) of the CGST Act, 2017 hereby clarifies the following:

**4. Guidelines for the applicant for filing TRAN-1/TRAN-2 or revising earlier filed TRAN-1/TRAN-2:**

4.1 The applicant may file declaration in FORM GST TRAN-1/TRAN-2 or revise earlier filed TRAN-1/TRAN-2 duly signed or verified through electronic verification code on the common portal. In cases where the applicant is filing a revised TRAN-1/TRAN-2, a facility for downloading the TRAN-1/TRAN-2 furnished earlier by him will be made available on the common portal.

4.2. The applicant shall at the time of filing or revising the declaration in FORM GST TRAN1/TRAN-2, also upload on the common portal the pdf copy of a declaration in the format as given in Annexure 'A' of this circular. The applicant claiming credit in table 7A of FORM GST TRAN-1 on the basis of Credit Transfer Document (CTD) shall also upload on the common portal the pdf copy of TRANS-3, containing the details in terms of the Notification No. 21/2017- CE (NT) dated 30.06.2017.

4.3 No claim for transitional credit shall be filed in table 5(b) & 5(c) of FORM GST TRAN-1 in respect of such C-Forms, F-Forms and H/I-Forms which have been issued after the due date prescribed for submitting the declaration in FORM GST TRAN-1 i.e. after 27.12.2017.

4.4 Where the applicant files a claim in FORM GST TRAN-2, he shall file the entire claim in one consolidated FORM GST TRAN-2, instead of filing the claim tax period wise as referred to in sub-clause (iii) of clause (b) of sub-rule (4) of rule 117 of the Central Goods and Services Tax Rules, 2017. In such cases, in the column 'Tax Period' in FORM GST TRAN-2, the applicant shall mention the last month of the consolidated period for which the claim is being made.

4.5 The applicant shall download a copy of the TRAN-1/TRAN-2 filed on the common portal and submit a self-certified copy of the same, along with declaration in Annexure 'A' and copy of TRANS-3, where ever applicable, to the jurisdictional tax officer within 7 days of filing of declaration in FORM TRAN-1/TRAN-2 on the common portal. The applicant shall keep all the requisite documents/records/returns/invoices, in support of his claim of transitional credit, ready for making the same available to the concerned tax officers for verification.

4.6 It is pertinent to mention that the option of filing or revising TRAN-1/TRAN-2 on the common portal during the period from 01.10.2022 to 30.11.2022 is a one-time opportunity for the applicant to either file the said forms, if not filed earlier, or to revise the forms earlier filed. The applicant is required to take utmost care and precaution while filing or revising TRAN1/TRAN-2 and thoroughly check the details before filing his claim on the common portal.

4.6.1 In this regard, it is clarified that the applicant can edit the details in FORM TRAN-1/ TRAN-2 on the common portal only before clicking the "Submit" button on the portal. The applicant is allowed to modify/edit, add or delete any record in any of the table of the said forms before clicking the "Submit' button. Once "Submit" button is clicked, the form gets frozen, and no further editing of details is allowed. This frozen form would then be required to be filed on the portal using "File" button, with Digital signature certificate (DSC) or an EVC. The

applicant shall, therefore, ensure the correctness of all the details in FORM TRAN-1/ TRAN-2 before clicking the "Submit" button. GSTN will issue a detailed advisory in this regard and the applicant may keep the same in consideration while filing the said forms on the portal.

4.6.2 It is further clarified that pursuant to the order of the Hon'ble Apex Court, once the applicant files TRAN-1/TRAN-2 or revises the said forms filed earlier on the common portal, no further opportunity to again file or revise TRAN-1/TRAN-2, either during this period or subsequently, will be available to him.

4.7 It is clarified that those registered persons, who had successfully filed TRAN-1/TRAN-2 earlier, and who do not require to make any revision in the same, are not required to file/ revise TRAN-1/TRAN-2 during this period from 01.10.2022 to 30.11.2022. In this context, it may further be noted that in such cases where the credit availed by the registered person on the basis of FORM GST TRAN-1/TRAN-2 filed earlier, has either wholly or partly been rejected by the proper officer, the appropriate remedy in such cases is to prefer an appeal against the said order or to pursue alternative remedies available as per law. Where the adjudication/ appeal proceeding in such cases is pending, the appropriate course would be to pursue the said adjudication/ appeal. In such cases, filing a fresh declaration in FORM GST TRAN-1/TRAN-2, pursuant to the special dispensation being provided vide this circular, is not the appropriate course of action.

5. The declaration in FORM GST TRAN-1/TRAN-2 filed/revised by the applicant will be subjected to necessary verification by the concerned tax officers. The applicant may be required to produce the requisite documents/ records/ returns/ invoices in support of their claim of transitional credit before the concerned tax officers for verification of their claim. After the verification of the claim, the jurisdictional tax officer will pass an appropriate order thereon on merits after granting appropriate reasonable opportunity of being heard to the applicant. The transitional credit allowed as per the order passed by the jurisdictional tax officer will be reflected in the Electronic Credit Ledger of the applicant on the common portal.

**20.5.2.6 Departmental Clarifications - Guidelines for verifying the Transitional Credit in light of 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- Circular No. 182/14/2022-GST dated 10th of November, 2022**

Attention is invited to the directions issued by the Hon'ble Supreme Court vide order dated 22.07.2022 in the matter of Union of India vs. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709-32710/2018. The operative portion of the judgment is as follows:

> "1. Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.
>
> 2. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).

3. GSTN has to ensure that there are no technical glitch during the said time.

4. The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.

5. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.

6. If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims. The Special Leave Petitions are disposed of accordingly. Pending applications, if any, also stand disposed of."

1.2. Subsequently in Miscellaneous Application No. 1545-1546/2022 in SLP(C) No. 32709-32710/2018, Hon'ble Supreme Court vide order dated 2nd September, 2022 has inter-alia ordered as follows:

**"The time for opening the GST Common Portal is extended for a further period of four weeks from today.**

**It is clarified that all questions of law decided by the respective High Courts concerning Section 140 of the Central Goods and Service Tax Act, 2017 read with the corresponding Rule/Notification or direction are kept open."**

2. As is clear from the above, the Hon'ble Court has directed that the common portal be opened for filing prescribed forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months from 01.10.2022 to 30.11.2022 for the aggrieved registered assessee (henceforth, referred as 'applicant'). The Transitional Credit claimed by the applicant shall be credited in his electronic credit ledger to the extent allowed by the jurisdictional tax officer through an order after carrying out necessary verifications. As per the Hon'ble Court's order, the said verification has to be carried out within 90 days after completion of the above window of two months, i.e. within 90 days from 01.12.2022 i.e. up to 28.02.2023.

2.1 It is to be noted that while allowing the applicant to file/revise TRAN-1/TRAN-2 during this window of 2 months, Hon'ble Supreme Court has kept all questions of law open.

2.2 It may be mentioned that Hon'ble Supreme Court has only allowed filing of TRAN 1/TRAN2 or revising the TRAN-1/TRAN-2 already filed by the applicant and has not allowed the applicant to file revised returns under the existing laws.

3. Reference is also invited to the Board's Circular No. 180/12/2022 dated 09.09.2022 vide which guidelines have been issued for the applicants for filing new TRAN-1/TRAN-2 or revising the already filed TRAN-1/TRAN-2 on the common portal.

4. To ensure uniformity in the implementation of the directions of the Hon'ble Supreme Court across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby issues the following guidelines for verifying the Transitional Credit:

**5. Verification of the Transitional Credit**

5.1 The jurisdictional tax officers can access the TRAN-1/TRAN-2 filed/revised by the applicant on their back office systems (which is the CBIC-AIO portal for the central tax officers, the respective State portal for MODEL-1 States and BO portal for MODEL 2 States). 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 as mentioned in Para 4.5 of Circular 180/12/2022 dated 09.09.2022.

5.2 The verification of the transitional credit shall be conducted by the jurisdictional tax officer who will pass an appropriate order regarding the veracity of the claim filed by the applicant, based on all the facts and the provisions of the law. In respect of TRAN-1/TRAN-2 filed/revised by the applicant under the administrative control of the central tax authorities, such verification and issuance of order shall be done by the jurisdictional officer of central tax, whereas in respect of TRAN-1/TRAN-2 filed/revised by the applicant under the administrative control of the state tax authorities, the same shall be done by the jurisdictional officer of state tax. The jurisdictional tax officer shall start the verification process immediately on availability of TRAN-1/TRAN-2 filed/revised by the applicant on the back office system or on receipt of self-certified downloaded copy of the same from the applicant, whichever is earlier. It is needless to mention that principles of natural justice shall be followed in the process of passing the order relating to allowance or disallowance of the Transitional Credit.

5.3 The jurisdictional tax officer shall, on the basis of declaration made by the applicant in the format specified in Annexure A to Circular no. 180/12/2022 dated 09.09.2022, and on the basis of data available on the back office system, shall check whether the applicant had earlier filed TRAN-1/ TRAN-2 or not. In cases where TRAN-1/ TRAN-2 had already been filed by the applicant earlier, the tax officer shall check whether there is any change from the earlier filed TRAN-1/TRAN-2 or not. In case, there is no change from the earlier filed TRAN-1/ TRAN-2, then such claim of transitional credit is liable for rejection by the tax officer, through a reasoned order, after providing due reasonable opportunity to the applicant.

5.3.1 In other cases, the jurisdictional tax officer shall proceed for verification of claim of transitional credit made by the applicant in FORM TRAN-1/TRAN-2. In this regard, in respect of transitional credit pertaining to central tax, he may refer to the guidelines detailed in Annexure I to this circular. In respect of verification of transitional credit pertaining to the State Tax/Union territory Tax, the tax officer may refer to the guidelines issued by the relevant state/UT, if any.

5.3.2 There may be cases where the transitional credit claim filed/revised by the applicant may have components of both central tax and state/UT tax. In such cases, where the applicant is under the jurisdiction of central tax officer and where the transitional credit claimed has component of state/Union Territory tax also, the jurisdictional central tax officer shall refer the said claim for verification of component of state/UT tax to his counterpart state/UT tax officer. For this purpose, he shall share the list of GSTINs/ARNs with the counterpart officer, in respect of which verification report is needed from him, on a weekly basis, along with an intimation of the same to the nodal officer of central tax as well as state/UT tax referred in Para 6.1 below through his official email ID or physically. Similar action, as above, shall also be taken by the jurisdictional state/UT tax officers in cases where the applicant is under the jurisdiction of state/UT tax officer and where the transitional credit claimed has component of central tax also.

5.3.3 The jurisdictional tax officer shall, in parallel, continue the verification of the remaining portion of the transitional credit at his end.

5.3.4 The jurisdictional tax officer and the counterpart tax officer shall verify the transitional credit claimed under the CGST or the SGST head, as the case may be, by referring to the guidelines detailed in Annexure I to this circular for transitional credit pertaining to central tax and the guidelines issued by the relevant state/UT for verification of transitional credit

pertaining to the State Tax/Union territory Tax, as applicable. While conducting the verification, the officer must also check whether any adjudication or appeal proceedings in TRAN-1/TRAN-2 related matter are pending/ concluded against the applicant. In such cases, where any adjudication or appellate proceedings have been initiated against the applicant in respect of TRAN-1/TRAN-2, the officer should take a note of the relevant facts in the notice/ order, and the grounds/reasons for inadmissibility of transitional credit, if any, in the said notice/ order.

5.3.5 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. In case, where the adjudication or appeal proceedings in respect of TRAN-1/TRAN-2 related matter are pending/ concluded against the applicant, the counterpart officer shall categorically bring out the relevant facts in his/her verification report along with his detailed findings, admissibility/ inadmissibility, reasons of inadmissibility thereof and the copy of the relevant notice and/or orders.

5.3.6 For the purpose of verification of the claim of the transitional credit, the jurisdictional tax officer as well as the counterpart tax officer, if required, may call for relevant records including requisite documents/returns/invoices, as the case may be, from the applicant.

5.3.7 After receiving the verification report from the counterpart officer, the jurisdictional tax officer shall decide upon the admissibility of the credit claimed by the applicant. In case the jurisdictional tax officer finds that the transitional credit claimed by the applicant is partly or wholly inadmissible as per the provisions of the Act and the rules thereof, then a notice shall be issued by the jurisdictional tax officer to the applicant preferably within a period of seven days from the receipt of report from the counterpart officer, seeking explanation of the applicant as to why the said credit claimed by him should not be denied wholly/partly, as the case may be. The applicant shall also be provided an opportunity of personal hearing by the jurisdictional tax officer in such cases. If required, the jurisdictional tax officer may seek comments of the counterpart officer on the submissions made by the applicant in so far as the said submission relates to the tax (central or State) being administered by such counterpart officer.

5.3.8 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. In any case, such order shall be passed within a period of 90 days from 01.12.2022 i.e. up to 28.02.2023.

5.3.9 Where the amount credited to the electronic credit ledger pursuant to the originally filed TRAN-1/TRAN-2 exceeds the amount of credit admissible in terms of the revised TRAN-1/TRAN-2 filed by the applicant, such excess credit is liable to be demanded and recovered from the applicant, along with interest and penalty, in accordance with the provisions of Chapter XV of the Act and the rules made thereunder.

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

5.3.11 It may be noted that consequent to reorganization of the state of Jammu & Kashmir and merger of the Union territories of Dadra and Nagar Haveli & Daman and Diu, the taxpayers of UT of Ladakh and the earlier UT of Daman and Diu have been allotted new GSTINs. Accordingly, the taxpayers of Ladakh and Daman and Diu can file/ revise TRAN-1/ TRAN-2 only through their newly allotted GSTINs. It is, therefore, advised that the concerned jurisdictional tax officers should take into consideration transitional credit, if any, claimed by such taxpayers under their previous GSTINs.

6. Modalities of coordination between central tax authorities and state tax authorities

6.1 It is to be noted that all the Zonal Principal Chief Commissioner/ Chief Commissioners (PCCs/CCs) of Central Tax and Chief Commissioners/ Commissioners of Commercial Taxes (CCCTs/CCTs) of various states/UTs shall appoint nodal officer(s) in their respective formations immediately for proper co-ordination between central and state/UT authorities for verification of transitional credit claims and shall make available the details of the said nodal officers, along with their phone numbers and email IDs, to the counterpart tax authority. The nodal officers shall ensure that the verification reports/comments sought by the jurisdictional tax officers are being sent in a timely manner by the counterpart officers in their formations.

6.2 It is the responsibility of the Zonal Principal Chief Commissioner/ Chief Commissioners (PCCs/CCs) of Central Tax and Chief Commissioners/ Commissioners of Commercial Taxes (CCCTs/CCTs) of various states/UTs to regularly monitor the progress made in this regard so that the timelines mentioned in the Hon'ble Supreme Court's order dated 22.07.2022 and 02.09.2022 are strictly adhered to by the field formations.

7. Where any communication is required to be made by the central tax officer with the applicant for the purpose of verification of TRAN-1/ TRAN-2, through a mode other than through the portal, the same should be made with the use of DIN, as per the guidelines mentioned in the CBIC Circular No. 122/41/2019-GST dated 5th November 2019.

### 20.2.3.1 Key Judicial Observations

**The Gujarat High Court issues notice in writ challenging the constitutional validity of the amendment in Section 140(1) of the CGST Act 2017 –** The challenge to the constitutional validity of the amendment in Section 140(1) of the CGST Act 2017 is substantially on the ground that it is violative of article 19(1)(g) of the constitution being absolutely arbitrary and unreasonable.

Notice issued to Union of India to file an appropriate reply and also keep necessary files ready to indicate the reasons for bringing around such amendment with retrospective effect.

The further proceedings, if any at the instance of the adjudicating authority shall be subject to the final outcome of the main matter.

[ HIGH COURT OF GUJARAT AT AHMEDABAD in R/Special Civil Application No. 11061 of 2019 - GRASIM INDUSTRIES LIMITED Versus UNION OF INDIA - HC-GW-1040-2019-GJ and GW-172-2022-GJ]

**AAR Maharashtra denied availment of credit of taxes which are not covered in the definition of eligible duties in Section 140**

We find that express provisions have been made in the Cenvat Credit Rules from time to time that credit availed in respect of EC, SHEC and KKC can be used for making tax/duty payments only against ECT SHEC and KKC, respectively. The CCR has also expressly provided that items in respect of which CENVAT credit is available, would not be utilized for payment of EC SHEC and KKC. Thus, there was a clear demarcation of the credit in respect of EC, SHEC and KKC. Under GST, there is no levy of the three types of cesses mentioned above.

We find that the provisions of Section 140 (1) of the GST ACT, 2017 clearly states that "a registered person shall be entitled to take, in his electronic credit ledger, the amount of cenvat credit carried forward……", It is further mentioned that entries in respect of KKC, EC etc. are not found in the existing Section of 140 of the CGST Act and also under the rules made therein. In the present case, EC, SHEC and KKC were to be utilized for payment of EC, SHEC and KKC respectively. Therefore, all the three types of cesses cannot be treated as excise duty or service tax. In view thereof, the CENVAT credit as referred to in subsection (1) of section 140 would not include the credit in respect of KKC. Therefore, the credit of taxes which are not covered in the definition of eligible duties in Section 140 cannot be availed.

[Re: AAR- Maharashtra - CMI FPE Limited- AAR-GW-118-2018-MH]

**Delhi High Court dismissed the writ petition for direction that credit accumulated on account of Education Cess and Secondary and Higher Secondary Education Cess should be allowed to utilized for the payment of service tax/excise liability.**

The Cellular Operators Association of India in Delhi High Court had filed a Writ Petition for direction that credit accumulated on account of Education Cess and Secondary and Higher Secondary Education Cess should be allowed to utilized for the payment of service tax/excise liability.

Under the CENVAT credit rules 2004, credit of EC and SHE could be utilized for payment of EC and CHE respectively. The cross utilization of EC and SHE towards excise duty or service tax was impermissible and not permitted. Later on EC and SHE were abolished from 1.3.2015. The Appellant claimed that they have a vested right to avail benefit of any unutilized amount of EC and SHE. It was also the contention that EC and SHE was subsumed in the Central Excise Duty and therefore the amount lying in the credit towards EC and SHE should be allowed for availing CENVAT credit as both become a part of excise duty or service tax. It was observed by the Delhi High Court that "It is no doubt true that the two cesses, in the present case, were in the nature of taxes and not fee, but it would be incorrect and improper to treat the two cesses as excise duty or service tax. They were specific cesses for the objective and purpose specified ....." and further observed that that EC and SHE did not subsume in the excise duty or service tax accordingly dismissed the said writ petition. Noticeably the two cesses and the excise duty and service tax was always treated as different and separate and cross utilization was never permitted.

Thus, the Delhi High Court judgment in the case of made it clear that cess and duty are separate levies and cannot be equated. In the present case KKC cannot be treated as excise duty or service tax. It is to be utilized for payment of KKC only. [Cellular Operators Association of India v. UOI (W.P. (Civil) No.7837 of 2016 dt.15.02.2018 – HC-GW-1014-2018-DL]

**AAR Maharashtra denied availment of credit of taxes which are not covered in the definition of eligible duties in Section 140; AAAR Maharashtra upholds AAR Maharashtra denial to avail Krishi Kalyan Cess (KKC) as admissible input tax credit.**

AAR Maharashtra hold that It can be seen that the non-availability of carry forward of credit with respect to KKC has been clarified to the Trade. In view thereof, we are convinced that accumulated credit by way of Krishi Kalyan Cess (KKC) as appeared in the Service tax return of Input Service Distributor (ISD) on June 30, 2017 which is carried forward in the electronic credit ledger maintained by the company under CCST Act 2017, will not be considered as admissible input tax-credit.

AAAR Maharashtra hold that the accumulated credit by way of Krishi Kalyan Cess (KKC) as appeared in the Service tax return of Input Service Distributor (ISD) on June 30, 2017 which is carried forward in the electronic credit ledger maintained by the Appellant under CGST Act 2017, shall not be allowed to be taken as admissible input tax credit.

[Re: AAR- Maharashtra - Kansai Nerolac Paints Limited - AAR-GW-86-2018-MH AAAR-Maharashtra - Kansai Nerolac Paints Limited - AAAR-GW-450-2018-MH]

**Appellant entitled to file refund claim of Education Cess, Secondary & Higher Education Cess and Krishi Kalyan Cess**

CESTAT Chandigarh set aside the order wherein the refund claim of Education Cess, Secondary & Higher Education Cess and Krishi Kalyan Cess filed by the appellant lying unutilized in their cenvet credit account on 01.07.2017 when GST Regime came into force has been denied.

CESTAT found that the facts of the case are not in disputed that on 01.07.2017, the new regime of GST came into force and on the said date, there was no bar on carry forward of the cenvat credit of Education Cess, Secondary & Higher Education Cess and Krishi Kalyan Cess to GST regime. In these circumstances, the appellant has taken the cenvat credit under CGST Act. It is also a fact on record that Section 140 of the CGST Act, 2017 was amended on 30.08.2018 and was applied retrospectively. As per the amendment, any credit which was not admissible by the appellant is cannot be a GST credit for transitional credit to the appellant, when it is no GST credit, the appellant reversed the credit abandoned caution the said amount in their GST account and filed the refund claim on 30.08.2019. As the appellant has reversed the said amount in their GST account, in terms of the amendment to Section 140 of the CGST Act, 2017 on 30.08.2018, the said amount shall remain lying unutilized in their cenvat credit account on account of Education Cess, Secondary & Higher Education Cess and Krishi Kalyan Cess as good as on 01.07.2017. Further, as admitted by both the sides that in terms of Section 140 of the Act, the amount of Education Cess, Secondary & Higher Education Cess and Krishi Kalyan Cess cannot be transferred to GST account then it is only a cenvat credit of Education Cess, Secondary & Higher Education Cess and Krishi Kalyan Cess lying unutilized as on 01.07.2017 in their cenvat credit account. Therefore, the contention that it is a GST credit, is not acceptable when the provision of law is very much clear that the said credit cannot be transferred to GST Regime.

Further held that the amendment to Section 140 came after one year of the switching to the GST Regime on 30.08.2018 which is applicable retrospectively. In that circumstances how the appellant could have filed the refund claim within one year from 01.07.2017 till 30.08.2018, when there was no provision of law existed, when amendment itself takes on 30.08.2018, therefore, the relevant date of filing the refund claim shall be 30.08.2018 and within one year of the said date, the refund claim has been filed by the appellant. In that circumstance, it is

hold that the refund claim filed by the appellant is not barred by limitation. [Customs, Excise And Service Tax Appellate Tribunal Chandigarh in Schlumberger Asia Services Ltd Versus Commissioner of CE & ST, Gurgaon-I - Service Tax Appeal No. 60095 of 2021 – CESTAT-GW-1057-2020-CHA]

**Appellant entitled for refund claim of unutilized credit of Education Cess (EC) and Secondary and Higher Education Cess (SHEC)**

With the introduction of GST there is a restriction for these cesses to be transitioned into GST by virtue of Section 140(1) of the Act and therefore the appellant did not transfer the credit of cesses into GST and preferred to file the refund claim under Section 11B of the Central Excise Act. The Division Bench of the CESTAT, New Delhi in the case of Bharat Heavy Electricals Ltd. Vs. Commissioner of C.T, Hyderabad – has held that the assessee is entitled to refund of an unutilized credit of Education Cess and Higher Education Cess after the introduction of GST.

[Customs, Excise And Service Tax Appellate Tribunal Bangalore in Kirloskar Toyota Textile Machinery Pvt. Ltd. Versus Commissioner of Central Tax, Bengaluru South GST Commissionerate - Central Excise Appeal No. 20320 of 2020 – CESTAT- GW-1058-2021-BGLR]

**Madras HC Single bench allowed transition of accumulated credit of EC, SHEC and KKC into the GST regime**

Section 140(8) which specifically deals with centralised registration also provides for transitioning of credit conditional upon an original or revised return being filed within three months of the appointed date reflecting a carry forward of the credit from the closing balance available. The intention, is clear, to the effect that the credit reflected in the earlier returns is sought to be permitted to be transitioned, except if specifically barred. The other two conditions under section 140(8) are that the credit should be admissible as ITC and that credit is freely transferrable inter se the units under centralised registration. These conditions also do not stand in the way of the claim of the petitioner.

The revenue has not made out any bar for the transitioning of EC, SHEC and KKC into the GST regime and the petitioner satisfies all conditions both under sub-section (1) and (8) of section 140. The embargo placed by Rule 3(7)(b) is long gone with the introduction of GST. Certainly the powers-that-be are conscious of these factors in drafting the new legislation and the specific provision in question i.e., Section 140.

Accumulated credit cannot be said to have been wiped out unless there is a specific order under which it lapses. Though there may be embargos placed by the Statutes and Rules, such as the embargo against cross –utilisation placed by Rule 3(7)(b) of the CCR, the accumulated credit continue in the books of the assessee till specifically wiped out.

Explanation (3) which clarifies that the expression ‘eligible duties and taxes’ excludes any cess not specified in Explanation (1) or (2), has not been notified.

In the light of the discussion above, the impugned order rejecting carry forward and utilisation of credit of EC, SHEC and KKC is set aside. [ Madras HC in Sutherland Global Services Private Limited vs. Assistant Commissioner CGST and Central Excise, Chennai - Writ Petition No.4773 of 2018 & WMP Nos.5916 & 13148 of 2018 - HC-GW-709-2019-TN ]

**Madras HC Double bench disallowed transition of accumulated credit of EC, SHEC and KKC into the GST regime**

The transition of unutilised Input Tax Credit could be allowed only in respect of taxes and duties which were subsumed in the new GST Law. Admittedly, the three types of Cess involved before us, namely Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess were not subsumed in the new GST Laws, either by the Parliament or by the States. Therefore, the question of transitioning them into the GST Regime and giving them credit under against Output GST Liability cannot arise. The plain scheme and object of GST Law cannot be defeated or interjected by allowing such Input Credits in respect of Cess, whether collected as Tax or Duty under the then existing laws and therefore, such set off cannot be allowed.

Explanation 3 to Section 140 could not be applied in a restricted manner only to the specified Sub-sections of Section 140 of the Act mentioned in the Explanations 1 and 2 and as a tool of interpretation, Explanation 3 would apply to the entire Section 140 of the Act and since it excluded the Cess of any kind for the purpose of Section 140 of the Act, which is not specified therein, the transition, carry forward or adjustment of unutilised Cess of any kind other than specified Cess, viz. National Calamity Contingent Duty (NCCD), against Output GST liability could not arise.

Madras HC Double bench hold that the Assessee was not entitled to carry forward and set off of unutilised Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess against the GST Output Liability with reference to Section 140 of the CGST Act, 2017 and set aside the judgment of the learned Single Judge dated 05.09.2019. [ Madras HC in Assistant Commissioner CGST and Central Excise, Chennai vs. Sutherland Global Services Private Limited - Writ Appeal No.53 of 2020 - HC-GW-569-2020-RJ]

### 20.2.2 Unavailed CENVAT credit in respect of capital goods not carried forward in a return

| Section | | Particulars |
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| **Section 140 (2)** | 01.07.2017 to till date | • A registered person,<br>• other than a person opting to pay tax under section 10,<br>• shall be entitled to take, in his electronic credit ledger,<br>• credit of the unavailed CENVAT credit in respect of capital goods,<br>• not carried forward in a return, furnished under the existing law by him,<br>• for the period ending with the day immediately preceding the appointed day<br>• [1][within such time and] in such manner as may be prescribed:<br><br>1 Inserted and shall be deemed to have been inserted with effect from the 1st day of July, 2017, vide clause (b) of Section 128 of the Finance Act, 2020 NO. 12 of 2020 dated 27th March, 2020 which comes into force on 18th |

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| | | May 2020, by Notification No. 43/2020 – Central Tax dated 16th May, 2020. |
| **First Proviso** | 01.07.2017 to till date | **Provided that** the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act. |
| **Explanation** | 01.07.2017 to till date | For the purposes of this sub-section, the expression "unavailed CENVAT credit" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law. |

**20.2.3 Credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished [4][ goods held in stock on the appointed day, by a registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012—Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer.**

| Section | | Particulars |
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| **Section 140 (3)** | 01.07.2017 to till date | A registered person,<br>• who was not liable to be registered under the existing law, or<br>• who was engaged in the manufacture of exempted goods<br>• or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012—Service Tax, dated the 20th June, 2012<br>• or a first stage dealer or a second stage dealer or<br>• a registered importer or |

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| | | • a depot of a manufacturer,<br><br>shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished [1][ goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] the following conditions, namely:—<br>(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;<br>(ii) the said registered person is eligible for input tax credit on such inputs under this Act;<br>(iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;<br>(iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and<br>(v) the supplier of services is not eligible for any abatement under this Act:<br><br>1 Substituted For the words "goods held in stock on the appointed day subject to", and shall be deemed to have been substituted with effect from the 1st day of July, 2017, vide clause (c) of Section 128 of the Finance Act, 2020 NO. 12 of 2020 dated 27th March, 2020 which comes into force on 18th May 2020, by Notification No. 43/2020 – Central Tax dated 16th May, 2020. |
| **First Proviso** | 01.07.2017 to till date | **Provided that** where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and |

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| | | safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed. |

**Calculations of the amount of credit –**

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| **Section 140 (10)** | 01.07.2017 to till date | The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed. |

**The expression "eligible duties" means—**

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| **Explanation** | 01.07.2017 to till date | For the purposes of sub-sections [1][sub-sections (3), (4)] and (6), the expression "**eligible duties**" means—<br>(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;<br>(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;<br>(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;<br>(iv) [2][*****]<br>(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;<br>(vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; and<br>(vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001,<br>in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day. |

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| | | 1. For the word, brackets and figures "sub-sections (3), (4)", the word, brackets and figures "sub-sections (1), (3), (4)" shall be substituted and shall always be deemed to have been substituted vide clause (b) (i) of Section 28 of the Central Goods and Services Tax (Amendment) Act, 2018.<br>2 Omitted clause (iv) "the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;" with effect from the 1st day of July, 2017 vide clause (b) (ii) of Section 28 of the Central Goods and Services Tax (Amendment) Act, 2018 and shall always be deemed to have been omitted which comes into force vide Notification No. 02/2019 – Central Tax dated 29th January, 2019. |

**20.2.4 CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day by a registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or provision of taxable as well as exempted services under Chapter V of the Finance Act, 1994 but which are liable to tax under this Act.**

| Section | | Particulars |
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| **Section 140 (4)** | 01.07.2017 to till date | A registered person,<br>• who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or<br>• provision of taxable as well as exempted services under Chapter V of the Finance Act, 1994,<br>• but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,— |

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| | | (a) the amount of CENVAT credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and (b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with the provisions of sub-section (3). |

**Calculations of the amount of credit –**

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| **Section 140 (10)** | 01.07.2017 to till date | The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed. |

**The expression "eligible duties" means—**

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| **Explanation** | 01.07.2017 to till date | For the purposes of sub-sections [1][sub-sections (3), (4)] and (6), the expression "**eligible duties**" means—<br>(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;<br>(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;<br>(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;<br>(iv) [2][*****]<br>(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;<br>(vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; and<br>(vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001, |

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| | | in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.<br>1. For the word, brackets and figures "sub-sections (3), (4)", the word, brackets and figures "sub-sections (1), (3), (4)" shall be substituted and shall always be deemed to have been substituted vide clause (b) (i) of Section 28 of the Central Goods and Services Tax (Amendment) Act, 2018.<br>2 Omitted clause (iv) "the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;" with effect from the 1st day of July, 2017 vide clause (b) (ii) of Section 28 of the Central Goods and Services Tax (Amendment) Act, 2018 and shall always be deemed to have been omitted which comes into force vide Notification No. 02/2019 – Central Tax dated 29th January, 2019. |

### 20.2.5 Credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day and recorded in the books of account within a period of thirty days from the appointed day.

| Section | | Particulars |
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| **Section 140 (5)** | 01.07.2017 to till date | A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the [1][existing law, within such time and in such manner as may be prescribed], subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day:<br>1 Substituted For the words "existing law", and shall be deemed to have been substituted with effect from the 1st day of July, 2017, vide clause (d) of Section 128 |

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| | | of the Finance Act, 2020 NO. 12 of 2020 dated 27th March, 2020 which comes into force on 18th May 2020, by Notification No. 43/2020 – Central Tax dated 16th May, 2020. |
| **First Proviso** | 01.07.2017 to till date | **Provided that** the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days:The period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days: |
| **Second Proviso** | 01.07.2017 to till date | **Provided further that** said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section. |

**The expression "eligible duties and taxes" means—**

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| **Explanation** | 01.07.2017 to till date | For the purposes of [1][sub-sections (5)], the expression "eligible duties and taxes" means—<br>(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;<br>(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;<br>(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;<br>(iv) [2][*****]<br>(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;<br>(vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985;<br>(vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001; and<br>(viii) the service tax leviable under section 66B of the Finance Act, 1994, |

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| | | in respect of inputs and input services received on or after the appointed day.<br>1 For the word, brackets and figure "sub-section (5)", the words, brackets and figures "sub-sections (1) and (5)" shall be substituted and shall always be deemed to have been substituted vide clause (c) (i) of Section 28 of the Central Goods and Services Tax (Amendment) Act, 2018. The provision is not yet enforced.<br>2. Omitted clause (iv) "the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;" with effect from the 1st day of July, 2017 vide clause (c) (ii) of Section 28 of the Central Goods and Services Tax (Amendment) Act, 2018 and shall always be deemed to have been omitted which comes into force vide Notification No. 02/2019 – Central Tax dated 29th January, 2019. |
| [1][Explanation | 01.07.2017 to till date | For removal of doubts, it is hereby clarified that the expression "eligible duties and taxes" excludes any cess which has not been specified in Explanation 1 or Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975.]<br>1. Inserted with effect from the 1st day of July, 2017 vide clause (d) of Section 28 of the Central Goods and Services Tax (Amendment) Act, 2018 and shall always be deemed to have been inserted which comes into force vide Notification No. 02/2019 – Central Tax dated 29th January, 2019. |

**20.2.6 Credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished [6][ goods held in stock on the appointed day, by a registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law.**

| Section | | Particulars |
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| **Section 140 (6)** | 01.07.2017 to till date | A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished [1][ goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] the following conditions, namely:—<br>(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;<br>(ii) the said registered person is not paying tax under section 10;<br>(iii) the said registered person is eligible for input tax credit on such inputs under this Act;<br>(iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of inputs; and<br>(v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.<br>1 Substituted For the words "goods held in stock on the appointed day subject to ",and shall be deemed to have been substituted with effect from the 1st day of July, 2017, vide clause (e) of Section 128 of the Finance Act, 2020 NO. 12 of 2020 dated 27th March, 2020 which comes into force on 18th May 2020, by Notification No. 43/2020 – Central Tax dated 16th May, 2020. |

**Calculations of the amount of credit –**

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| **140 (10)** | 01.07.2017 to till date | The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed. |

**The expression "eligible duties" means—**

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| **Explanation** | 01.07.2017 to till date | For the purposes of sub-sections [1][sub-sections (3), (4)] and (6), the expression "**eligible duties**" means–<br>–<br>(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;<br>(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;<br>(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;<br>(iv) [2][*****]<br>(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;<br>(vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; and<br>(vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001,<br>in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.<br>1. For the word, brackets and figures "sub-sections (3), (4)", the word, brackets and figures "sub-sections (1), (3), (4)" shall be substituted and shall always be deemed to have been substituted vide clause (b) (i) of Section 28 of the Central Goods and Services Tax (Amendment) Act, 2018.<br>2 Omitted clause (iv) "the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;" with effect from the 1st day of July, 2017 vide clause (b) (ii) of Section 28 of the Central Goods and Services Tax (Amendment) Act, 2018 and shall always be deemed to have been omitted which comes into force vide Notification No. 02/2019 – Central Tax dated 29th January, 2019. |

### 20.2.7.- Distribution of input tax credit on account of any services received prior to the appointed day by an Input Service Distributor

| Section | | Particulars |
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| **Section 140 (7)** | 01.07.2017 to till date | Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by<br>• an Input Service Distributor shall<br>• be eligible for distribution as [1][credit under this Act,<br>• within such time and in such manner as may be prescribed,<br>• even if] the invoices relating to such services are received on or after the appointed day.<br><br>1 Substituted For the words "credit under this Act even if", and shall be deemed to have been substituted with effect from the 1st day of July, 2017, vide clause (f) of Section 128 of the Finance Act, 2020 NO. 12 of 2020 dated 27th March, 2020 which comes into force on 18th May 2020, by Notification No. 43/2020 – Central Tax dated 16th May, 2020. |

In view of the above provisions, the ISD credit ought to have been distributed by the ISD Registration to its different units/offices before 1.07.2017 even if the invoices relating to such services are received on or after the appointed day and thereafter the transferee unit/offices ought to have filed TRAN-1 to transition the said credit distributed to it by ISD Registration, into their respective Electronic Credit Ledger ("ECL").

Many of the ISD Registration have wrongly transitioned the balance of ISD credit in Form GST TRAN-1 whereas ISD is not eligible to carry forward its balance credit to electronic credit ledger under Section 140(1) of the CGST Act 2017.

It is seen that an ISD is not eligible to have an electronic credit ledger for taking and distribution of credit under GST law in view of the followings:-

(i) As per Rule 86, Electronic Credit Ledger is required to be maintained in the form GST PMT - 02 for each registered person eligible for input tax credit under section 16 for credit of input tax credit and debit of tax liability in of Section 49 or claiming of refunds in terms Of Section 54.

(ii) An ISD registered under GST is not eligible for ITC under Section 16 as he is not using the Inputs in the course or furtherance of his business for making taxable supplies as ISD.

(iii) ISDs distribute the credit and do not utilize the credit to pay output tax.

(iv) An ISD (as also a person registered only for TDS/TCS) are not eligible for ITC under Section 16 and will not have an electronic credit ledger.

Thus, the ISD is not eligible to carry forward his balance credit to electronic credit ledger under Section 140(1). Even Otherwise, the balance in credit ledger is to be utilized in terms of Section 49(4) for payment of output tax and is not eligible for distribution as Section 20 read with Rule 39 of the CGST Rules 2017 provides for distribution of ITC through GSTR 6 only and not from Electronic Credit Ledger.

Therefore, it appears that, after the appointed date i.e. after, 01.07.2017, amount of credit lying balance with ISD under the existing law automatically lapses as the same is not covered by Tran 1.

It appears that most of the procedural issues have arisen due to the fact that the GST was at the nascent stage of its implementation and there was a prevalent ambiguity with regard to the transitional provisions.

Some of the Industry associations have informed to the Government that their members have faced problems with respect to distribution of Tran 1 credit under their ISD Registration. While the credit of ITC uploaded under Tran 1 is appearing in the Electronic Credit Ledger (“ECL”), the portal does not show the balance as “available for distribution” without which, distribution of available credit under ISD is not possible.

Further, as per the process laid down for distribution of ITC under ISD, the taxpayers are required to file return in Form GSTR 6. The said return allows to utilize the balance only if it is auto populated in Form GSTR 6A. Since the ITC under Tran 1 of ISD Registration holder is not getting auto populated, the distribution of the same is not possible on the common portal.

Similarly, many others attempted distribution of credit transitioned / reporting of the distributed credit by the ISD registration to their units/offices. However, they were not able to distribute / recognise and report the distribution, as there were procedural and functional difficulties in relation to the GST forms and portal.

The department has issued Show Cause Notices to many ISD registration to recover the credit wrongly carried forward and distributed by the ISDs to their units registererd with the same PAN stating that (i) Petitioner has wrongly transitioned the balance of ISD credit in Form GST TRAN-1 as ISD is not eligible to carry forward its balance credit to electronic credit ledger under Section 140(1) of the CGST; (ii) Migration of ISD registration from the existing law to the GST regime as an ISD is prohibited under GST; etc.

**Way forward**

The recipient units can file revised declaration in Form GST TRAN 1, either electronically or manually (where electronically is not possible), for taking the credit already distributed to them by the ISD unit by issuing invoices.

Once, such a revised declaration is filed by the concerned recipient units, the credit already taken by the said units shall be treated to have been taken validly on the date on which it was originally taken. However, no further credit based on revised declaration in Form TRAN-1 shall

be claimed, as the said filing is purely for regularizing the earlier action of transition and distribution of Cenvat credit by the ISD registration.

In case the said credit is once again reflected in the Electronic Credit Ledger of the recipient units, let us undertake that our recipient units shall make a debit entry in the Electronic Credit Ledger to the extent such credit has already been claimed earlier.

Once, the credit taken by the respective units is regularized by filing revised electronic or manual declaration (as the case maybe) in Form GST TRAN – 1, the credit balance shown in Electronic Credit Ledger of the ISD unit shall be deemed to have lapsed/ deleted.

**Key Judicial Observations regularizing the earlier action of transition and distribution of Cenvat credit by the ISD registration**

Some of the important judgements are summarized herewith for understanding the procedure to rectify the erroneous transfer of ITC through Tran 1 by the ISD registration:

**20.2.7.1- Regularizing the earlier action of transition and distribution of Cenvat credit by the ISD registration** [The High Court of Judicature at Bombay - Colgate Palmolive (I) Limited vs Union of India & Ors. – HC-GW-168-2022-MH]

Petitioner issued the invoices to transfer the transitional credit being accumulated ISD credit to its other units and further disclosed the said transfer to the recipient units through Column 9 of Table 8 in Form GST TRAN-1. Basis the same, the respective units availed the input tax credit in its Electronic Credit Ledger by disclosing the respective amount of ISD Credit transferred in its returns filed under GST in Form GSTR-3B.

The case of the Respondents is that (i) Petitioner has wrongly transitioned the balance of ISD credit in Form GST TRAN-1 as ISD is not eligible to carry forward its balance credit to electronic credit ledger under Section 140(1) of the CGST; (ii) Migration of ISD registration from the existing law to the GST regime as an ISD is prohibited under GST; and (iii) the ISD has transitioned credit with respect to invoices which were not received by it prior to 30th June, 2017.

It is Petitioner's case that there is no dispute with regard to the eligibility of Petitioner to the claim and/or transition the aforesaid Credit. The entire dispute only pertains to the procedure for transition of the said CENVAT credit being balance of the ISD credit and its distribution to the other units of Petitioner.

Petitioner's recipient units can file revised declaration in Form GST TRAN-1, either electronically or manually (where electronically is not possible), for taking the credit already distributed to them by the ISD registration of Petitioner by issuing invoices.

Once, such a revised declaration is filed by the concerned recipient units of Petitioner, the credit already taken by the said units shall be treated to have been taken validly on the date on which it was originally taken. However, no further credit based on revised declaration in Form TRAN-1 shall be claimed by Petitioner, as the said filing is purely for regularizing the earlier action of transition and distribution of Cenvat credit by the ISD registration of Petitioner.

In case the said credit is once again reflected in the Electronic Credit Ledger of the recipient units, Petitioner undertakes that its recipient units shall make a debit entry in the Electronic Credit Ledger to the extent such credit has already been claimed earlier.

Once, the credit taken by the respective units is regularized by filing revised electronic or manual declaration (as the case may be) in Form GST TRAN-1, the credit balance shown in Electronic Credit Ledger of Petitioner being the balance of ISD credit transitioned shall be deemed to have lapsed/deleted.

**20.2.7.2- Regularizing the earlier action of transition and distribution of Cenvat credit by the ISD registration** [The High Court of Judicature at Bombay - Apar Industries Limited vs Union of India & Ors. – HC-GW-202-2018-MH]

Petitioner issued the invoices to transfer the transitional credit from its ISD registration to its other units. Basis the said invoices, the respective units availed the input tax credit in its Electronic Credit Ledger by disclosing the said amounts transferred by the ISD registration in its return filed in Form GSTR – 3B.

Majority of the recipient units of Petitioner (13 out of 18) to whom the said credit was transitioned, have been issued identical Show Cause Notices inter-alia alleging that (i) the ISD unit of Petitioner has erroneously transitioned the credit from the erstwhile regime to the GST regime; and (ii) the credit distributed by the ISD unit of Petitioner has been wrongly availed and utilized by the recipient units for payment of output GST liability of the recipient unit.

The case of Respondents is that (i) Petitioner has wrongly migrated the erstwhile ISD registration to the GST regime and transitioned the credit which is prohibited as per CGST Act, 2017; (ii) ISD registration under the GST regime does not enjoy the status of an assessee obtaining registration under GST for carrying out his business, and (iii) ISD registered under GST is not eligible for ITC under Section 16 as he is not using the inputs in the course of or furtherance of his business for making taxable supplies as ISD.

It is Petitioner's case that there is no dispute with regard to eligibility of Petitioner to the claim and/or transition the aforesaid Credit. The entire dispute only pertains to the procedure for transition of the said CENVAT credit by the ISD unit and its distribution to the other units of Petitioner. It is not the case of the department, that Petitioner has transitioned/ distributed ineligible credit, i.e., there is no loss to revenue on account of the said transition/ distribution of the credit.

In the present case, the Joint Commissioner has, post detailed verification, confirmed in writing that Petitioner has correctly transitioned the credit in its ISD registration.

It appears that most of the procedural issues have arisen due to the fact that the GST was at the nascent stage of its implementation and there was a prevalent ambiguity with regard to the transitional provisions.

Petitioner's recipient units can file revised declaration in Form GST TRAN 1, either electronically or manually (where electronically is not possible), for taking the credit already distributed to them by the ISD unit of Petitioner by issuing invoices.

Once, such a revised declaration is filed by the concerned recipient units of Petitioner, the credit already taken by the said units shall be treated to have been taken validly on the date on which it was originally taken. However, no further credit based on revised declaration in Form TRAN-1 shall be claimed by Petitioner, as the said filing is purely for regularizing the earlier action of transition and distribution of Cenvat credit by the ISD registration of Petitioner.

In case the said credit is once again reflected in the Electronic Credit Ledger of the recipient units, Petitioner undertakes that its recipient units shall make a debit entry in the Electronic Credit Ledger to the extent such credit has already been claimed earlier.

Once, the credit taken by the respective units is regularized by filing revised electronic or manual declaration (as the case maybe) in Form GST TRAN – 1, the credit balance shown in Electronic Credit Ledger of the ISD unit of Petitioner shall be deemed to have lapsed/ deleted.

**20.2.7.3 – Regularizing the earlier action of transition and distribution of Cenvat credit by the ISD registration** [The High Court of Judicature at Bombay - Unichem Laboratories Limited vs Union of India – HC-GW-169-2022-MH, Castrol India Limited and Anr- vs Union of India – HC-GW-169-2022-MH, Nivea India Private Limited vs Union of India – HC-GW-169-2022-MH, Pfizer Limited vs Union of India – HC-GW-169-2022-MH, Siemens Healthcare Pvt Ltd vs Union of India – HC-GW-169-2022-MH ]

The present batch of Petitions have been filed in relation to the procedural difficulties / objections raised with regard to distribution and/or utilisation and/or eligibility of Input Service Distributor (ISD) credit of Service Tax/excise duty under Section 140 of the CGST Act 2017.

The common objection of Respondent in this batch of Petitions is that ISD Credit cannot be transitioned directly into the Electronic Credit Ledger (ECL) maintained under the GST Regime. In view of the provisions of CGST Act, the ISD credit ought to have been distributed by the said ISD to its different units/offices before 1.07.2017 and thereafter the transferee unit/offices ought to have filed TRAN-1 to transition the said credit distributed to it by ISD, into their respective ECL.

It is Petitioners' case that Petitioners attempted distribution of credit transitioned/reporting of the distributed credit by the ISD registration to their units/offices. However, they were not able to distribute/recognise and report the distribution, as there were procedural and functional difficulties in relation to the GST forms and portal.

All Petitioners, through their respective units/offices registered under CGST Act and/or State Acts, as the case may be, can avail this window and file GST TRAN-1/revised GST TRAN-1 at the units/offices between 01.09.2022 to 31.10.2022 in terms of the Hon'ble Supreme Court's order in Filco Trade.

The GST TRAN-1/ revised GST TRAN-1 filed by the units/offices will be basis the manual ISD invoices issued / to be issued by ISD of Petitioner subject to aggregate credit not exceeding the ISD credit available with the ISD Petitioner.

The Central Board of Indirect Taxes and Customs (CBIC), keeping in mind the problems faced by various parties, to issue a clarification, after due deliberation, in relation to the distribution / reporting of ISD credit preferably within 21 days from the date this is Order is uploaded, keeping in mind the approach adopted by the Hon'ble Supreme Court of India in Filco Trade. Petitioners, may, if so advised, approach the CBIC in this regard.

### 20.2.8 Credit of the amount of CENVAT credit carried forward in a return by a registered person having centralised registration under the existing law

| Section | | Particulars |
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| **Section 140 (8)** | 01.07.2017 to till date | • Where a registered person having centralised registration under the existing law has obtained a registration under this Act, |

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| | | • such person shall be allowed to take, in his electronic credit ledger,<br>• credit of the amount of CENVAT credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day<br>• [1][ within such time and in such manner] as may be prescribed:<br><br>1 Substituted For the words "in such manner", and shall be deemed to have been substituted with effect from the 1st day of July, 2017, vide clause (g) of Section 128 of the Finance Act, 2020 NO. 12 of 2020 dated 27th March, 2020 which comes into force on 18th May 2020, by Notification No. 43/2020 – Central Tax dated 16th May, 2020. |
| **First Proviso** | 01.07.2017 to till date | **Provided that** if the registered person furnishes his return for the period ending with the day immediately preceding the appointed day within three months of the appointed day, such credit shall be allowed subject to the condition that the said return is either an original return or a revised return where the credit has been reduced from that claimed earlier: |
| **Second Proviso** | 01.07.2017 to till date | **Provided further that** the registered person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act: |
| **Third Proviso** | 01.07.2017 to till date | **Provided also that** such credit may be transferred to any of the registered persons having the same Permanent Account Number for which the centralised registration was obtained under the existing law. |

### 20.2.9 Reclaim of credit which has been reversed due to non-payment of the consideration within a period of three months

| Section | | Particulars |
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| **Section 140 (9)** | 01.07.2017 to till date | • Where any CENVAT credit availed for the input services provided under the existing law<br>• has been reversed due to non-payment of the consideration within a period of three months,<br>• such [1][credit can be reclaimed within such time and in such manner as may be prescribed, subject to] the condition that<br>• the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.<br><br>1 Substituted for the words "credit can be reclaimed subject to", and shall be deemed to have been substituted with effect from the 1st day of July, 2017, vide clause (g) of Section 128 of the Finance Act, 2020 NO. 12 of 2020 dated 27th March, 2020 which comes into force on 18th May 2020, by Notification No. 43/2020 – Central Tax dated 16th May, 2020. |

### 20.2.10 Manner of calculation of the amount of credit under sub-sections (3), (4) and (6) of Section 140 of the CGST Act 2017

| Section | | Particulars |
|---|---|---|
| **Section 140 (10)** | 01.07.2017 to till date | The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed. |

### 20.2.11-Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day [Rule 117].-

| Rule | Applicable to | Particulars |
|---|---|---|
| **Rule 117** | **Section 140** | **Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day** |
| **Rule 117(1)** | **Section 140** | Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in **FORM GST TRAN-1**, duly signed, on the common portal specifying therein, separately, the amount of input tax credit [1][of eligible duties and taxes, as defined in Explanation 2 to section 140], to which he is entitled under the provisions of the said section: |

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| **First Proviso** | **Section 140** | **Provided that** The Commissioner may, on the recommendations of the Council, extend the period of ninety days by a further period not exceeding ninety days. |
| **Second Proviso** | **Section 140** | **Provided further that** Where the inputs have been received from an Export Oriented Unit or a unit located in Electronic Hardware Technology Park, the credit shall be allowed to the extent as Provided in sub-rule (7) of rule 3 of the CENVAT Credit Rules, 2004. |
| [2][**Rule 117(1A)** | **Section 140** | Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in **FORM GST TRAN-1** by a further period not beyond [3][31st March, 2020], in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension.] |
| **Rule 117(2)** | **Section 140 (2)** | Every declaration under sub-rule (1) shall-<br>(a) in the case of a claim under sub-section (2) of section 140, specify separately the following particulars in respect of every item of capital goods as on the appointed day-<br>(i) the amount of tax or duty availed or utilized by way of input tax credit under each of the existing laws till the appointed day; and<br>(ii) the amount of tax or duty yet to be availed or utilized by way of input tax credit under each of the existing laws till the appointed day; |
| | **Section 140 (3), (4) (b), (6) and (8)** | (b) in the case of a claim under sub-section (3) or clause (b) of sub-section (4) or sub-section (6) or sub-section (8) of section 140, specify separately the details of stock held on the appointed day; |
| | **Section 140 (5)** | (c) in the case of a claim under sub-section (5) of section 140, furnish the following details, namely:—<br>(i) the name of the supplier, serial number and date of issue of the invoice by the supplier or any document on the basis of which credit of input tax was admissible under the existing law;<br>(ii) the description and value of the goods or services;<br>(iii) the quantity in case of goods and the unit or unit quantity code thereof;<br>(iv) the amount of eligible taxes and duties or, as the case may be, the value added tax [or entry tax] charged by the supplier in respect of the goods or services; and<br>(v) the date on which the receipt of goods or services is entered in the books of account of the recipient. |

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| **Rule 117(3)** | **Section 140** | The amount of credit specified in the application in **FORM GST TRAN-1** shall be credited to the electronic credit ledger of the applicant maintained in **FORM GST PMT-2** on the common portal. |
| **Rule 117(4)** | **Proviso to Section 140 (3)** | (4) (a) (i) A registered person who was not registered under the existing law shall, in accordance with the proviso to sub-section (3) of section 140, be allowed to avail of input tax credit on goods (on which the duty of central excise or, as the case may be, additional duties of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975, is leviable) held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of central excise duty.<br>(ii) The input tax credit referred to in sub-clause (i) shall be allowed at the rate of sixty per cent. on such goods which attract central tax at the rate of nine per cent. or more and forty per cent. for other goods of the central tax applicable on supply of such goods after the appointed date and shall be credited after the central tax payable on such supply has been paid:<br>**Provided** that where integrated tax is paid on such goods, the amount of credit shall be allowed at the rate of thirty per cent. and twenty per cent. respectively of the said tax;<br>(iii) The scheme shall be available for six tax periods from the appointed date.<br>(b) The credit of central tax shall be availed subject to satisfying the following conditions, namely:-<br>(i) such goods were not unconditionally exempt from the whole of the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 or were not nil rated in the said Schedule;<br>(ii) the document for procurement of such goods is available with the registered person;<br>[4][(iii) The registered person availing of this scheme and having furnished the details of stock held by him in accordance with the provisions of clause (b) of sub-rule (2), submits a statement in **FORM GST TRAN 2** by 31st March 2018, or within such period as extended by the Commissioner, on the recommendations of the Council, for each of the six tax periods during which the scheme is in operation indicating therein, the details of supplies of such goods effected during the tax period:]<br>[5][**Provided** that the registered persons filing the declaration in **FORM GST TRAN-1** in accordance with sub-rule (1A), may submit the statement in **FORM GST TRAN-2** by [6][30th April, 2020];<br>(iv) the amount of credit allowed shall be credited to the electronic credit ledger of the applicant |

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| | | maintained in **FORM GST PMT-2** on the common portal; and<br>(v) the stock of goods on which the credit is availed is so stored that it can be easily identified by the registered person. |

| Notes to Rule 117 of the CGST Rules 2017 | |
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| 1 | Inserted with effect from the 1st day of July, 2017 vide Notification No. 15/2017 – Central Tax dated 1st July, 2017. |
| 2 | Inserted w.e.f.10th September, 2018 vide Notification No. 48/2018-CT dt. 10.09.2018. |
| 3 | Substituted w.e.f. 31st December, 2019 for the figures, letters and word "31st December, 2019", vide Notification No. 02/2020 – Central Tax dt. 01st January, 2020. |
| 4. | Substituted with effect from 7th March, 2018 vide Notification No. 12/2018-CT dt. 07.03.2018, for sub-clause (iii), Read as – "the registered person availing of this scheme and having furnished the details of stock held by him in accordance with the provisions of clause (b) of sub-rule (2), submits a statement in **FORM GST TRAN 2** at the end of each of the six tax periods during which the scheme is in operation indicating therein, the details of supplies of such goods effected during the tax period;" |
| 5 | Inserted w.e.f.10th September, 2018 vide Notification No. 48/2018-CT dt. 10.09.2018. |
| 6 | Substituted w.e.f. 01st January, 2020 for the figures, letters and word "31st January, 2020", vide Notification No. 02/2020 – Central Tax dt. 01st January, 2020. |

## 20.3 Transitional provisions relating to job work [Section 141]

### 20.3.1.1-Inputs removed to a job worker and returned on or after the appointed day within six months

| Section | | Particulars |
|---|---|---|
| **Section 141(1)** | 01.07.2017 to till date | Where any inputs received at a place of business had been<br>• removed as such or<br>• removed after being partially processed to a job worker for further processing, testing, repair, reconditioning or any other purpose<br>• in accordance with the provisions of existing law prior to the appointed day and<br>• such inputs are returned to the said place on or after the appointed day,<br>• no tax shall be payable if such inputs, after completion of the job work or otherwise, are returned to the said place within six months from the appointed day: |

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| **First Proviso** | 01.07.2017 to till date | **Provided that** the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months: |
| **Second Proviso** | 01.07.2017 to till date | **Provided further that i**f such inputs are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142. |

### 20.3.1.2 Semi-finished goods removed to a job worker and returned on or after the appointed day within six months

| Section | | Particulars |
|---|---|---|
| **Section 141(2)** | 01.07.2017 to till date | Where any semi-finished goods had been<br>• removed from the place of business to any other premises for carrying out certain manufacturing processes<br>• in accordance with the provisions of existing law prior to the appointed day and<br>• such goods (hereafter in this section referred to as "the said goods") are returned to the said place on or after the appointed day, no tax shall be payable, if the said goods, after undergoing manufacturing processes or otherwise, are returned to the said place within six months from the appointed day: |
| **First Proviso** | 01.07.2017 to till date | **Provided that** the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months: |
| **Second Proviso** | 01.07.2017 to till date | **Provided further that** if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142: |
| **Third Proviso** | 01.07.2017 to till date | **Provided also that** the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods to the premises of any registered person for the purpose of supplying therefrom on payment of tax in India or without payment of tax for exports within the period specified in this sub-section. |

### 20.3.1.3-Excisable goods removed for carrying out tests or any other process not amounting to manufacture and returned on or after the appointed day

| Section | | Particulars |
|---|---|---|
| **Section 141(3)** | 01.07.2017 to till date | Where any excisable goods manufactured at a place of business had been |

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| | | • removed without payment of duty for carrying out tests or any other process not amounting to manufacture,<br>• to any other premises, whether registered or not,<br>• in accordance with the provisions of existing law prior to the appointed day and<br>• such goods, are returned to the said place on or after the appointed day,<br>• no tax shall be payable if the said goods, after undergoing tests or any other process, are returned to the said place within six months from the appointed day: |
| **First Proviso** | 01.07.2017 to till date | **Provided that** the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months: |
| **Second Proviso** | 01.07.2017 to till date | **Provided further that** if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142: |
| **Third Proviso** | 01.07.2017 to till date | **Provided also that** the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods from the said other premises on payment of tax in India or without payment of tax for exports within the period specified in this sub-section. |

#### 20.3.1.4 Tax payable if the manufacturer and the job worker do not declare the details of the inputs or goods held in stock by the job worker on behalf of the manufacturer on the appointed day

| Section | | Particulars |
|---|---|---|
| **Section 141(4)** | 01.07.2017 to till date | The tax under sub-sections (1), (2) and (3) shall not be payable, only if the manufacturer and the job worker declare the details of the inputs or goods held in stock by the job worker on behalf of the manufacturer on the appointed day in such form and manner and within such time as may be prescribed. |

### 20.3.2 Declaration of stock held by a principal and job-worker

| Rule | Particulars |
|---|---|
| **Rule 119** | **Declaration of stock held by a principal and [1][job-worker]** |
| | Every person to whom the provisions of section 141 apply shall, within [2][the period specified in rule 117 or such further period as extended by the Commissioner], submit a declaration electronically in **FORM GST TRAN-1**, specifying therein, the stock of the inputs, semi-finished |

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| | goods or finished goods, as applicable, held by him on the appointed day.<br>**Notes**<br>1 Substituted for the word "agent", with effect from the 1st day of July, 2017 vide Notification No. 15/2017 – Central Tax dated 1st July, 2017.<br>2 Substituted w.e.f. 29th September, 2017 for the words "ninety days of the appointed day", vide Notification No. 36/2017-Central Tax (Dated 29th September 2017). |

### 20.4. Miscellaneous transitional provisions [Section 142]

### 20.4.1 - Duty paid goods returned to any place of business on or after the appointed day

| Section | | Particulars |
|---|---|---|
| **Section 142(1)** | 01.07.2017 to till date | Where any goods on which duty, if any, had been paid<br>• under the existing law at the time of removal thereof,<br>• not being earlier than six months prior to the appointed day,<br>• are returned to any place of business on or after the appointed day,<br>• the registered person<br>• shall be eligible for refund of the duty paid under the existing law<br>• where such goods are returned by a person, other than a registered person,<br>• to the said place of business within a period of six months from the appointed day and such goods are identifiable to the satisfaction of the proper officer: |
| **First Proviso** | 01.07.2017 to till date | **Provided that i**f the said goods are returned by a registered person, the return of such goods shall be deemed to be a supply. |

### 20.4.2 - Issue of a supplementary invoice or debit note or credit note where the price of any goods or services or both is revised upwards or downward, in pursuance of a contract entered into prior to the appointed day.

| Section | | Particulars |
|---|---|---|
| **Section 142(2)(a)** | 01.07.2017 to till date | Where, in pursuance of a contract entered into prior to the appointed day,<br>• the price of any goods or services or both is revised upwards on or after the appointed day, |

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| | | • the registered person who had removed or provided such goods or services or both<br>• shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed,<br>• within thirty days of such price revision and<br>• for the purposes of this Act such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act; |
| **Section 142(2)(b)** | 01.07.2017 to till date | Where, in pursuance of a contract entered into prior to the appointed day,<br>• the price of any goods or services or both is revised downwards on or after the appointed day,<br>• the registered person who had removed or provided such goods or services or both<br>• may issue to the recipient a credit note, containing such particulars as may be prescribed,<br>• within thirty days of such price revision and<br>• for the purposes of this Act such credit note shall be deemed to have been issued in respect of an outward supply made under this Act: |
| **First Proviso** | 01.07.2017 to till date | **Provided that t**he registered person shall be allowed to reduce his tax liability on account of issue of the credit note only if the recipient of the credit note has reduced his input tax credit corresponding to such reduction of tax liability. |

### 20.4.3- Claim for refund shall be disposed of in accordance with the provisions of existing law

| Section | | Particulars |
|---|---|---|
| **Section 142(3)** | 01.07.2017 to till date | Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be<br>• disposed of in accordance with the provisions of existing law and<br>• any amount eventually accruing to him shall be paid in cash,<br>• notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944: |

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| **First Proviso** | 01.07.2017 to till date | **Provided that** where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse. |
| **Second Proviso** | 01.07.2017 to till date | **Provided further that** no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act. |

**20.4.4 - Claim for refund filed after the appointed day in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the existing law**

| Section | | Particulars |
|---|---|---|
| **Section 142(4)** | 01.07.2017 to till date | Every claim for refund filed after the appointed day for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the existing law: |
| **First Proviso** | 01.07.2017 to till date | **Provided that** where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse. |
| **Second Proviso** | 01.07.2017 to till date | **Provided further that** no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act. |

**20.4.5- Claim filed by a person after the appointed day for refund of tax paid under the existing law in respect of services not provided**

| Section | | Particulars |
|---|---|---|
| **Section 142(5)** | 01.07.2017 to till date | Every claim filed by a person after the appointed day for refund of tax paid under the existing law in respect of services not provided shall be disposed of in accordance with the provisions of existing law and<br>• any amount eventually accruing to him shall be paid in cash,<br>• notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944. |

**20.4.6- Claim for CENVAT credit under the provisions of existing law**

| Section | | Particulars |
|---|---|---|

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| **Section 142(6)(a)** | 01.07.2017 to till date | Every proceeding of appeal, review or reference relating to a claim for CENVAT credit<br>• initiated whether before, on or after the appointed day under the existing law<br>• shall be disposed of in accordance with the provisions of existing law, and<br>• any amount of credit found to be admissible to the claimant shall be refunded to him in cash,<br>• notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and<br>• the amount rejected, if any, shall not be admissible as input tax credit under this Act: |
| **First Proviso** | 01.07.2017 to till date | **Provided that** no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act; |
| **Section 142(6)(b)** | 01.07.2017 to till date | Every proceeding of appeal, review or reference relating to recovery of CENVAT credit<br>• initiated whether before, on or after the appointed day under the existing law<br>• shall be disposed of in accordance with the provisions of existing law and if<br>• any amount of credit becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and<br>• the amount so recovered shall not be admissible as input tax credit under this Act. |

### 20.4.7 - Every proceeding of appeal, review or reference relating to any output duty or tax liability shall be disposed of in accordance with the provisions of the existing law

| Section | | Particulars |
|---|---|---|
| **Section 142(7)(a)** | 01.07.2017 to till date | Every proceeding of appeal, review or reference relating to any output duty or tax liability initiated<br>• whether before, on or after the appointed day under the existing law,<br>• shall be disposed of in accordance with the provisions of the existing law, and |

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| | | • **if any amount becomes recoverable** as a result of such appeal, review or reference, the same shall,<br>• unless recovered under the existing law, **be recovered as an arrear of duty or tax under this Act** and<br>• the **amount so recovered shall not be admissible as input tax credit under this Act**. |
| **Section 142(7)(b)** | 01.07.2017 to till date | Every proceeding of appeal, review or reference relating to any output duty or tax liability initiated<br>• whether before, on or after the appointed day under the existing law,<br>• shall be disposed of in accordance with the provisions of the existing law, and<br>• **any amount found to be admissible to the claimant shall be refunded to him in cash**,<br>• notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and<br>• **the amount rejected, if any, shall not be admissible as input tax credit under this Act**. |

### 20.4.8 - Amount of tax, interest, fine or penalty recoverable or refundable in pursuance of an assessment or adjudication proceedings

| Section | | Particulars |
|---|---|---|
| **Section 142(8)(a)** | 01.07.2017 to till date | Where in pursuance of an assessment or adjudication proceedings instituted,<br>• whether before, on or after the appointed day, under the existing law,<br>• any amount of tax, interest, fine or penalty becomes recoverable from the person,<br>• the same shall,<br>• unless recovered under the existing law, be recovered as an arrear of tax under this Act and<br>• the amount so recovered shall not be admissible as input tax credit under this Act. |
| **Section 142(8)(b)** | 01.07.2017 to till date | Where in pursuance of an assessment or adjudication proceedings instituted,<br>• whether before, on or after the appointed day, under the existing law,<br>• any amount of tax, interest, fine or penalty becomes refundable to the taxable person, |

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| | | • the same shall be<br>• refunded to him in cash under the said law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and<br>• the amount rejected, if any, shall not be admissible as input tax credit under this Act. |

### 20.4.9 - Amount of tax, interest, fine or penalty recoverable or refundable in pursuance of revision of returns

| Section | | Particulars |
|---|---|---|
| **Section 142(9)(a)** | 01.07.2017 to till date | Where any return, furnished under the existing law,<br>• is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or<br>• any amount of CENVAT credit is found to be inadmissible,<br>• the same shall,<br>• unless **recovered under the existing law**,<br>• be recovered as an arrear of tax under this Act and<br>• the amount so recovered shall not be admissible as input tax credit under this Act. |
| **Section 142(9)(b)** | 01.07.2017 to till date | Where any return, furnished under the existing law,<br>• is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision,<br>• any amount is found to be refundable or CENVAT credit is found to be admissible to any taxable person,<br>• the same shall be<br>• **refunded to him in cash under the existing law**,<br>• notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and<br>• the amount rejected, if any, shall not be admissible as input tax credit under this Act. |

### 20.4.10 - Goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day

| Section | | Particulars |
|---|---|---|
| **Section 142(10)** | 01.07.2017 to till date | The goods or services or both supplied on or after the appointed day<br>• in pursuance of a contract entered into prior to the appointed day<br>• shall be liable to tax under the provisions of this Act. |

### 20.4.11 - Ongoing transactions

| Section | | Particulars |
|---|---|---|
| **Section 142(11)(a)** | 01.07.2017 to till date | Notwithstanding anything contained in section 12,<br>• no tax shall be payable on goods under this Act to the extent<br>• the tax was leviable on the said goods under the Value Added Tax Act of the State. |
| **Section 142(11)(b)** | 01.07.2017 to till date | Notwithstanding anything contained in section 13,<br>• no tax shall be payable on services under this Act to the extent<br>• the tax was leviable on the said services under Chapter V of the Finance Act, 1994. |
| **Section 142(11)(c)** | 01.07.2017 to till date | Where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994,<br>• tax shall be leviable under this Act and<br>• the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law<br>• to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed. |

### 20.4.11.1- Declaration to be made under clause (c) of sub-section (11) of section 142

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|---|---|
| **Rule 118** | Every person to whom the provision of **clause (c) of sub-section (11) of section 142** applies, shall within [1][the period specified in rule 117 or such further period as extended by the Commissioner], submit a declaration electronically in **FORM GST TRAN-1** furnishing the proportion of supply on which Value Added Tax or service tax has been |

| | |
|---|---|
| | paid before the appointed day but the supply is made after the appointed day, and the Input Tax Credit admissible thereon.<br><br>**Notes**<br>1 Substituted w.e.f. 29th September, 2017 for the words "a period of ninety days of the appointed day", vide Notification No. 36/2017-Central Tax (Dated 29th September 2017). |

**20.4.12 - Goods sent on approval basis, not earlier than six months before the appointed day, are rejected or not approved by the buyer and returned to the seller on or after the appointed day**

| Section | | Particulars |
|---|---|---|
| **Section 142(12)** | 01.07.2017 to till date | Where any goods sent on approval basis, **not earlier than six months before the appointed day**,<br>• are rejected or not approved by the buyer and returned to the seller on or after the appointed day,<br>• **no tax shall be payable** thereon if such goods are returned within **six months** from the appointed day: |
| **First Proviso** | 01.07.2017 to till date | **Provided that** the said period of six months may, on sufficient cause being shown, be **extended by the Commissioner** for a further period not exceeding **two months**: |
| **Second Proviso** | 01.07.2017 to till date | **Provided further that the tax shall be payable by the person returning the goods** if such goods are liable to tax under this Act, and are **returned after a period specified** i.e. six months from the appointed day or the period as extended by the Commissioner: |
| **Third Proviso** | 01.07.2017 to till date | **Provided also that tax shall be payable by the person who has sent the goods on approval** basis if such goods are liable to tax under this Act, and are **not returned within a period specified** i.e. six months from the appointed day or the period as extended by the Commissioner. |

**20.4.12.1 - Details of goods sent on approval basis -**

| | |
|---|---|
| **Rule 120** | Every person having sent goods on approval under the existing law and to whom **sub-section (12) of section 142** applies shall, within [1][the period specified in rule 117 or such further period as extended by the Commissioner], submit details of such goods sent on approval in **FORM GST TRAN-1**.<br><br>**Notes** |

| | | |
|---|---|---|
| | | 1. Substituted w.e.f. 29th September, 2017 for the words "ninety days of the appointed day", vide Notification No. 36/2017-Central Tax (Dated 29th September 2017). |

### 20.4.13 - Deduction of tax at source

| Section | | Particulars |
|---|---|---|
| **Section 142(13)** | 01.07.2017 to till date | Where a supplier has made any sale of goods<br>• in respect of which tax was required to be deducted at source under any law of a State or Union territory relating to Value Added Tax and<br>• has also issued an invoice for the same before the appointed day,<br>• no deduction of tax at source under section 51 shall be made by the deductor under the said section where payment to the said supplier is made on or after the appointed day. |

**Explanation.—**For the purposes of this Chapter, the expressions "capital goods", "Central Value Added Tax (CENVAT) credit", "first stage dealer", "second stage dealer", or "manufacture" shall have the same meaning as respectively assigned to them in the Central Excise Act, 1944 or the rules made thereunder.

### 20.4.2.1 Departmental Clarifications - Clarifications on exports related refund issues- Circular No. 37/11/2018-GST dated 15th March, 2018

Board vide Circular No. 17/17/2017 – GST dated 15th November 2017 and Circular No. 24/24/2017 – GST dated 21st December 2017 clarified various issues in relation to processing of claims for refund. Since then, several representations have been received seeking further clarifications on issues relating to refund. In order to clarify these issues and with a view to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (CGST Act), hereby clarifies the issues raised as below:

**2. Non-availment of drawback**: The third proviso to sub-section (3) of section 54 of the CGST Act states that no refund of input tax credit shall be allowed in cases where the supplier of goods or services or both avails of drawback in respect of central tax.

2.1 This has been clarified in paragraph 8.0 of Circular No. 24/24/2017 – GST, dated 21st December 2017. In the said paragraph, reference to "section 54(3)(ii) of the CGST Act" is a typographical error and it should read as "section 54(3)(i) of the CGST Act". It may be noted that in the said circular reference has been made only to central tax, integrated tax, State / Union territory tax and not to customs duty leviable under the Customs Act, 1962. Therefore, a supplier availing of drawback only with respect to basic customs duty shall be eligible for refund of unutilized input tax credit of central tax / State tax / Union territory tax / integrated tax / compensation cess under the said provision. It is further clarified that refund of eligible credit on account of State tax shall be available even if the supplier of goods or services or both has availed of drawback in respect of central tax.

**3. Amendment through Table 9 of GSTR-1**: It has been reported that refund claims are not being processed on account of mis-matches between data contained in FORM GSTR-1, FORM GSTR-3B and shipping bills/bills of export. In this connection, it may be noted that the facility of filing of Table 9 in FORM GSTR-1, an amendment table which allows for amendments of invoices/ shipping bills details furnished in FORM GSTR-1 for earlier tax period, is already available. If a taxpayer has committed an error while entering the details of an invoice / shipping bill / bill of export in Table 6A or Table 6B of FORM GSTR-1, he can rectify the same in Table 9 of FORM GSTR-1.

3.1. It is advised that while processing refund claims on account of zero rated supplies, information contained in Table 9 of FORM GSTR-1 of the subsequent tax periods should be taken into cognizance, wherever applicable.

3.2. Field formations are also advised to refer to Circular No. 26/26/2017 – GST dated 29th December, 2017, wherein the procedure for rectification of errors made while filing the returns in FORM GSTR-3B has been provided. Therefore, in case of discrepancies between the data furnished by the taxpayer in FORM GSTR-3B and FORM GSTR-1, the officer shall refer to the said Circular and process the refund application accordingly.

**4. Exports without LUT**: Export of goods or services can be made without payment of integrated tax under the provisions of rule 96A of the Central Goods and Services Tax Rules, 2017 (the CGST Rules). Under the said provisions, an exporter is required to furnish a bond or Letter of Undertaking (LUT) to the jurisdictional Commissioner before effecting zero rated supplies. A detailed procedure for filing of LUT has already been specified vide Circular No. 8/8/2017 –GST dated 4th October, 2017. It has been brought to the notice of the Board that in some cases, such zero rated supplies have been made before filing the LUT and refund claims for unutilized input tax credit have been filed.

4.1. In this regard, it is emphasised that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made. The delay in furnishing of LUT in such cases may be condoned and the facility for export under LUT may be allowed on ex post facto basis taking into account the facts and circumstances of each case.

**5. Exports after specified period**: Rule 96A (1) of the CGST Rules provides that any registered person may export goods or services without payment of integrated tax after furnishing a LUT / bond and that he would be liable to pay the tax due along with the interest as applicable within a period of fifteen days after the expiry of three months or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the goods are not exported out of India. The time period in case of services is fifteen days after the expiry of one year or such further period as may be allowed by the Commissioner

from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange.

5.1 It has been reported that the exporters have been asked to pay integrated tax where the goods have been exported but not within three months from the date of the issue of the invoice for export. In this regard, it is emphasised that exports have been zero rated under the Integrated Goods and Services Tax Act, 2017 (IGST Act) and as long as goods have actually been exported even after a period of three months, payment of integrated tax first and claiming refund at a subsequent date should not be insisted upon. In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services.

**6. Deficiency memo**: It may be noted that if the application for refund is complete in terms of sub-rule (2), (3) and (4) of rule 89 of the CGST Rules, an acknowledgement in FORM GST RFD-02 should be issued. Rule 90 (3) of the CGST Rules provides for communication in FORM GST RFD-03 (deficiency memo) where deficiencies are noticed. The said sub-rule also provides that once the deficiency memo has been issued, the claimant is required to file a fresh refund application after the rectification of the deficiencies.

6.1. In this connection, a clarification has been sought whether with respect to a refund claim, deficiency memo can be issued more than once. In this regard rule 90 of the CGST Rules may be referred to, wherein it has been clearly stated that once an applicant has been communicated the deficiencies in respect of a particular application, the applicant shall furnish a fresh refund application after rectification of such deficiencies. It is therefore, clarified that there can be only one deficiency memo for one refund application and once such a memo has been issued, the applicant is required to file a fresh refund application, manually in FORM GST RFD-01A. This fresh application would be accompanied with the original ARN, debit entry number generated originally and a hard copy of the refund application filed online earlier. It is further clarified that once an application has been submitted afresh, pursuant to a deficiency memo, the proper officer will not serve another deficiency memo with respect to the application for the same period, unless the deficiencies pointed out in the original memo remain unrectified, either wholly or partly, or any other substantive deficiency is noticed subsequently.

**7. Self-declaration for non-prosecution**: It is learnt that some field formations are asking for a self-declaration with every refund claim to the effect that the claimant has not been prosecuted.

7.1. The facility of export under LUT is available to all exporters in terms of notification No. 37/2017- Central Tax dated 4th October, 2017, except to those who have been prosecuted for any offence under the CGST Act or the IGST Act or any of the existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees. Para 2(d) of the Circular No. 8/8/2017-GST dated 4th October, 2017, mentions that a person intending to export under LUT is required to give a self-declaration at the time of submission of LUT that he has not been prosecuted. Persons who are not eligible to export under LUT are required to export under bond.

7.2. It is clarified that this requirement is already satisfied in case of exports under LUT and asking for self–declaration with every refund claim where the exports have been made under LUT is not warranted.

**8. Refund of transitional credit**: Refund of unutilized input tax credit is allowed in two scenarios mentioned in sub-section (3) of section 54 of the CGST Act. These two scenarios

are zero rated supplies made without payment of tax and inverted tax structure. In sub-rule (4) and (5) of rule 89 of the CGST Rules, the amount of refund under these scenarios is to be calculated using the formulae given in the said sub-rules. The formulae use the phrase 'Net ITC' and defines the same as "input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under subrules (4A) or (4B) or both". It is clarified that as the transitional credit pertains to duties and taxes paid under the existing laws viz., under Central Excise Act, 1944 and Chapter V of the Finance Act, 1994, the same cannot be said to have been availed during the relevant period and thus, cannot be treated as part of 'Net ITC'.

**9. Discrepancy between values of GST invoice and shipping bill/bill of export:** It has been brought to the notice of the Board that in certain cases, where the refund of unutilized input tax credit on account of export of goods is claimed and the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, refund claims are not being processed. The matter has been examined and it is clarified that the zero rated supply of goods is effected under the provisions of the GST laws. An exporter, at the time of supply of goods declares that the goods are for export and the same is done under an invoice issued under rule 46 of the CGST Rules. The value recorded in the GST invoice should normally be the transaction value as determined under section 15 of the CGST Act read with the rules made thereunder. The same transaction value should normally be recorded in the corresponding shipping bill / bill of export.

9.1 During the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill / bill of export should be examined and the lower of the two values should be sanctioned as refund.

**10. Refund of taxes paid under existing laws**: Sub-sections (3), (4) and (5) of section 142 of the CGST Act provide that refunds of tax/duty paid under the existing law shall be disposed of in accordance with the provisions of the existing law. It is observed that certain taxpayers have applied for such refund claims in FORM GST RFD-01A also. In this regard, the field formations are advised to reject such applications and pass a rejection order in FORM GST PMT-03 and communicate the same on the common portal in FORM GST RFD-01B. The procedures laid down under the existing laws viz., Central Excise Act, 1944 and Chapter V of the Finance Act, 1994 read with above referred sub-sections of section 142 of the CGST Act shall be followed while processing such refund claims.

10.1 Furthermore, it has been brought to the notice of the Board that the field formations are rejecting, withholding or re-crediting CENVAT credit, while processing claims of refund filed under the existing laws. In this regard, attention is invited to sub-section (3) of section 142 of the CGST Act which provides that the amount of refund arising out of such claims shall be refunded in cash. Further, the first proviso to the said sub-section provides that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse and therefore, will not be transitioned into GST. Furthermore, it should be ensured that no refund of the amount of CENVAT credit is granted in case the said amount has been transitioned under GST. The field formations are advised to process such refund applications accordingly.

**11. Filing frequency of Refunds**: Various representations have been made to the Board regarding the period for which refund applications can be filed. Section 2(107) of the CGST Act defines the term "tax period" as the period for which the return is required to be furnished. The terms 'Net ITC' and 'turnover of zero rated supply of goods/services' are used in the

context of the relevant period in rule 89(4) of CGST Rules. The phrase 'relevant period' has been defined in the said sub-rule as 'the period for which the claim has been filed'.

11.1 In many scenarios, exports may not have been made in that period in which the inputs or input services were received and input tax credit has been availed. Similarly, there may be cases where exports may have been made in a period but no input tax credit has been availed in the said period. The above referred rule, taking into account such scenarios, defines relevant period in the context of the refund claim and does not link it to a tax period.

11.2 In this regard, it is hereby clarified that the exporter, at his option, may file refund claim for one calendar month / quarter or by clubbing successive calendar months / quarters. The calendar month(s) / quarter(s) for which refund claim has been filed, however, cannot spread across different financial years.

12. BRC / FIRC for export of goods: It is clarified that the realization of convertible foreign exchange is one of the conditions for export of services. In case of export of goods, realization of consideration is not a pre-condition. In rule 89 (2) of the CGST Rules, a statement containing the number and date of invoices and the relevant Bank Realisation Certificates (BRC) or Foreign Inward Remittance Certificates (FIRC) is required in case of export of services whereas, in case of export of goods, a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices is required to be submitted along with the claim for refund. It is therefore clarified that insistence on proof of realization of export proceeds for processing of refund claims related to export of goods has not been envisaged in the law and should not be insisted upon.

**13. Supplies to Merchant Exporters**: Notification No. 40/2017 – Central Tax (Rate), dated 23rd October 2017 and notification No. 41/2017 – Integrated Tax (Rate) dated 23rd October 2017 provide for supplies for exports at a concessional rate of 0.05% and 0.1% respectively, subject to certain conditions specified in the said notifications.

13.1 It is clarified that the benefit of supplies at concessional rate is subject to certain conditions and the said benefit is optional. The option may or may not be availed by the supplier and / or the recipient and the goods may be procured at the normal applicable tax rate.

13.2 It is also clarified that the exporter will be eligible to take credit of the tax @ 0.05% / 0.1% paid by him. The supplier who supplies goods at the concessional rate is also eligible for refund on account of inverted tax structure as per the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act. It may also be noted that the exporter of such goods can export the goods only under LUT / bond and cannot export on payment of integrated tax. In this connection, notification No. 3/2018-Central Tax, dated 23.01.2018 may be referred.

**14. Requirement of invoices for processing of claims for refund**: It has been brought to the notice of the Board that for processing of refund claims, copies of invoices and other additional information are being insisted upon by many field formations.

14.1 It was envisaged that only the specified statements would be required for processing of refund claims because the details of outward supplies and inward supplies would be available on the common portal which would be matched. Most of the other information like shipping bills details etc. would also be available because of the linkage of the common portal with the Customs system. However, because of delays in operationalizing the requisite modules on the common portal, in many cases, suppliers' invoices on the basis of which the exporter is

claiming refund may not be available on the system. For processing of refund claims of input tax credit, verifying the invoice details is quintessential. In a completely electronic environment, the information of the recipients' invoices would be dependent upon the suppliers' information, thus putting an in-built check-and-balance in the system. However, as the refund claims are being filed by the recipient in a semi-electronic environment and is completely based on the information provided by them, it is necessary that invoices are scrutinized.

14.2 A list of documents required for processing the various categories of refund claims on exports is provided in the Table below. Apart from the documents listed in the Table below, no other documents should be called for from the taxpayers, unless the same are not available with the officers electronically:

**Table**

| Type of Refund | **Documents** |
|---|---|
| Export of Services with payment of tax (Refund of IGST paid on export of services) | ✓ Copy of **FORM RFD-01A** filed on common portal<br>✓ Copy of Statement 2 of **FORM RFD-01A**<br>✓ Invoices w.r.t. input, input services and capital goods<br>✓ BRC/FIRC for export of services<br>✓ Undertaking/Declaration in **FORM RFD-01A** |
| Export (goods or services) without payment of tax (Refund of accumulated ITC Copy of IGST/CGST/SGST UTGST/Cess) | ✓ Copy of **FORM RFD-01A** filed on common portal<br>✓ Copy of Statement 3A of **FORM RFD-01A** generated on common portal<br>✓ Copy of Statement 3 of **FORM RFD-01A**<br>✓ Invoices w.r.t. input and input services<br>✓ BRC/FIRC for export of services<br>✓ Undertaking/Declaration in FORM RFD-01A |

15. These instructions shall apply to exports made on or after 1st July, 2017. It is also advised that refunds may not be withheld due to minor procedural lapses or non-substantive errors or omission.

**20.4.2.2 Departmental Clarifications - Clarification regarding procedure for recovery of arrears under the existing law and reversal of inadmissible input tax credit-- Circular No. 42/16/2018-GST dated 13th April, 2018**

Kind attention is invited to the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) relating to the recovery of arrears of central excise duty /service tax and CENVAT credit thereof, CENVAT credit carried forward erroneously and related interest, penalty or late fee payable arising as a result of the proceedings of assessment, adjudication, appeal etc. initiated before, on or after the appointed date under the provisions of the existing law. In this regard, representations have been received seeking clarification on the procedure for recovery of such arrears in the GST regime.

2. The issues have been examined and to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168 (1) of the Central Goods and Services Tax Act, 2017, (hereinafter referred to as the "CGST Act") hereby specifies the procedure to be followed for recovery of arrears arising out of proceedings under the existing law.

3. **Legal provisions relating to the recovery of arrears of central excise duty and service tax and CENVAT credit thereof arising out of proceedings under the existing law (Central Excise Act, 1944 and Chapter V of the Finance Act, 1994)**

i) **Recovery of arrears of wrongly availed CENVAT Credit**: In case where any proceeding of appeal, review or reference relating to a claim for CENVAT credit had been initiated, whether before, on or after the appointed day, under the existing law, any amount of such credit becomes recoverable, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under theCGST Act [Section 142(6)(b) of the CGST Act refers].

ii) **Recovery of CENVAT Credit carried forward wrongly**: CENVAT credit of central excise duty/service tax availed under the existing law may be carried forward in terms of transitional provisions as per section 140 of the CGST Act subject to the conditions prescribed therein. Any credit which is not admissible in terms of section 140 of the CGST Act shall not be allowed to be transitioned or carried forward and the same shall be recovered as an arrear of tax under section 79 of the CGST Act.

iii) **Recovery of arrears of central excise duty and service tax:** a. Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable, the same shall, unless recovered under the existing law,be recovered as an arrear of tax under the CGST Act [Section 142(8)(a)of the CGST Act refers]. b. If due to any proceedings of appeal, review or reference relating to output duty or tax liability initiated, whether before, on or after the appointed day, under the existing law, any amount of output duty or tax becomes recoverable, the same shall, unless recovered under the existing law,be recovered as an arrear of tax under the CGST Act [Section 142(7)(a)of the CGST Act refers].

iv) **Recovery of arrears due to revision of return under the existing law**: Where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [Section 142(9)(a)of the CGST Act refers].

4. In view of the above legal provisions, recovery of central excise duty/ service tax and CENVAT credit thereof arising out of the proceedings under the existing law, unless recovered under the existing law, and that of inadmissible transitional credit,is required to be made as an arrear of tax under the CGST Act.The following procedure is hereby prescribed for the recovery of arrears:

**4.1 Recovery of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law and inadmissible transitional credit:**

(a) The CENVAT credit of central excise duty or service tax wrongly carried forward as transitional credit shall be recovered as central tax liability to be paid through the utilization of amounts available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

(b) The arrears ofcentral excise duty, service tax or wrongly availed CENVAT credit thereof under the existing lawarising out of any of the situations discussed in para 3 above, shall, unless recovered under the existing law, be recovered as central tax liability to be paid through the utilization of amounts available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

**4.2 Recovery of interest, penalty and late fee payable**:

(a) The arrears of interest, penalty and late fee in relation to CENVAT credit wrongly carried forward, arising out of any of the situations discussed in para 3 above, shall be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in electronic cash ledgerof the registered person and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

(b) The arrears of interest, penalty and late fee in relation to arrears of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law arising out of any of the situations discussed in para 3 above, shall, unless recovered under the existing law, be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in the electronic cash ledger of the registered person and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

**4.3 Payment of central excise duty & service tax on account of returns filed for the past period:** The registered person may file Central Excise / Service Tax return for the period prior to 1st July, 2017 by logging onto www.aces.gov.in and make payment relating to the same through EASIEST portal (cbec-easiest.gov.in), as per the practice prevalent for the period prior to the introduction of GST. However, with effect from 1st of April, 2018, the return filing shall continue on www.aces.gov.in but the payment shall be made through the ICEGATE portal. As the registered person shall be automatically taken to the payment portal on filing of the return, the user interface remains the same for him.

**4.4 Recovery of arrears from assessees under the existing law in cases where such assessees are not registered under the CGST Act, 2017:** Such arrears shall be recovered in cash, under the provisions of the existing law and the payment of the same shall be made as per the procedure mentioned in para 4.3 supra.

**20.4.2.3 Departmental Clarifications - Recovery of arrears of wrongly availed CENVAT credit under the existing law and inadmissible transitional credit- Circular No. 58/32/2018-GST dated 4th September, 2018**

Various representations have been received seeking clarification on the process of recovery of arrears of wrongly availed CENVAT credit under the existing law and CENVAT credit wrongly carried forward as transitional credit in the GST regime. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act'), hereby specifies the process of recovery of the said arrears and inadmissible transitional credit in the succeeding paragraphs.

2. The Board vide Circular No. 42/16/2018-GST dated 13th April, 2018, has clarified that the recovery of arrears arising under the existing law shall be made as central tax liability to be paid through the utilization of the amount available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

3. Currently, the functionality to record this liability in the electronic liability register is not available on the common portal. Therefore, it is clarified that as an alternative method, taxpayers may reverse the wrongly availed CENVAT credit under the existing law and inadmissible transitional credit through Table 4(B)(2) of FORM GSTR-3B. The applicable interest and penalty shall apply on all such reversals which shall be paid through entry in column 9 of Table 6.1 of FORM GSTR-3B.

**20.4.2.4 Departmental Clarifications - Clarification on certain issues (sale by government departments to unregistered person; leviability of penalty under section 73(11) of the CGST Act; rate of tax in case of debit notes / credit notes issued under section 142(2) of the CGST Act; applicability of notification No. 50/2018-Central Tax; valuation methodology in case of TCS under Income Tax Act and definition of owner of goods) related to GST- Circular No. 76/50/2018-GST dated 31st December, 2018**

Various representations have been received seeking clarification on certain issues under the GST laws. In order to clarify these issues and to ensure uniformity of implementation across field formations, the Board, in exercise of its powers conferred under section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") hereby clarifies the issues as below:

| Sl. No. | Issue | Clarification |
|---|---|---|
| 1. | Whether the supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government departments are taxable under GST? | 1. It may be noted that intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority is a taxable supply under GST. |

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| | | 2. | Vide Notification No. 36/2017-Central Tax (Rate) and Notification No. 37/2017-Integrated Tax (Rate) both dated 13.10.2017, it has been notified that intra-State and inter-State supply respectively of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by the Central Government, State Government, Union territory or a local authority to any ***registered person***, would be subject to GST on reverse charge basis as per which tax is payable by the recipient of such supplies. |
| | | 3. | A doubt has arisen about taxability of intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority to an ***unregistered person***. |
| | | 4. | It was noted that such supply to an unregistered person is also a taxable supply under GST but is not covered under notification No. 36/2017-Central Tax (Rate) and notification No. 37/2017- Integrated Tax (Rate) both dated 13.10.2017. |
| | | 5. | In this regard, it is clarified that the respective Government departments (i.e. Central Government, State Government, Union territory or a local authority) shall be liable to get registered and pay GST on intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by them to an ***unregistered person*** subject to the provisions of sections 22 and 24 of the CGST Act. |
| 2. | Whether penalty in accordance with section 73 (11) of the CGST Act should be levied in cases where the return in **FORM GSTR-3B** has been filed after the due date of filing such return? | 1. | As per the provisions of section 73(11) of the CGST Act, penalty is payable in case self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax. |
| | | 2. | It may be noted that a show cause notice (SCN for short) is required to be issued to a person where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised for any reason under the provisions of section 73(1) of the CGST Act. The provisions of section 73(11) of the CGST Act can be invoked |

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| | | | only when the provisions of section 73 are invoked. |
| | | 3. | The provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in **FORM GSTR-3B** because tax along with applicable interest has already been paid but after the due date for payment of such tax. It is accordingly clarified that penalty under the provisions of section 73(11) of the CGST Act is not payable in such cases. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act, a general penalty under section 125 of the CGST Act may be imposed after following the due process of law. |
| 3. | In case a debit note is to be issued under section 142(2)(a) of the CGST Act or a credit note under section 142(2)(b) of the CGST Act, what will be the tax rate applicable – the rate in the pre-GST regime or the rate applicable under GST? | 1. | It may be noted that as per the provisions of section 142(2) of the CGST Act, in case of revision of prices of any goods or services or both on or after the appointed day (i.e., 01.07.2017), a supplementary invoice or debit/credit note may be issued which shall be deemed to have been issued in respect of an outward supply made under the CGST Act. |
| | | 2. | It is accordingly clarified that in case of revision of prices, after the appointed date, of any goods or services supplied before the appointed day thereby requiring issuance of any supplementary invoice, debit note or credit note, the rate as per the provisions of the GST Acts (both CGST and SGST or IGST) would be applicable. |
| 4. | Applicability of the provisions of section 51 of the CGST Act (TDS) in the context of notification No. 50/2018- Central Tax dated 13.09.2018. | 1. | A doubt has arisen about the applicability of long line mentioned in clause (a) of notification No. 50/2018- Central Tax dated 13.09.2018. |
| | | 2. | It is clarified that the long line written in clause (a) in notification No. 50/2018- Central Tax dated 13.09.2018 is applicable to both the items (i) and (ii) of clause (a) of the said notification. Thus, an authority or a board or any other body whether set up by an Act of Parliament or a State Legislature |

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| | | or established by any Government with fifty-one per cent. or more participation by way of equity or control, to carry out any function would only be liable to deduct tax at source.<br>3. In other words, the provisions of section 51 of the CGST Act are applicable only to such authority or a board or any other body set up by an Act of parliament or a State legislature or established by any Government in which fifty one per cent. or more participation by way of equity or control is with the Government. |
| *5.* | What is the correct valuation methodology for ascertainment of GST on Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961? | *1.* Section 15(2) of CGST Act specifies that the value of supply shall include "any taxes, duties cesses, fees and charges levied under any law for the time being in force other than this Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier."<br>*2.* It is clarified that as per the above provisions, taxable value for the purposes of GST shall include the TCS amount collected under the provisions of the Income Tax Act since the value to be paid to the supplier by the buyer is inclusive of the said TCS. |
| 6. | Who will be considered as the 'owner of the goods' for the purposes of section 129(1) of the CGST Act? | It is hereby clarified that if the invoice or any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner. If the invoice or any other specified document is not accompanying the consignment of goods, then in such cases, the proper officer should determine who should be declared as the owner of the goods. |

**20.4.2.5 Departmental Clarifications - 4.4.2.8 Departmental Clarifications - Fully electronic refund process through FORM GST RFD-01 and single disbursement - The procedure for electronic submission and processing of refund applications in supersession of earlier Circulars viz. Circular No. 17/17/2017-GST dated 15.11.2017, 24/24/2017-GST dated 21.12.2017, 37/11/2018-GST dated 15.03.2018, 45/19/2018-GST dated 30.05.2018 (including corrigendum dated 18.07.2019), 59/33/2018-GST dated 04.09.2018, 70/44/2018-GST dated 26.10.2018, 79/53/2018-GST dated 31.12.2018 and 94/13/2019-GST dated 28.03.2019. - The provisions of the said Circulars shall continue to apply for all refund applications filed on the common portal before 26.09.2019 and the said applications shall continue to be processed manually Circular No. 125/44/2019**

**– GST dated 18th November, 2019 - Circular No. 125/44/2019 – GST dated 18th November, 2019**

After roll out of GST w.e.f. 01.07.2017, on account of the unavailability of electronic refund module on the common portal, a temporary mechanism had to be devised and implemented wherein applicants were required to file the refund application in FORM GST RFD-01A on the common portal, take a print out of the same and submit it physically to the jurisdictional tax office along with all supporting documents. Further processing of these refund applications, i.e. issuance of acknowledgement of the refund application, issuance of deficiency memo, passing of provisional/final order, payment advice etc. was also being done manually. In order to make the process of submission of the refund application electronic, Circular No. 79/53/2018-GST dated 31.12.2018 was issued wherein it was specified that the refund application in FORM GST RFD01A, along with all supporting documents, shall be submitted electronically. However, various post submission stages of processing of the refund application continued to be manual.

2. The necessary capabilities for making the refund procedure fully electronic, in which all steps of submission and processing shall be undertaken electronically, have been deployed on the common portal with effect from 26.09.2019. Accordingly, the Circulars issued earlier laying down the guidelines for manual submission and processing of refund claims need to be suitably modified and a fresh set of guidelines needs to be issued for electronic submission and processing of refund claims. With this objective and in order to ensure uniformity in the implementation of the provisions of law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby lays down the procedure for electronic submission and processing of refund applications in supersession of earlier Circulars viz. Circular No. 17/17/2017-GST dated 15.11.2017, 24/24/2017-GST dated 21.12.2017, 37/11/2018-GST dated 15.03.2018, 45/19/2018-GST dated 30.05.2018 (including corrigendum dated 18.07.2019), 59/33/2018-GST dated 04.09.2018, 70/44/2018-GST dated 26.10.2018, 79/53/2018-GST dated 31.12.2018 and 94/13/2019-GST dated 28.03.2019. However, the provisions of the said Circulars shall continue to apply for all refund applications filed on the common portal before 26.09.2019 and the said applications shall continue to be processed manually as prior to deployment of new system.

**Filing of refund applications in FORM GST RFD-01**

3. With effect from 26.09.2019, the applications for the following types of refunds shall be filed in FORM GST RFD 01 on the common portal and the same shall be processed electronically:

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. The following modalities shall be followed for all refund applications filed in FORM GST RFD-01 on the common portal with effect from 26.09.2019:

a. FORM GST RFD-01 shall be filled on the common portal by an applicant seeking refund under any of the categories mentioned above. This shall entail filing of statements/declarations/undertakings which are part of FORM GST RFD-01 itself, and also uploading of other documents/invoices which shall be required to be provided by the applicant for processing of the refund claim. A comprehensive list of such documents is provided at Annexure-A and it is clarified that no other document needs to be provided by the applicant at the stage of filing of the refund application. The facility of uploading these other documents/invoices shall be available on the common portal where four documents, each of maximum 5MB, may be uploaded along with the refund application. Neither the refund application in FORM GST RFD-01 nor any of the supporting documents shall be required to be physically submitted to the office of the jurisdictional proper officer.

b. The Application Reference Number (ARN) will be generated only after the applicant has completed the process of filing the refund application in FORM GST RFD-01, 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.

c. 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 sub-rule (2) of rule 90 of the CGST Rules on the date of generation of the said ARN and the time limit of 15 days to issue an acknowledgement or a deficiency memo, as the case may be, shall be counted from the said date. This will obviate the need for an applicant to visit the jurisdictional tax office for the submission of the refund application and /or any of the supporting documents. Accordingly, the acknowledgement for the complete application (FORM GST RFD-02) or deficiency memo (FORM GST RFD-03), as the case may be, would be issued electronically by the jurisdictional tax officer based on the documents so received from the common portal.

d. If a refund application is electronically transmitted to the wrong jurisdictional officer, he/she shall reassign it to the correct jurisdictional officer electronically as soon as possible, but not later than three working days, from the date of generation of the ARN. Deficiency memos shall not be issued in such cases merely on the ground that the applications were received electronically in the wrong jurisdiction.

e. It may be noted that the facility to reassign such refund applications is already available with the Commissioner or the officer(s) authorized by him.

5. The refund application in FORM GST RFD-01 filed by all taxpayers, who have already been assigned to the Centre or the State tax authorities, shall be automatically forwarded by the common portal to the concerned authority. At the same time, there might be some migrated taxpayers, who have remained unassigned so far. The refund application in FORM GST RFD-01 filed by such unassigned taxpayers shall be forwarded, for processing, by the common portal to the jurisdictional proper officer of the tax authority from which the taxpayer has originally migrated. Such officers will continue to process these applications up to the stage of issuance of final order in FORM GST RFD-06 and the related payment order in FORM GST RFD-05 even if the applicant is assigned to the counterpart tax authority while the refund claim is under processing. However, if such an applicant gets assigned to one of the tax authorities after generation of the ARN and a deficiency memo gets issued for the refund application submitted by him, then the re-submitted refund application, after correction of deficiencies, shall be treated as a fresh refund application and shall be forwarded to the jurisdictional proper officer of the tax authority to which the taxpayer has now been assigned, irrespective of which authority handled the initial refund claim and issued the deficiency memo.

6. Any refund claim for a tax period may be filed only after furnishing all the returns in FORM GSTR-1 and FORM GSTR-3B which were due to be furnished on or before the date on which the refund application is being filed. However, in case of a claim for refund filed by a composition taxpayer, a non-resident taxable person, or an Input Service Distributor (ISD) furnishing of returns in FORM GSTR-1 and FORM GSTR-3B is not required. Instead, the applicant should have furnished returns in FORM GSTR-4(along with FORM GST CMP-08), FORM GSTR-5 or FORM GSTR-6, as the case may be, which were due to be furnished on or before the date on which the refund application is being filed.

7. Since the functionality of furnishing of FORM GSTR-2 and FORM GSTR-3 remains unimplemented, it has been decided by the GST Council to sanction refund of provisionally accepted input tax credit. However, the applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of section 42 of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted electronically along with the refund claim.

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.

**Deficiency Memos**

9. It may be noted that if the application for refund is complete in terms of sub-rule (2), (3) and (4) of rule 89 of the CGST Rules, an acknowledgement in FORM GST RFD-02 should be issued within 15 days of the filing of the refund application. The date of generation of ARN for FORM GST RFD-01 is to be considered as the date of filing of the refund application. Sub-

rule (3) of rule 90 of the CGST Rules provides for communication of deficiencies in FORM GST RFD-03 where deficiencies are noticed within the aforesaid period of 15 days. It is clarified that either an acknowledgement or a deficiency memo should be issued within the aforesaid period of 15 days starting from the date of generation of ARN. Once an acknowledgement has been issued in relation to a refund application, no deficiency memo, on any grounds, may be subsequently issued for the said application.

10. After a deficiency memo has been issued, the refund application would not be further processed and a fresh application would have to be filed. Any amount of input tax credit/cash debited from electronic credit/ cash ledger would be re-credited automatically once the deficiency memo has been issued. It may be noted that the re-credit would take place automatically and no order in FORM GST PMT-03 is required to be issued. The applicant is required to rectify the deficiencies highlighted in deficiency memo and file fresh refund application electronically in FORM GST RFD-01 again for the same period and this application would have a new and distinct ARN.

11. It is further clarified that once an application has been submitted afresh, pursuant to a deficiency memo, the proper officer will not serve another deficiency memo with respect to the application for the same period, unless the deficiencies pointed out in the original deficiency memo remain un-rectified, either wholly or partly, or any other substantive deficiency is noticed subsequently.

12. It is also clarified that since a refund application filed after correction of deficiency is treated as a fresh refund application, such a rectified refund application, submitted after correction of deficiencies, shall also have to be submitted within 2 years of the relevant date, as defined in the explanation after sub-section (14) of section 54 of the CGST Act.

**Provisional Refund**

13. Doubts get raised as to whether provisional refund would be given even in those cases where the proper officer prima-facie has sufficient reasons to believe that there are irregularities in the refund application which would result in rejection of whole or part of the refund amount so claimed. It is clarified that in such cases, the proper officer shall refund on a provisional basis ninety percent of the refundable amount of the claim (amount of refund claim less the inadmissible portion of refund so found) in accordance with the provisions of rule 91 of the CGST Rules. Final sanction of refund shall be made in accordance with the provisions of rule 92 of the CGST Rules.

14. It is further clarified that there is no prohibition under the law preventing a proper officer from sanctioning the entire amount within 7 days of the issuance of acknowledgement through issuance of FORM GST RFD-06, instead of grant of provisional refund of 90 per cent of the amount claimed through FORM GST RFD-04. If the proper officer is fully satisfied about the eligibility of a refund claim on account of zero-rated supplies, and is of the opinion that no further scrutiny is required, the proper officer may issue final order in FORM GST RFD-06 within 7 days of the issuance of acknowledgement. In such cases, the issuance of a provisional refund order in FORM GST RFD-04 will not be necessary.

15. Further, there are doubts on the procedure to be followed in situations where the final refund amount to be sanctioned in FORM GST RFD-06 is less than the amount of refund sanctioned provisionally through FORM GST RFD-04. For example, consider a situation where an applicant files a refund claim of Rs.100/- on account of zero-rated supplies. The proper officer, after prima-facie examination of the application, sanctions Rs. 90 as provisional refund through FORM GST RFD-04 and the same is electronically credited to his bank

account. However, on detailed examination, it appears to the proper officer that only an amount of Rs. 70 is admissible as refund to the applicant. In such cases, the proper officer shall have to issue a show cause notice to the applicant, in FORM GST RFD-08, under section 54 of the CGST Act, read with section 73 or 74 of the CGST Act, requiring the applicant to show cause as to why:

(a) the amount claimed of Rs. 30/- should not be rejected as per the relevant provisions of the law; and

(b) the amount of Rs. 20/- erroneously refunded should not be recovered under section 73 or section 74 of the CGST Act, as the case may be, along with interest and penalty, if any.

16. The proper officer for adjudicating the above case shall be the same as the proper officer for sanctioning refund under section 54 of the CGST Act. The above notice shall be adjudicated following the principles of natural justice and an order shall be issued, in FORM GST RFD-06, under section 54 of the CGST Act, read with section 73 or section 74 of the CGST Act, as the case may be. If the adjudicating authority decides against the applicant in respect of both points (a) and (b) above, then an amount of Rs. 70/- will have to be sanctioned in FORM GST RFD-06, and an amount of Rs. 20/-, along with interest and penalty, if any, shall be entered by the officer in the electronic liability register of the applicant through issuance of FORM GST DRC-07. Further, if the application pertains to refund of unutilized/accumulated ITC, then Rs. 30/-, i.e. the amount rejected, shall have to be re-credited to the electronic credit ledger of the applicant through FORM GST PMT-03. However, this re-credit shall be done only after the receipt of an undertaking from the applicant to the effect that he shall not file an appeal or in case he files an appeal, the same has been finally decided against the applicant. In such cases, it may be noted that FORM GST RFD08 and FORM GST RFD-06, are to be considered as show cause notice and adjudication order respectively, under both section 54 (for rejection of refund) and section 73/74 of the CGST Act as the case may be (for recovery of erroneous refund).

17. It is further clarified that no adjustment or withholding of refund, as provided under subsections (10) and (11) of section 54 of the CGST Act, shall be allowed in respect of the amount of refund which has been provisionally sanctioned. In cases where there is an outstanding recoverable amount due from the applicant, the proper officer, instead of granting refund on provisional basis, may process and sanction refund on final basis at the earliest and recover the amount from the amount so sanctioned.

**Scrutiny of Application**

18. In case of refund claim on account of export of goods without payment of tax, the Shipping bill details shall be checked by the proper officer through ICEGATE SITE (www.icegate.gov.in) wherein the officer would be able to check details of EGM and shipping bill by keying in port name, Shipping bill number and date. It is advised that while processing refund claims, information contained in Table 9 of FORM GSTR-1 of the relevant tax period as well as that of the subsequent tax periods should also be taken into cognizance, wherever applicable. In this regard, Circular No. 26/26/2017–GST dated 29.12.2017 may be referred, wherein the procedure for rectification of errors made while filing the returns in FORM GSTR-3B has been provided. Therefore, in case of discrepancies between the data furnished by the taxpayer in FORM GSTR-3B and FORM GSTR-1, the proper officer shall refer to the said Circular and process the refund application accordingly.

19. Detailed guidelines laid down in subsequent paragraphs of this Circular covering various types of refund claims may also be followed while scrutinizing refund claims for completeness and eligibility.

**Re-crediting of electronic credit ledger on account of rejection of refund claim**

20. In case of rejection of refund claim of unutilized/accumulated ITC due to ineligibility of the input tax credit under any provisions of the CGST Act and rules made thereunder, the proper officer shall have to issue a show cause notice in FORM GST RFD-08, under section 54 of the CGST Act, read with section 73 or 74 of the CGST Act, requiring the applicant to show cause as to why:

(a) the refund amount corresponding to the ineligible ITC should not be rejected as per the relevant provisions of the law; and

(b) the amount of ineligible ITC should not be recovered as wrongly availed ITC under section 73 or section 74 of the CGST Act, as the case may be, along with interest and penalty, if any.

21. The above notice shall be adjudicated following the principles of natural justice and an order shall be issued, in FORM GST RFD-06, under section 54 of the CGST Act, read with section 73 or section 74 of the CGST Act, as the case may be. If the adjudicating authority decides against the applicant in respect of both points (a) and (b) above, then FORM GST RFD-06 shall have to be issued accordingly, and the amount of ineligible ITC, along with interest and penalty, if any, shall be entered by the officer in the electronic liability register of the applicant through issuance of FORM GST DRC-07. Alternatively, the applicant can voluntarily pay this amount, along with interest and penalty, as applicable, before service of the demand notice, and intimate the same to the proper officer in FORM GST DRC-03 in accordance with sub-section (5) of section 73 or sub-section (5) of section 74 of the CGST Act, as the case may be, read with subrule (2) of rule 142 of the CGST Rules. In such cases, the need for serving a demand notice for recovery of ineligible ITC will be obviated. In any case, the proper officer shall order for the rejected amount to be re-credited to the electronic credit ledger of the applicant using FORM GST PMT-03, only after the receipt of an undertaking from the applicant to the effect that he shall not file an appeal or in case he files an appeal, the same is finally decided against the applicant.

22. In case of rejection of a claim for refund, on account of any reason other than the ineligibility of credit, the process described in para 20 and 21 above shall be followed with the only difference that there shall be no proceedings for recovery of ineligible ITC under section 73 or section 74, as the case may be.

23. Consider an example where against a refund claim of unutilized/accumulated ITC of Rs.100/-, only Rs.80/- is sanctioned (Rs.15/- is rejected on account of ineligible ITC and Rs.5/- is rejected on account of any other reason). As stated above, a show cause notice, in FORM GST RFD-08 shall have to be issued to the applicant, requiring him to show cause as to why the refund claim amounting to Rs.20/-should not be rejected under the relevant provisions of the law and why the ineligible ITC of Rs. 15/- should not be recovered under section 73 or section 74, as the case may be, with interest and penalty, if any. If the said notice is decided against the applicant, Rs. 15/-, along with interest and penalty, if any, shall be entered by the officer in the electronic liability register of the applicant through issuance of FORM GST DRC-07. Further, Rs. 20/- would be recredited through FORM GST PMT-03 only after the receipt of an undertaking from the applicant to the effect that he shall not file an appeal or in case he files an appeal, the same is finally decided against the applicant.

24. Continuing with the above example, further assume that the applicant files an appeal against this order and the appellate authority decides wholly in the applicant's favour. It is hereby clarified in such a case the petitioner would file a fresh refund claim for the said amount of Rs. 20/- under the option of claiming refund "On Account of Assessment/Provisional Assessment/Appeal/Any other order".

**Application for refund of integrated tax paid on export of services and supplies made to a Special Economic Zone developer or a Special Economic Zone unit**

25. It has been represented that while filing the return in FORM GSTR-3B for a given tax period, certain registered persons committed errors in declaring the export of services on payment of integrated tax or zero-rated supplies made to a Special Economic Zone developer or a Special Economic Zone unit on payment of integrated tax. They have shown such supplies in the Table under column 3.1(a) instead of showing them in column 3.1(b) of FORM GSTR-3B whilst they have shown the correct details in Table 6A or 6B of FORM GSTR-1 for the relevant tax period and duly discharged their tax liabilities. Such registered persons were earlier unable to file the refund application in FORM GST RFD-01A for refund of integrated tax paid on the export of services or on supplies made to a SEZ developer or a SEZ unit on the GST common portal because of an in-built validation check in the system which restricted the refund amount claimed (integrated tax/cess) to the amount of integrated tax/cess mentioned under column 3.1(b) of FORM GSTR3B (zero rated supplies) filed for the corresponding tax period.

26. In this regard, it is clarified that for the tax periods commencing from 01.07.2017 to 30.06.2019, such registered persons shall be allowed to file the refund application in FORM GST RFD-01 on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of FORM GSTR-3B filed for the corresponding tax period.

**Disbursal of refunds**

27. Separate disbursement of refund amounts under different tax heads by different tax authorities, i.e. disbursement of Central tax, Integrated tax and Compensation Cess by Central tax officers and disbursement of State tax by State tax officers, was causing undue hardship to the refund applicants. In order to facilitate refund applicants on this account, it has now been decided that for a refund application assigned to a Central tax officer, both the sanction order (FORM GST RFD-04/06) and the corresponding payment order (FORM GST RFD-05) for the sanctioned refund amount, under all tax heads, shall be issued by the Central tax officer only. Similarly, for refund applications assigned to a State/UT tax officer, both the sanction order (FORM GST RFD04/06) and the corresponding payment order (FORM GST RFD-05) for the sanctioned refund amount, under all tax heads, shall be issued by the State/UT tax officer only.

28. The sanctioned refund amounts, as entered in the payment orders issued by the Central and State/UT tax officers, shall be disbursed through the Public Financial Management System (PFMS) of the Controller General of Accounts (CGA), Ministry of Finance, Government of India. On filing of a refund application in FORM GST RFD-01, the common portal shall generate a master file for the applicant containing the relevant details like name, GSTIN, bank account details etc. This master file shall be shared with PFMS for validation of the bank account details provided by the applicant in the refund application. Once the bank account is validated, PFMS will create a unique assessee code (combination of GSTIN +

validated bank account number) for the applicant. This unique assessee code will be used by PFMS for all refund payments made to the applicant in the said bank account. Therefore, in order to avoid repeat validations and generation of multiple unique assessee codes for the same GSTIN, it shall be advisable for the applicants to enter the same bank account details in successive refund applications submitted in FORM GST RFD-01. In cases where an applicant wishes to avail the refund in a different bank account, which has not yet been validated, a new unique assessee code (comprising of GSTIN + new bank account) will be generated by PFMS after validation of the said bank account.

29. If the bank account details mentioned by an applicant in the refund application submitted in FORM GST RFD-01 are invalidated, an error message shall be transmitted by PFMS to the common portal electronically and the common portal shall make the error message available to the applicant and the refund officers on their dashboards. On receiving such an error message, an applicant can:

a) rectify the invalidated bank account details by filing a non-core amendment in FORM GST REG-14; or

b) add a new bank account by filing a non-core amendment in FORM GST REG-14

30. The updated bank account details will be reflected in a drop-down menu on the dashboard. From this drop-down menu, the applicant can choose any bank account, including the ones rectified (option (a)) or newly added (option (b)), from the list of bank accounts available in his registration database. The chosen bank account details will again be sent to PFMS for validation. The proper officer will be able to issue the payment order in FORM GST RFD-05 only after the selected bank account has been validated.

31. By following the above process, validation errors, if any, will generally be corrected before the issuance of payment order in FORM GST RFD-05. Therefore, there should generally not be any validation errors after issuance of a payment order in FORM GST RFD-05. However, in certain exceptional cases, it is possible that a validation error occurs after issuance of the payment order. In such cases, the said payment order will be invalidated by the common portal and a new payment order will have to be issued by the proper officer after following the rectification process described in paras 29 and 30 above. The re-issued payment order will have a new reference number and shall contain the newly selected bank account details. However, there will be no change in either the original ARN or the sanction order number or the amount for which the payment order was originally issued.

32. It may be noted that the applicant, at the time of filing of refund application in FORM GST RFD-01, can select a bank account only from the list of bank accounts provided by him at the time of registration in FORM GST REG-01, or subsequently through filing a non-core amendment in FORM GST REG-14. The same account details will be auto-populated in the payment order issued in FORM GST RFD-05. Any change in these auto-populated bank account details shall not be allowed unless there is a validation error in relation to the same.

33. The disbursement status of the refund amount would be communicated by PFMS to the common portal. The common portal shall notify the same to the taxpayer by email/SMS. Such details shall also be available on the status tracking facility on the dashboard.

34. Section 56 of the CGST 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-Central Tax dated 28.06.2017) 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 applicant. 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 applicant. 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 applicant. Accordingly, all tax authorities are advised to issue the final sanction order in FORM GST RFD-06 and the payment order in FORM GST RFD-05 within 45 days of the date of generation of ARN, so that the disbursement is completed within 60 days.

35. The provisions relating to refund provide for partial as well as complete adjustment of refund against any outstanding demand under GST or under any existing law. It is hereby clarified that both partial or complete adjustment of sanctioned amount of refund against any outstanding demand under GST or under any existing law would be made in FORM GST RFD-06. Furthermore, sub-clause (b) of sub-section (6), sub-clause (a) of sub-section (7), sub-clause (a) of sub-section (8) and sub-clause (a) of sub-section (9) of Section 142 of the CGST Act provides for recovery of any tax, interest, fine, penalty or any other amount recoverable under the existing law as an arrear of tax under GST unless such amount is recovered under the existing law. It is hereby clarified that adjustment of refund amount against any outstanding demand under the existing law can be done.

**Guidelines for refunds of unutilized Input Tax Credit**

36. Applicants of refunds of unutilized ITC, i.e. refunds pertaining to items listed at (a), (c) and (e) in para 3 above, shall have to upload a copy of FORM GSTR-2A for the relevant period (or any prior or subsequent period(s) in which the relevant invoices have been auto-populated) for which the refund is claimed. The proper officer shall rely upon FORM GSTR-2A as an evidence of the accountal of the supply by the corresponding supplier(s) in relation to which the input tax credit has been availed by the applicant. Such applicants shall also upload the details of all the invoices on the basis of which input tax credit has been availed during the relevant period for which the refund is being claimed, in the format enclosed as Annexure-B along with the application for refund claim. Such availment of ITC will be subject to restriction imposed under sub-rule (4) in rule 36 of the CGST rules inserted vide Notification No. 49/2019-CT dated 09.10.2019. The applicant shall also declare the eligibility or otherwise of the input tax credit availed against the invoices related to the claim period in the said format for enabling the proper officer to determine the same. Self-certified copies of invoices in relation to which the refund of ITC is being claimed and which are declared as eligible for ITC in Annexure – B, but which are not populated in FORM GSTR-2A, shall be uploaded by the applicant along with the application in FORM GST RFD 01. It is emphasized that the proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are available in FORM GSTR-2A of the relevant period uploaded by the applicant.

37. In case of refunds pertaining to items listed at (a), (c) and (e) in para 3 above, the common portal calculates the refundable amount as the least of the following amounts:

a) The maximum refund amount as per the formula in rule 89(4) or rule 89(5) of the CGST Rules [formula is applied on the consolidated amount of ITC, i.e. Central tax + State tax/Union Territory tax +Integrated tax];

b) The balance in the electronic credit ledger of the applicant at the end of the tax period for which the refund claim is being filed after the return in FORM GSTR-3B for the said period has been filed; and

c) The balance in the electronic credit ledger of the applicant at the time of filing the refund application.

After calculating the least of the three amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the applicant in the following order:

a) Integrated tax, to the extent of balance available;

b) Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/Union Territory tax, in this case).

38. The order of debit described above, however, is not presently available on the common portal. Till the time such facility is made available on the common portal, the taxpayers are advised to follow the order as explained above for all refund applications. However, for applications where this order is not adhered to by the applicant, no adverse view may be taken by the tax authorities. The above system validations are being clarified so that there is no ambiguity in relation to the process through which an application in FORM GST RFD-01 is generated.

39. For all refund applications where refund of unutilized ITC of compensation cess is being claimed, the calculation of the refundable amount of compensation cess shall be done separately and the amount so calculated will be entirely debited from the balance of compensation cess available in the electronic credit ledger.

40. The third proviso to sub-section (3) of section 54 of the CGST Act states that no refund of input tax credit shall be allowed in cases where the supplier of goods or services or both avails of drawback in respect of Central tax. It is clarified that if a supplier avails of drawback in respect of duties rebated under the Customs and Central Excise Duties Drawback Rules, 2017, he shall be eligible for refund of unutilized input tax credit of Central tax/ State tax/ Union Territory tax / Integrated tax/ Compensation cess. It is also clarified that refund of eligible credit on account of State tax shall be available if the supplier of goods or services or both has availed of drawback in respect of Central tax.

**Guidelines for refund of tax paid on deemed exports**

41. Certain supplies of goods have been notified as deemed exports vide notification No. 48/2017-Central Tax dated 18.10.2017 under section 147 of the CGST Act. Further, the third proviso to rule 89(1) of the CGST Rules allows either the recipient or the supplier to apply for refund of tax paid on such deemed export supplies. In case such refund is sought by the supplier of deemed export supplies, the documentary evidences as specified in notification No. 49/2017- Central Tax dated 18.10.2017 are also required to be furnished which includes an undertaking that the recipient of deemed export supplies shall not claim the refund in respect of such supplies and shall not avail any input tax credit on such supplies. Similarly, in case the refund is filed by the recipient of deemed export supplies, an undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed in statement 5B for the tax period for which refund is being claimed and that he has not availed input tax credit on such invoices. The recipient shall also be required to declare that the supplier has not claimed refund with respect to the said supplies. The procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU) / Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit /

Bio-Technology Parks (BTP) Unit under deemed export as laid down in Circular No. 14/14/2017-GST dated 06.11.2017 needs to be complied with.

**Guidelines for claims of refund of Compensation Cess**

42. Doubts have been raised whether a registered person is eligible to claim refund of unutilized input tax credit of compensation cess paid on inputs, where the zero-rated final product is not leviable to compensation cess. For instance, cess is levied on coal, which is an input for the manufacture of aluminium products, whereas cess is not levied on aluminium products. In this context, attention is invited to section 16(2) of the Integrated Goods and Services Tax Act, 2017 (hereafter referred to as the "IGST Act") which states that, subject to the provisions of section 17(5) of the CGST Act, credit of input tax may be availed for making zero rated supplies. Further, section 16 of the IGST Act has been mutatis mutandis made applicable to inter-State supplies under the Cess Act vide section 11 (2) of the Cess Act. Thus, it implies that input tax credit of Compensation Cess may be availed for making zero-rated supplies. Further, by virtue of section 54(3) of the CGST Act, the refund of such unutilized ITC shall be available. Accordingly, it is clarified that a registered person making zero rated supply of aluminium products under bond or LUT may claim refund of unutilized credit including that of compensation cess paid on coal. Such registered persons may also make zero-rated supply of aluminium products on payment of Integrated tax but they cannot utilize the credit of the compensation cess paid on coal for payment of Integrated tax in view of the proviso to section 11(2) of the Cess Act, which allows the utilization of the input tax credit of cess, only for the payment of cess on the outward supplies.

43. As regards the 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 on which clarifications have been sought since GST roll out, the same 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. aluminium). 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 Central tax, State tax/Union Territory tax or Integrated tax charged on the invoices for these inputs. This ITC is utilized for payment of Integrated tax 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 Central tax/State tax/Union Territory tax/Integrated tax 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. However, 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 Integrated tax. This process would be applicable for application(s) 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 common portal 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 zerorated supplies. Moreover, the reversed ITC has been accounted as a cost which would have reduced the income tax liability of the applicant. 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 CGST 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 37 above. This is subject to the restriction that the accounting entry showing the said ITC as cost is also reversed.

**Clarifications on issues related to making zero-rated supplies**

44. Export of goods or services can be made without payment of Integrated tax under the provisions of rule 96A of the CGST Rules. Under the said provisions, an exporter is required to furnish a bond or Letter of Undertaking (LUT) to the jurisdictional Commissioner before effecting zero rated supplies. A detailed procedure for filing of LUT has been specified vide

Circular No. 8/8/2017 –GST dated 4.10.2017. It has been brought to the notice of the Board that in some cases, such zero-rated supplies were made before filing the LUT and refund claims for unutilized input tax credit got filed. In this regard, it is emphasized that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made. The delay in furnishing of LUT in such cases may be condoned and the facility for export under LUT may be allowed on ex post facto basis taking into account the facts and circumstances of each case.

45. Rule 96A (1) of the CGST Rules provides that any registered person may export goods or services without payment of Integrated tax after furnishing a LUT / bond and that he would be liable to pay the tax due along with the interest as applicable within a period of fifteen days after the expiry of three months or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the goods are not exported out of India. The time period in case of services is fifteen days after the expiry of one year or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange. It has been reported that the exporters have been asked to pay Integrated tax where the goods have been exported but not within three months from the date of the issue of the invoice for export. In this regard, it is emphasized that exports have been zero rated under the IGST Act and as long as goods have actually been exported even after a period of three months, payment of Integrated tax first and claiming refund at a subsequent date should not be insisted upon. In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services.

46. It is learnt that some field formations are asking for a self-declaration with every refund claim to the effect that the applicant has not been prosecuted. The facility of export under LUT is available to all exporters in terms of notification No. 37/2017- Central Tax dated 04.10.2017, except to those who have been prosecuted for any offence under the CGST Act or the IGST Act or any of the existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees. Para 2(d) of the Circular No. 8/8/2017-GST dated 04.10.2017, mentions that a person intending to export under LUT is required to give a self-declaration at the time of submission of LUT that he has not been prosecuted. Persons who are not eligible to export under LUT are required to export under bond. It is clarified that this requirement is already satisfied in case of exports under LUT and asking for self–declaration with every refund claim where the exports have been made under LUT is not warranted.

47. It has also been brought to the notice of the Board that in certain cases, where the refund of unutilized input tax credit on account of export of goods is claimed and the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, refund claims are not being processed. The matter has been examined and it is clarified that the zero-rated supply of goods is effected under the provisions of the GST laws. An exporter, at the time of supply of goods declares that the goods are meant for export and the same is done under an invoice issued under rule 46 of the CGST Rules. The value recorded in the GST invoice should normally be the transaction value as determined under section 15 of the CGST Act read with the rules made thereunder. The same transaction value should normally be recorded in the corresponding shipping bill / bill of export. During the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill / bill of export should be examined and the lower of the two values should be taken into account while calculating the eligible amount of refund.

48. It is clarified that the realization of consideration in convertible foreign exchange, or in Indian rupees wherever permitted by Reserve Bank of India, is one of the conditions for export of services. In case of export of goods, realization of consideration is not a pre-condition. In rule 89 (2) of the CGST Rules, a statement containing the number and date of invoices and the relevant Bank Realization Certificates (BRC) or Foreign Inward Remittance Certificates (FIRC) is required in case of export of services whereas, in case of export of goods, a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices is required to be submitted along with the claim for refund. It is therefore clarified that insistence on proof of realization of export proceeds for processing of refund claims related to export of goods has not been envisaged in the law and should not be insisted upon.

49. As per section 16(2) of the IGST Act, credit of input tax may be availed for making zero rated supplies, notwithstanding that such supply is an exempt supply. In terms of section 2 (47) of the CGST Act, exempt supply includes non-taxable supply. Further, as per section 16(3) of the IGST Act, a registered person making zero rated supply shall be eligible to claim refund when he either makes supply of goods or services or both under bond or letter of undertaking (LUT) or makes such supply on payment of Integrated tax. However, in case of zero-rated supply of exempted or non-GST goods, the requirement for furnishing a bond or LUT cannot be insisted upon. It is thus, clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of Integrated tax; LUT/bond is not required. Such registered persons exporting non-GST goods shall comply with the requirements prescribed under the existing law (i.e. Central Excise Act, 1944 or the VAT law of the respective State) or under the Customs Act, 1962, if any. Further, the exporter would be eligible for refund of unutilized input tax credit of Central tax, State tax, Union Territory tax, Integrated tax and compensation cess in such cases.

**Refund of transitional credit**

50. Refund of unutilized input tax credit is allowed in two scenarios mentioned in sub-section (3) of section 54 of the CGST Act. These two scenarios are zero rated supplies made without payment of tax and inverted tax structure. In sub-rule (4) and (5) of rule 89 of the CGST Rules, the amount of refund under these scenarios is to be calculated using the formulae given in the said sub-rules. The formulae use the phrase ‘Net ITC’ and defines the same as “input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both”. It is clarified that as the transitional credit pertains to duties and taxes paid under the existing laws viz., under Central Excise Act, 1944 and Chapter V of the Finance Act, 1994, the same cannot be said to have been availed during the relevant period and thus, cannot be treated as part of ‘Net ITC’ and thus no refund of such unutilized transitional credit is admissible.

**Restrictions imposed by sub-rule (10) of rule 96 of the CGST Rules**

51. Sub-rule (10) of rule 96 of the CGST Rules, restricted exporters from availing the facility of claiming refund of Integrated tax paid on exports in certain scenarios. It was intended that exporters availing benefit of certain notifications would not be eligible to avail the facility of such refund. However, representations were received requesting that exporters who have received capital goods under the Export Promotion Capital Goods Scheme (hereinafter referred to as “EPCG Scheme”), should be allowed to avail the facility of claiming refund of the Integrated tax paid on exports. GST Council, in its 30th meeting held in New Delhi on 28th September, 2018, accorded approval to the proposal of suitably amending the said sub-rule along with sub-rule (4B) of rule 89 of the CGST Rules prospectively in order to enable such

exporters to avail the said facility. Notification No. 54/2018 – Central Tax dated the 9th October, 2018 was issued to carry out the changes recommended by the GST Council. In addition, notification No. 39/2018- Central Tax dated 4th September, 2018 was rescinded vide notification No. 53/2018 – Central Tax dated the 9th October, 2018.

52. The net effect of these changes is that any exporter who himself/herself imported any inputs/capital goods in terms of notification Nos. 78/2017-Customs and 79/2017-Customs both dated 13.10.2017, before the issuance of the notification No. 54/2018 – Central Tax dated 09.10.2018, shall be eligible to claim refund of the Integrated tax paid on exports. Further, exporters who have imported inputs in terms of notification Nos. 78/2017-Customs dated 13.10.2017, after the issuance of notification No. 54/2018 – Central Tax dated 09.10.2018, would not be eligible to claim refund of Integrated tax paid on exports. However, exporters who are receiving capital goods under the EPCG scheme, either through import in terms of notification No. 79/2017-Customs dated 13.10. 2017 or through domestic procurement in terms of notification No. 48/2017-Central Tax, dated 18.10.2017, shall continue to be eligible to claim refund of Integrated tax paid on exports and would not be hit by the restrictions provided in sub-rule (10) of rule 96 of the CGST Rules.

**Clarification on calculation of refund amount for claims of refund of accumulated ITC on account of inverted tax structure**

53. Sub-section (3) of section 54 of the CGST 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, subsection (59) of section 2 of the CGST 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. 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 tax structure.

54. There have been instances where while processing the refund of unutilized ITC on account of inverted tax structure, some of the tax authorities denied 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 CGST 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 CGST 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 CGST 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 the help of 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 CGST Act read with rule 89(5) of the CGST Rules, which prescribes the formula for the maximum refund amount permissible in such situations.

iii. Further assume that the applicant 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 applicant 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 CGST Rules which is Rs. 25/-.

**Refund of TDS/TCS deposited in excess**

55. Tax deducted in accordance with the provisions of section 51 of the CGST Act or tax collected in accordance with the provisions of section 52 of the CGST Act is required to be paid while discharging the liability in FORM GSTR 7 or FORM GSTR 8, as the case may be, by the deductor or the collector, as the case may be.

56. It has been reported that, there are instances where taxes so deducted or collected is deposited under the wrong head (e.g. an amount deducted as Central tax is deposited as Integrated tax/State tax), thereby creating excess balance in the cash ledger of the deductor or the collector as the case may be. Doubts have been raised on the fate of this excess balance of TDS/TCS in the cash ledger of the deductor or the collector. It is clarified that such excess balance may be claimed by the tax deductor or the collector as the excess balance in electronic cash ledger. In this case, the common portal would debit the amount so claimed as refund. However, in case where tax deducted or collected in excess is also paid while discharging the liability in FORM GSTR 7 or FORM GSTR 8, as the case may be, and the said amount has been credited to the electronic cash ledger of the deductee, the deductee can adjust the same while discharging his output liability or he can claim refund of the same under the category “refund of excess balance in the electronic cash ledger”.

**Debit of electronic credit ledger using FORM GST DRC-03**

57. Various representations have been received seeking clarifications on certain refund related issues, the solutions to which involve debiting the electronic credit ledger using FORM GST DRC-03. These issues are clarified as under:

| Sl. No. | Issue | Clarification |
|---|---|---|
| 1 | Certain registered persons have reversed, through return in **FORM GSTR-3B** filed for the month of August, 2018 or for a subsequent month, the accumulated input tax credit (ITC) required to be lapsed in terms | (*a*) As a one-time measure to resolve this issue, refund of accumulated ITC on account of inverted tax structure, for the period(s) in which there is reversal of the ITC required to be lapsed in terms of the said notification, is |

| | | |
|---|---|---|
| | of notification No. 20/2018-Central Tax (Rate) dated 26.07.2018 read with circular No. 56/30/2018-GST dated 24.08.2018 (hereinafter referred to as the "said notification"). Some of these registered persons, who have attempted to claim refund of accumulated ITC on account of inverted tax structure for the same period in which the ITC required to be lapsed in terms of the said notification has been reversed, are not able to claim refund of accumulated ITC to the extent to which they are so eligible. This is because of a validation check on the common portal which prevents the value of input tax credit in Statement 1A of **FORM GST RFD-01A from** being higher than the amount of ITC availed in **FORM GSTR-3B** of the relevant period minus the value of ITC reversed in the same period. This results in registered persons being unable to claim the full amount of refund of accumulated ITC on account of inverted tax structure to which they might be otherwise eligible. What is the solution to this problem? | to be claimed under the category "any other" instead of under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure" in **FORM GST RFD-01A** It is emphasized that this application for refund should relate to the same tax period in which such reversal has been made.<br><br>(*b*) The application shall be accompanied by all statements, declarations, undertakings and other documents which are statutorily required to be submitted with a "refund claim of unutilized ITC on account of accumulation due to inverted tax structure". On receiving the said application, the proper officer shall himself calculate the refund amount admissible as per rule 89(5) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules"), in the manner detailed in **para 37** above. After calculating the admissible refund amount, as described above, and scrutinizing the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through **FORM GST DRC-03.** Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in **FORM GST RFD-06** and the payment order in **FORM GST RFD-05**<br><br>(*c*) All refund applications for unutilized ITC on account of accumulation due to inverted tax structure for subsequent tax period(s) shall be filed in **FORM GST RFD-01** under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure". |
| 2 | The clarification at SI. No. 1 above applies to registered persons who have already reversed the ITC required to be lapsed in terms of the said notification through return in **FORM GSTR-3B.** What about those registered persons who are yet to perform this reversal? | It is hereby clarified that all those registered persons required to make the reversal in terms of the said notification and who have not yet done so, may reverse the said amount through **FORM GST DRC-03** instead of through **FORM GSTR-3B** |
| 3 | What shall be the consequence if any registered person reverses the amount of credit to be lapsed, in terms the said notification, through the return in **FORM** | (*a*) As the registered person has reversed the amount of credit to be lapsed in the return in **FORM GSTR-3B** for a month subsequent to the month of August, 2018 or |

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| | **GSTR-3B** for any month subsequent to August, 2018 or through **FORM GST DRC-03** subsequent to the due date of filing of the return in **FORM GSTR-3B** for the month of August, 2018? | through **FORM GST DRC-03** subsequent to the due date of filing of the return in **FORM GSTR-3B** for the month of August, 2018, he shall be liable to pay interest under sub-section (1) of section 50 of the CGST Act on the amount which has been reversed belatedly. Such interest shall be calculated starting from the due date of filing of return in **FORM GSTR-3B** for the month of August, 2018 till the date of reversal of said amount through **FORM GSTR-3B** or through **FORM GST DRC-03,** as the case may be.<br><br>(*b*) The registered person who has reversed the amount of credit to be lapsed in the return in **FORM GSTR-3B** for any month subsequent to August, 2018 or through **FORM GST DRC-03** subsequent to the due date of filing of the return in **FORM GSTR-3B** for the month of August, 2018 would remain eligible to claim refund of unutilized ITC on account of accumulation due to inverted tax structure w.e.f 01.08.2018. However, such refund shall be granted only after the reversal of the amount of credit to be lapsed, either through **FORM GSTR-3B or FORM GST DRC-03,** along with payment of interest, as applicable. |
| 4 | How should a merchant exporter claim refund of input tax credit availed on supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321(E), dated the 23rd October, 2017 (hereinafter referred to as the "said notifications")? | (*a*) Rule 89(4B) of the CGST Rules provides that where the person claiming refund of unutilized input tax credit on account of zero-rated supplies without payment of tax has received supplies on which the supplier has availed the benefit of the said notifications, the refund of input tax credit, availed in respect of such inputs received under the said notifications for export of goods, shall be granted.<br><br>(*b*) This refund of accumulated ITC under rule 89(4B) of the CGST Rules shall be applied under the category "any other" instead of under the category "refund of unutilized ITC on account of exports without payment of tax" in **FORM GST RFD-01** and shall be accompanied by all supporting documents required for substantiating the refund claim under the category "refund of unutilized ITC on account of exports without payment of tax". After scrutinizing the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to |

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| | | debit the said amount from his electronic credit ledger through **FORM GST DRC-03.** Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in **FORM GST RFD-06** and the payment order in **FORM GST RFD-05** |

**Refund of Integrated Tax paid on Exports**

58. The refund of Integrated tax paid on goods exported out of India is governed by rule 96 of the CGST Rules. The shipping bill filed by an exporter is deemed to be an application for refund in such cases, but the same is deemed to have been filed only when the export manifest or export report is filed and the applicant has filed the return in FORM GSTR-3B for the relevant period duly indicating the integrated tax paid on goods exported in Table 3.1(b) of FORM-GSTR-3B . In addition, the exporter is expected to furnish the details of the exported goods in Table 6A of FORM GSTR-1 of the relevant period. Only where the common portal is able to validate the consistency of the details so entered by the applicant, the relevant information regarding the refund claim is forwarded to Customs Systems. Upon receipt of the information from the common portal regarding furnishing of these details, the Customs Systems processes the claim for refund and an amount equal to the Integrated tax paid in respect of such export is electronically credited to the bank account of the applicant.

**Clarifications on other issues**

59. Notification No. 40/2017 – Central Tax (Rate) and notification No. 41/2017 – Integrated Tax (Rate) both dated 23.10.2017 provide for supplies for exports at a concessional rate of 0.05% and 0.1% respectively, subject to certain conditions specified in the said notifications. It is clarified that the benefit of supplies at concessional rate is subject to certain conditions and the said benefit is optional. The option may or may not be availed by the supplier and / or the recipient and the goods may be procured at the normal applicable tax rate. It is also clarified that the exporter will be eligible to take credit of the tax @ 0.05% / 0.1% paid by him. The supplier who supplies goods at the concessional rate is also eligible for refund on account of inverted tax structure as per the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act. It may also be noted that the exporter of such goods can export the goods only under LUT / bond and cannot export on payment of Integrated tax.

60. Sub-section (14) of section 54 of the CGST Act provides that no refund under subsection (5) or sub-section (6) of section 54 of the CGST Act shall be paid to an applicant, if the amount is less than one thousand rupees. In this regard, it is clarified that the limit of rupees one thousand shall be applied for each tax head separately and not cumulatively.

61. 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 2018, may be declared in the FORM GSTR-3B filed for a subsequent month, say September 2018. This is inevitable in cases where the supplier raises an invoice, say in August, 2018, and the goods reach the recipient's premises in September, 2018. Since GST law mandates that ITC can be availed only after the goods have been received, the recipient can only avail the ITC on such goods in the FORM GSTR-3B filed for the month of September, 2018. However, it has been reported that tax authorities are excluding such invoices from the

calculation of refund of unutilized ITC filed for the month of September, 2018. In this regard, it is clarified that "Net ITC" as defined in rule 89(4) of the CGST 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 CGST 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, 2019, "availed" in September, 2019 cannot be excluded from the calculation of the refund amount for the month of September, 2019.

62. 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 applicant. It is clarified that the ITC of the GST paid on inputs, including 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 CGST Act. Further, capital goods have been clearly defined in section 2(19) of the CGST 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.

### 20.4.3 Key Judicial Observations – Section 142 of the CGST Act 2017

**Every claim of refund shall be dealt under the existing law i.e. Central Excise Act, 1944 and not by the provisions of the CGST Act.**

The High Court affirmed the order passed by Customs, Excise & Services Tax Appellate Tribunal, Chandigarh whereby the respondent has been held to be entitled for interest of refund from the date of deposit.

Held that Section 142 of the Act deals with miscellaneous transitional provisions including the claim for refund filed by any person before, on or after the appointed day for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law.

Section 142 of the Act when read with Section 2(48) of the Act is a complete answer to the plea raised by the appellant qua the issue of jurisdiction. The provision explicitly provides that every claim of refund shall be dealt under the existing law i.e. Central Excise Act, 1944 and not by the provisions of the CGST Act. Thus the plea of transfer of jurisdiction due to GST regime is not available to the appellant.

The High Court of Punjab and Haryana at Chandigarh in Commissioner of Central Excise, Panchkula vs. M/s Riba Textiles Limited [CEA No.8 of 2022 (O&M)] – HC-GW-329-2022-HR

**No justification for the rejection of refund claim of the amount paid after introduction of GST for the transactions during earlier regime**

The appellants paid the service tax belatedly in March 2019 for the services received by them from the foreign service provider for the period January 2017 to June 2017 under reverse charge mechanism. In terms of Cenvat Credit Rules, 2004 as it stood during the relevant period, the appellants were eligible to avail credit of the service tax paid by them. After introduction of GST with effect from 1.7.2017, as appellants could not avail cenvat credit, they filed an application for refund of the amount of which they are eligible for credit. The refund claim was rejected by the adjudicating authority stating that the tax has been voluntarily paid and that no credit is eligible in the GST regime. On appeal filed before the Commissioner (Appeals), the said view was upheld.

CESTAT (Chennai) Held that, Though credit is not available as Input Tax Credit under GST law, the credit under the erstwhile Cenvat Credit Rules is eligible to the appellant. Such credit has to be processed under section 142 (3) of GST Act, 2017 and refunded in cash to the assessee.

Section 142 (3) of GST Act provides how to deal with claims of refund of service tax of tax and duty/credit under the erstwhile law. It is stated that therein that such claims have to be disposed in accordance with the provisions of existing law and any amount eventually accruing has to be paid in cash.

Further held that the rejection of refund claim cannot be justified. The impugned order is set aside. - Customs, Excise & Service Tax Appellate Tribunal, Chennai in M/s. Circor Flow Technologies India Private Ltd. Vs. The Principal Commissioner of GST & Central Excise, Coimbatore [SERVICE TAX APPEAL No. 40597 of 2020]

**20.5** [2][**Revision of declaration in FORM GST TRAN-1**] [1][**Rule 120A]**- Every registered person who has submitted a declaration electronically in **FORM GST TRAN-1** within the time period specified in rule 117, rule 118, rule 119 and rule 120 may revise such declaration once and submit the revised declaration in FORM **GST TRAN-1** electronically on the common portal within the time period specified in the said rules or such further period as may be extended by the Commissioner in this behalf.]

| Notes | |
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| 1 | Inserted w.e.f. 15th September, 2017 vide Notification No. 34/2017 – Central Tax dated 15.09.2017. |
| 2 | Inserted the marginal heading w.e.f. 29th September, 2017 vide Notification No. 36/2017-Central Tax (Dated 29th September 2017). |

In this regard, in exercise of the powers conferred by rule 120A of the Central Goods and Services Tax Rules, 2017 read with section 168 of the Central Goods and Services Tax Act, 2017, the Commissioner, on the recommendations of the Council, has extended the period for submitting the declaration in FORM GST TRAN-1 as under:

| Order No. | Particulars |
|---|---|
| Order No. 02/2017-GST dated 18.09.2017 | Extension of time limit for submitting the revised declaration in FORM GST TRAN-1 under rule 120A of the |

| | |
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| | Central Goods and Service Tax Rules, 2017 till 31st October, 2017. |
| Order-08/2017-GST dated 28.10.2017 | Extension of time limit for submitting the revised declaration in FORM GST TRAN-1 under rule 120A of the Central Goods and Service Tax Rules, 2017 till 30th November, 2017. |
| Order-10/2017-GST dated 15.11.2017 | Extension of time limit for submitting the revised declaration in FORM GST TRAN-1 under rule 120A of the Central Goods and Service Tax Rules, 2017 till 27th December, 2017. |

**20.6. Recovery of credit wrongly availed. [Rule 121] -**The amount credited under sub-rule (3) of rule 117 may be verified and proceedings under section 73 or, as the case may be, section 74 shall be initiated in respect of any credit wrongly availed, whether wholly or partly.

In this regard, Maharashtra Government has issued Internal Circular No. 35A of 2019 - No. GST/MISC/2019/35/B-416 dated 19.10.2019 to clarify :

1. **Interest on excess credit "availed"**: Interest u/s 50 is payable in case excess credit has been "availed" in TRAN-1 by a dealer. In other words, mere availment of excess credit in TRAN-1 is sufficient to attract interest u/s 50 of the MGST Act and such excess credit need not have been "utilized" to discharge GST liability. Thus, interest u/s 50 shall become payable, in respect of such excess credit claim, from the date of filing of TRAN-1 till the date the dealer reverses such excess credit in GSTR-3B (as per earlier instructions) or makes payment and informs either in DRC-03 or in Part B of DRC-01A.

2. **Revised TRAN-1:** In case, a dealer has filed a revised TRAN-1 and has increased the amount of MVAT credit, which is found to be inadmissible, then interest shall be payable u/s 50 from the date of submission of such revised TRAN-1, in respect of such inadmissible credit claimed in revised TRAN-1.

An interesting question, here, comes to our mind as to how will the department adjudicate and then recover such allegedly wrongly claimed transitional credit. Also, what shall be rights of the taxpayer to contest such stand by way of appellate mechanism?

**Food for thought**- We may refer to the two decisions of Delhi High Court in the case of Mega Cabs Pvt. Ltd. v. Union of India - HC-GW-2-2016-DL & Travelite (India) v. Union of India - HC-GW-3-2014-DL wherein Rule providing for audit by the department was struck down in absence of any provision in the law enabling such audits. Although

both the decisions have been stayed by the Supreme Court, the Supreme Court is yet to decide on the merits of the case.

However, the ratio of both the decisions can also be applied to the present issue since if the audit powers given in rules but not in Act are held ultra vires, then, on the same footing, even adjudication powers with respect to transitional credit given in rules but not in the Act should be held ultra vires.

## 20.7 Filing of Tran 1 – Points to understand

In the Form TRAN 1 there are the following entries which decide all the CGST/ SGST credit which is posted in the electronic credit ledger. These entries are briefly described below. It is advised that the full text of law be referred for better understanding of the issue.

| S. No. | Table No. in TRAN-1 | Provision in CGST Act /SGST Act | Indicative list of nature of Credit |
|---|---|---|---|
| **1** | Col. 6 in table 5(a) | 140(1), 140(4)(a) and 140(9) | This table captures detail of the CENVAT credit carried forward in the return (ER-1/2/3 or ST-3) relating to the period ending with 30.06.2017, subject to conditions specified in section 140(1) of CGST Act, by the manufacturers/ service providers. |
| **2** | Table 5(b) | 140(1), 140(4)(a) and 140(9) | This table captures detail of the statutory forms i.e. C Forms / F Forms / H Forms / I Forms etc. received during 01.04.2015 to 30.06.2017 for which credit is being carried forward. |
| **3** | Table 5(c) | 140(1), 140(4)(a) and 140(9) | This table captures details of tax credit carried forward to Electronic Credit Ledger as State/ UT Tax (For all registrations on the same PAN and in the same state). |

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| **4** | Column 11 of table 6(a) | 140(2) | This table captures details of unavailed credit of capital goods in the pre-GST era. Capital Goods credit was allowed to be availed in two installments of 50% each. This table is meant to be used by the taxpayers who have availed a portion of CENVAT credit on capital goods through ER or ST return and now intend to avail remaining credit in respect of capital goods which has not been availed through the ER or ST return. |
| **5** | Table 6(b) | 140(2) | This table captures details of unavailed Input tax credit carried forward to Electronic Credit Ledger as State/ UT Tax (For all registrations on the same PAN and in the same state). |
| **6** | Table 7(a) - Column (6) in Entry 7A in Table 7(a) | 140(3), 140(4)(b), 140(6) and 140(7) | This table pertains to credit claim by new taxpayers or taxpayers who were either not registered or were not part of CENVAT Credit chain earlier. Here, Credit can be claimed in TRAN-1 in respect of inputs held in stock and inputs contained in semifinished or finished goods held in stock on the appointed day based on invoice/ document evidencing payment of duty (including CTD), subject to fulfilment of other conditions specified in section 140(3), 140(4)(b), 140(6) and 140(7) as the case may be. |

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| | Table 7(a) - Column (6) in Entry 7B in Table 7(a) | Proviso to Section 140 (3) and Rule 117(4) of CGST Rules | This table pertains to credit claim by new taxpayers (e.g. traders) who were not manufacturers or service providers.<br>**Deemed credit @ 60% of Central Tax applicable where CGST is 9% or more, and 40% where CGST is less than 9% can be availed.**<br>The provision applies where the assessee is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs only. [In this case the Electronic Credit Ledger gets populated through TRAN-2 and not through TRAN 1]. |
| **7** | Column (8) in Table 7(b) | 140(5), 140(7) | This table captures transitional credit taken on such inputs or input services which were received after 1st of July, 2017 but taxes on which were paid under the existing law (Goods/ Services in Transit). **It does not apply to capital goods.** This table also captures credit distributed by the Input Service Distributor. |
| **8** | Table 7(c) | 140(3), 140(4)(b) and 140(6) | Amount of VAT and Entry Tax paid on inputs supported by invoices/documents evidencing payment of tax carried forward to electronic credit ledger as SGST/UTGST under sections 140(3), 140(4)(b) and 140(6). |
| **9** | Table 7(d) | Rule 117 (4) | Stock of goods not supported by invoices/documents evidencing payment of tax (credit in terms of rule 117 (4)) ***(To be there only in States having VAT at single point).*** |

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| **10** | Column 9 in Table 8 | 140(8) | This table pertains to Centrally Registered unit, the Cenvat credit carried forward in their last return is captured in table 5(a) and a part or full of such credit can be distributed through table 8. The credit distributed through column 9 gets credited in the electronic credit ledger of the receivers and a corresponding debit entry in made in the ledger of the Centrally registered unit. |
| **11** | Table 9 (a) | 141 | This table pertains to details of goods sent as principal to the job worker under section 141. |
| **12** | Table 9 (b) | 141 | This table pertains to details of goods held in stock as job worker on behalf of the principal under section 141. |
| **13** | Table 10 (a) | 142 (14) | This table pertains to details of goods held as agent on behalf of the principal. |
| **14** | Table 10 (b) | 142 (14) | This table pertains to details of goods held by the agent. |
| **15** | Column (7) in Table 11 | Section 142 (11)(c) read with Rule 118 of CGST Rules | Transition of credit in respect of supplies which attracted both VAT and Service Tax in pre-GST era and where VAT and Service Tax both were paid, before 1st July 2017, on any supply but the supply is made after 1st July, 2017. The taxable person is entitled to take as CGST credit, the service tax paid under the existing law to the extent of supplies made after 1st July, 2017 as he would be liable to pay CGST in respect of such supplies. (VAT credit cannot be taken as Service tax credit and vice versa). |

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| **16** | Table 12 | Section 142 (12) | This table pertains to details of goods sent on approval basis six months prior to the appointed day. |

As a matter of assistance, We have discussed the precautions and various business scenarios in which transition is suggested or not suggested in relation to the entries provided in various tables of TRAN 1. The list of Precautions is not exhaustive but is indicative only based on provisions of law, the likely error and the inputs received from the various sources on the preliminary verification of the Transitional credit. All the taxpayers will find these points to be very useful for the filing Tran 1 and Tran 2 for availment of the Transitional credit as well as Revenue officials for verification of the Transitional credit claimed.

**20.7.1. Precautions for Table 5(a):**

**20.7.1.1 Precaution 1:** Ensure that the credit has been taken against closing balance of CENVAT credit in ER-1/2/3 or ST-3. Credit can be taken only where the last return was filed and credit taken in Table 5(a) should not be more than closing balance of credit in ER-1/2/3 or ST-3 minus the education / secondary education cess / KKC/ SBC.

**20.7.1.2: Precaution 2:** Credit of taxes not covered in the definition of eligible duties in section 140 cannot be availed. Example: Krishi Kalyan Cess, Education Cess, etc.

Many of the taxpayers registered under the Central Excise Law carry a huge amount of unutilized balance of credit in the PLA Account as on 30th June, 2017. However, currently no provision exists for utilization / carry forward of the same in the GST Law.

Similarly, Credit of VAT as transitional credit is not allowed in law.

**20.7.1.3: Precaution 3:** The registered person shall not be allowed to take credit where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date.

Ensure that returns have been filed for last 6 months. An assessee filing TRAN1 and taking credit in table 5(a) should have –

a) Filed ER-1 or ER-2 regularly between Jan, 2017 and June, 2017 or

b) Filed ER-3 for period ending March, 2017 and June, 2017 or

c) Filed ST-3 for period ending March, 2017 and June, 2017.

This has to be ensured where many units have merged into one registration or a single unit has been split into many (Centralised registration cases / LUT units) in GST. Compliance by any of the merging unit which was filing the returns in the pre-GST would entitle the new unit to avail credit in relation to that merging unit.

**Business scenario I**- A taxpayer had claimed transitional credit of Cenvat credit carried forward from the legacy Central Excise (ER1) and Service Tax (ST3) returns, under Table 5(a) of Tran 1 returns. The taxpayer had filed Tran 1 returns for the above claim during the month of November 2017 and the amount was credited to the ECL on 27th December 2017.

The taxpayer had not filed ST 3 returns for the period ending with June 2017, at the time of filing the Tran 1 return. The ST3 return for the said period was filed during the month of September 2018, after a lapse of almost 10 months from date of filing Tran 1. Therefore, the

taxpayer was not eligible to claim Cenvat credit in respect of the returns, which was not furnished at the time of claiming transitional credit.

**20.7.1.5 Precaution 4 :** The registered person shall not be allowed to take credit where the said amount of credit is not admissible as input tax credit under this Act.

As per Section 16(1) of the CGST Act, 2017, every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of **goods or services or both to him which are used or intended to be used in the course or furtherance of his business** and the said amount shall be credited to the electronic credit ledger of such person.

Further, as per Section 17(5) of the CGST Act, 2017, notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of (a) motor vehicles and other conveyances except when they are used for making taxable supplies, (b) supplies of foods and beverages, outdoor catering, any inward supplies for making an outward taxable supply, (b) (iii) rent-a-cab, life insurance and health insurance except where the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force, (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business, (g) goods or services or both used for personal consumption. In case where input credits has been wrongly availed or utilized for any reason can be recovered with interest under Section 73 or 74 of the Act.

The taxpayer should not avail ITC on GST paid on inadmissible goods viz., Cement, TMT bars, medicines for corporate hospitals, and supply of services viz., civil works, canteen, guest house expenses, maintenance of civil township etc., which are inadmissible as per provisions ibid. Specially, input services like works contract services used for civil constructions when the taxpayer was not engaged in supply of works contract services.

**20.7.1.5 Precaution 5 :** The registered person shall not be allowed to take credit where the said amount of credit relates to **goods manufactured and cleared under such exemption notifications as are notified by the Government**.

**Business scenario I: Reflection of transitional credit arising out of payment of service tax on reverse charge basis after 30th June 2017 and by 5th/ 6th July 2017**.

Certain instances of assessees, who had chosen to wait till 5th /6th July 2017 to make the payment of service tax on reverse charge basis, instead of paying the same by 30-6-2017. These cases would be ones where the service was received before 1-7-2017 and payment for the value of the service was also made before 1-7-2017. Since the input tax credit in cases of payment under reverse charge would be available only after payment of service tax, these assessees may have doubts as to whether the details of credit should be included in the return in Form ST-3 or in Form GST TRAN-1.

In such cases, details of credit arising as a consequence of payment of service tax on reverse charge basis after 30th June 2017 by 5th /6th July 2017, the details should be indicated in Part I of Form ST-3 in entries, I3.1.2.6, I3 2.2.6 and I3 3.2.6. Linked entries should be made in Part H of Form ST-3. In case the return has already been filed by or after the due date, these details should be indicated in the revised return, the time for filing of which is 45 days from the date of filing of the return.

It is necessary to give compliant assessees who had filed their ST 3 return by the due date or some days later, an immediate and viable window in which a revised return can be filed consequent to the issue of this instruction. Hence all ST3 returns for the period 1-4-2017 to 30-6-2017 which have been filed upto and inclusive of the 31st day of August 2017, shall be deemed to have been filed on 31-8-2017. This will give all such assessees some more days to file a revised return, if necessitated. Once details of such credit are reflected in the ST-3, the assessee may proceed to fill in the details in Form GST TRAN-1. It may be noted that as on date, GST TRAN-1 can be filed upto 31-10-2017 and can also be revised.[ CBIC Circular 207/5/2017-Service Tax dated 28.09.2017]

**Business scenario II-** A taxpayer was a manufacturer of Cement under legacy central excise regime. The taxpayer had claimed transitional credit of closing balance of Cenvat credit, carried forward from his legacy returns. During verification, Audit noticed that the taxpayer had closed his manufacturing activity completely from November 2015 and no clearance of manufactured products happened since then. However, the taxpayer had claimed Cenvat credit on capital goods and input services during 2016-17. As the goods or services were not used in the factory of the manufacturer for taxable activity, the transitional credit claim was ab initio ineligible.

Cenvat credit was eligible only when the goods or services were used for manufacturing dutiable goods or for provision of taxable services as per Rule 2(a)(k)(l) of the Cenvat Credit Rules, 2004. In this case, as the factory was closed and no manufacturing activity was happening, goods and services were not used for taxable activity to claim the Cenvat credit.

**20.7.2. Precautions for Table 5(b):**

**20.7.2.1 Precaution 6:** Ensure that No claim for transitional credit shall be filed in table 5(b) & 5(c) of FORM GST TRAN-1 in respect of such C-Forms, F-Forms and H/I-Forms which have been issued after the due date prescribed for submitting the declaration in FORM GST TRAN-1 i.e. after December 27, 2017.

**20.7.3. Precautions for Table 6(a) and 6(b):**

**20.7.3.1 Precaution 7:** Ensure that in table 6 only credit on capital goods not availed in any return is taken. If second installment of any capital goods credit is taken through return in table 5(a) and again the details are filled in table 6, it would lead to double credit getting taken. For example, the second installment of capital goods credit where first installment credit was availed in 2016-17 and second installment can be availed in the financial year 2017-18, provided the second installment was not availed in any of the returns filed in the first quarter of 2017-18 under Central Excise or Service Tax.

**If no credit was availed earlier, credit of entire amount cannot be availed through this Table**.

**Business scenario I** - A registered person, say, purchases capital goods under the existing law (Central Excise) in the June quarter of 2017-18. Though the invoice has been received within 30th June but the capital goods are received on 5th July, 2017 (i.e. in GST regime). Will such a person get full credit of CENVAT in GST regime?

**Ans.** Yes, he will be entitled to credit in 2017-18 provided such a credit was admissible as CENVAT credit in the existing law and is also admissible as credit in CGST - section 140(2) of the CGST Act.

**Business scenario II** - VAT credit was not available on items 'X' & 'Y' as capital goods in the existing law (Central Excise). Since they are covered in GST, can the registered taxable person claim it now?

**Ans.** He will be entitled to credit only when ITC on such goods are admissible under the existing law and is also admissible in GST. Since credit is not available under the existing law on such goods, the said person cannot claim it in GST – proviso to section 140(2) of the SGST Act.

**Business scenario III** - Section 140 (2) of CGST Act, 2017, stipulates that a registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed provided that the registered person shall not be allowed to take credit **unless the said credit was admissible as Cenvat credit under the existing law and is also admissible as input tax credit under this Act.**

**Business scenario IV** - A taxpayer had claimed transitional credit of unutilised Cenvat credit on capital goods under section 140(2) of the CGST Act. The credit was claimed on the components and parts of Nitric Acid and Ammonium Plants imported during April 2017 for the manufacturing unit. The credit claimed on these goods was credited to the ECL of the taxpayer during December 2017.

During verification of the claim, Audit noticed that the capital goods were stored in a warehouse as stated in the Bill of Entry and the taxpayer had neither received the goods in the factory of production nor used them for manufacturing activity to claim the Cenvat credit on the goods under the provisions of the existing law. Therefore, credit was not claimed in their legacy Central Excise Returns (ER1) and the entire amount was claimed as unavailed portion of Cenvat credit under the GST transitional provisions. As per the proviso under Section 140(2), the taxpayer was eligible for transition of unavailed portion of Cenvat credit only when the credit was also eligible under the existing law, which was not fulfilled in this case. Hence, the transitional credit claimed by the taxpayer under Table 6(a) of Tran 1 return in respect of the goods not used for manufacturing was irregular.

**Business scenario V** - A taxpayer had claimed transitional credit of unavailed Cenvat credit in respect of capital goods under Table 6(a) of Tran 1 return. The taxpayer was covered under the erstwhile centralised registration under Service tax provisions for which the Centralised unit coming under Gurugram Central Tax Commissionerate had already claimed transitional credit as per Section 140(8) of the CGST Act.

Further, the credit claimed by the Gurugram unit was also distributed among the units covered under the erstwhile centralised registration. As such, the other units of the centralised registrant were not eligible to claim the benefit of transitional credit provisions of the Act. Thus, the transitional credit claimed by Guwahati unit, being one of the units covered under the erstwhile centralised registration, under Section 140(2) of the Act was irregular.

Audit noticed another 19 cases pertaining to the other registered units of same taxpayer covered under the Centralised registration claiming transitional credit under Section 140(2). As the Centralised unit had already claimed the transitional credit and distributed the credit to the units covered under the centralised registration as per section 140(8) of the Act, these individual claims from other registered units have a potential risk exposure of irregular credit.

**Business scenario VI**- A taxpayer had claimed transitional credit of unavailed portion of Cenvat credit on capital goods under Section 140(2) of the Act. On scrutiny of the claim, Audit noticed that the taxpayer had claimed 100 per cent credit in respect of the capital goods, which was not permissible under the extant provisions.

The Department may ensure that the records of taxpayers, who have carried forward 100 per cent of the credit, on capital goods in GST regime, are examined to rule out availment of a portion (50 per cent) of the credit in the previous legacy returns of 2016-17 and 2017-18 (first quarter).

Further, the Department needs to take a uniform position on this issue by clarifying the instructions contained in Para 5.1 of the Board's guidance which states that "if no credit was availed earlier, credit of entire amount cannot be availed through this Table."

**Business scenario VII** - Traders and manufacturers availing SSI exemption under the earlier laws were not eligible for the CENVAT credit as they were not paying excise duty on the final products. Such persons, who are now registered persons under the GST regime would not be eligible for availment of the credit on capital goods purchased before 01st July, 2017. Further, Section 140(3) of the CGST Act, 2017 does not provide for carry forward of credit of taxes paid on capital goods.

**Business scenario VIII** - There may be a situation wherein a Company was incorporated in May 2017 but was not granted registration by the VAT department or was unable to register with VAT department till 30.06.2017. Upon purchase of capital goods by the said Company, the credit of VAT paid on such goods would not be available as the Company is unregistered. As such, the Company would not be able to avail the credit of VAT paid on purchase of such capital goods, as the amount of VAT paid would not be reflected in the returns furnished under the earlier law and hence, cannot be carried forward as transitional credit under the GST law.

**20.7.4. Precautions for Table 7(a), Entry 7A:**

**20.7.4.1 Precaution 8**: In cases where the credit is being shown by an assessee who was registered in Central Excise or Service on account of inputs relating to exempted goods, carefully ensure whether the assessee has followed the provisions of rule 6 in the period prior to GST.

**Business scenario I: Only exempted goods/services were being manufactured or provided**: Rule 6(2) of CENVAT credit rules did not allow any credit in the CENVAT register if only exempted goods were being manufactured.

Therefore, no credit can flow from return in relation to inputs in such cases. The entry in table 5(a) therefore should be NIL. The apportionment of credit on inputs and complete reversal thereof under rule 6 took place at the time of removal of goods. Therefore, in such cases only credit of inputs and inputs contained in semi-finished which existed in stock on the day of the transition and for which conditions prescribed in cl (i) to (v) of section 140(3) are satisfied would be available.

**Business scenario II: Exempted and non-exempted goods/services were being manufactured or provided**: Rule 6(3) of the CENVAT credit rules provided the procedure for apportionment of credit relating to taxable goods/services and reversal of credit relating to exempted goods/services.

Credit in table 5(a) would flow from the return in such cases. It should be ensured that the return reflects credit after application of rule 6(3). The reversal in terms of rule 6(3) was

required to be done at the time of removal of finished goods. Therefore some credit in Table 7A can arise for such inputs which were in stock and which not attributed till the date of the transition to either exempted goods or non-exempted goods. To avail credit on such inputs, other conditions prescribed in cl (i) to (v) of section 140(3) are required to be satisfied.

**Business scenario III** - A taxpayer had claimed transitional credit in respect of duty paid goods held in stock on the appointed date under section 140(3) of the Act, in respect of which the taxpayer was in possession of the duty paid documents. During verification, Audit noticed that in many duty paid documents the consignee was different from the claimant, evidencing that the taxpayer was not in possession of the goods for which credit was claimed on the appointed day. Thus, the claim of the taxpayer based on the invoices against other consignees, at different State jurisdictions, was irregular.

**Business scenario IV -** A taxpayer had claimed transitional credit of duty paid on finished goods held in stock on the appointed day under section 140(3) of the Act. The taxpayer had filed the details of goods held in stock on the appointed date in respect of which duty paid documents were available. During verification of the claim, Audit noticed that the taxpayer had claimed credit on the quantity of goods in excess of the declared quantity of stock as on the appointed day resulting in excess credit.

**Business scenario V** - A taxpayer had claimed transitional credit on duty paid goods held in stock on the appointed date under Table 7(a)A of Tran 1 return. During verification of the claim, Audit noticed that the taxpayer was not in possession of the invoices or documents evidencing payment of Central Excise duty on the said goods under the existing Central Excise Act, 1944. Thus, the transitional credit claimed by the taxpayer was ineligible as the taxpayer had not borne the Central Excise Duty for which claim was made.

**Business scenario VI -** A taxpayer had claimed transitional credit under the Table 7a(A) of Tran 1 return for the duty paid goods held in stock on the appointed day. On verification of the duty paid documents produced in support of the claim, Audit noticed that some of the duty paid documents, for which credit was claimed, were issued earlier than 12 months from the appointed date. Hence, the same were time barred for claiming the credit under the Act.

**Notes**

Section 140(3) of the GST law provides to take credit of eligible duties in respect of inputs/finished goods held in stock on the appointed day where invoices were issued not earlier than twelve months immediately preceding the appointed day. Hence, Section 140(3) specifically restricts the credit on inputs/finished goods held in stock for more than twelve months.

However, proviso to section 140(3) states that a person who is not in possession of an invoice, can avail credit at such rate as is prescribed in rules.

Say, if a person is in possession of duty paying documents or invoice then credit shall be restricted to only those goods which are held for not more than twelve months in stock. However, if a person is not in possession of duty paying documents or invoice then there is no such restriction in law and credit can be availed in respect of stock held for more than twelve months as well from the appointed day.

This leads to a breach of principle of equality and legislation violates the fundamental principle as provided in article 14 of the constitution of India.

It is important to note that the entire goods held as stock on 30.06.2017 including the stock held for more than one year will be sold in the GST regime and assesse will be levying and paying output GST on such sale. Therefore, blocking the credit on the stock and charging output tax on the goods

will result into cascading effect of taxes which is very much against the object clause of the GST Act.

**Interim Order Passed By Delhi High Court**

In the writ petitions filed by GMMCO Limited vs UOI (W.P.(C) 9539/2017, C.M. APPL.38777/2017) & ANR and Hafele India Private Limited Vs. Union of India & ANR (W.P.(C) 9572/2017, C.M. APPL.38984/2017 - HC-GW-49-2017-DL) assessee contented that such restriction upon persons possessing invoice is arbitrary in as much as proviso thereto allows deemed credit at prescribed percentage without any restriction to persons not possessing invoice.

The Delhi High Court has passed an order on 11.12.2017 stating that "we have heard learned counsel for the parties and are of the opinion that the matter requires to be heard in greater detail. In the meanwhile, it is open to the petitioners to proceed and claim credit or pay duty, as the case may be. In case any duty amounts are paid, that will be subject to final outcome of the proceedings."

**Business scenario VII -** A taxpayer was a registered importer dealer under the legacy Central Excise Act. The taxpayer had claimed transitional credit under Table 7(a) of Tran 1 return as duty paid goods held in stock at the job workers' premises. The taxpayer had claimed that these goods were supplied to his job worker through challans as per job-work provisions of the Central Excise Act.

Audit noticed that the taxpayer was not entitled to claim the benefit of job work provisions under the erstwhile Central Excise Act, as he was neither a registered manufacturer nor had followed the prescribed procedures for job work manufacturing. Further, the taxpayer had not paid excise duty on the goods claimed to be manufactured through job-workers nor furnished any assessment returns to that effect. The taxpayer, as registered importer dealer, was actually supplying goods to the job-worker through the Cenvat invoices or bill of entries as mentioned in the Excise returns filed by the taxpayer. Hence, the Cenvat credit of duty paid goods consigned to the job workers as on the appointed date does not qualify under Section 140(3).

**20.7.4.2: Precaution 9:** In cases where a taxpayer has to avail credit using Credit Transfer Document, ensure that CTD issued by the manufacturer exists and CTD has been issued in terms of rule 15(2) of CCR, 2017 read with notification no. 21/2017-CE (NT) dated 30.06.2017 (Capital Goods having value more than Rs. 25,000, goods to be identifiable by a distinct number etc.). Eg. : Dealers of new car.

**20.7.5. Precautions for Table 7(a), Entry 7B:**

**20.7.5.1 Precaution 10:** In terms of CGST Rule 117(4)(a)(i), sub-section (3) of section 140 of the CGST Act, form TRAN-2 can be filed by a dealer/trader (but not a manufacturer or a service provider) who is registered in the GST regime, but was unregistered under the pre-GST regime. Such a dealer, who does not have a VAT or excise invoice for stocks held by him on 30 June, 2017, can use form TRAN-2 to claim tax credit of the stock held by him. TRAN-2 has to be filed by a dealer or trader at the end of every month, when stock is sold, reporting the details to claim ITC.

It may be noted that credit of this stock would be available on sale being made and TRAN 2 return being filed. It is reiterated that electronic credit ledger would get populated through TRAN-2 and not through TRAN-1.

**Business scenario I -** It seems that the provision is discriminatory when it seeks to deny the benefit of the transitional credit to a manufacturer or a service provider as even such taxpayers may have purchased goods from a non-excise dealer and hence, would not be in a possession of duty paying document in respect of the stock held. For example, Printing services are taxable under the GST laws as a 'supply of service'; however, no transitional credit would be available to such service provider under proviso to Section 140(3) of CGST Act, 2017 in case he has purchased goods from a non-excise dealer i.e. paper for printing on which VAT /CST was charged under the erstwhile laws.

**20.7.5.2 Precaution 11:** Ensure that you have not declared this stock in any other table or have not availed this credit from any other table, say table 5(a). Where the person availing credit through TRAN 2, for which stock is declared in this table, is a trader, no credit can exist in any other table which pertains to credit to taxpayers who were registered earlier [e.g. Table 5(a)].

**Business scenario I** - As per CGST Rule 117 (4), a taxpayer can avail ITC on goods held in stock on the appointed day and declared in form TRAN-1. He cannot avail any ITC on such goods which had not been declared therein. In other words, only such HSN line items can be added in TRAN-2 for availing ITC, which have been declared in Part 7B of Table 7(a) and Table 7(d) of TRAN-1, furnished earlier.

**Business scenario II** - As per CGST Rule 117(4)(a)(ii), the ITC on items carried forward in form TRAN 2 "shall be allowed at the rate of sixty percent on such goods which attract central tax at the rate of nine percent or more and forty per cent for other goods of the central tax applicable on supply of such goods after the appointed date and shall be credited after the central tax payable on such supply has been paid". In case of tax paid as IGST, the rate of credit would be 30 and 20 per cent, respectively.

The credit carried forward from form TRAN– 2, to the electronic credit ledger, should be as per the provisions of the Rule stated above.

**Business scenario III** - A taxpayer claimed transitional credit under table 7(a) in Tran-1 where inputs were procured from their existing registered manufacturing unit located at Jammu & Kashmir (J&K). The taxpayer cleared excisable goods availing benefit under notification No.1/2010-CE dated 6 February 2010, which exempts the clearance from a unit located in the state of J&K from levy of excise duty or additional excise duty. Further, it was noticed that a refund was sanctioned to the taxpayer on account of central excise duty paid by him under the said notification, which proves that the excise duty element which had been paid earlier by the manufacturing unit at J&K through PLA was returned back to the manufacturing unit by way of refund, which implies that the goods became exempted. Hence, the goods lying in the stock procured from J&K unit of the taxpayer were not eligible for claim of transitional credit. This resulted in incorrect claim of transitional credit on goods in stock, which needs to be recovered.

**Food for thought** - Can the impugned goods received by the taxpayer on payment of duty from their unit in J&K, be considered as exempted goods for the reason that the J&K unit has claimed refund of duty payable on value addition ?

The taxpayer had received the goods under duty paying documents and the amount claimed as transitional credit under table 7(a) seems to be proper and in order.

Section 140(3) of CGST Act, 2017, clearly stipulates that the said registered person should be in possession of invoice or other prescribed documents evidencing payment of duty under

the existing law in respect of such inputs. The excise duty element which had been paid earlier by the manufacturing unit at J&K through PLA was returned back to the manufacturing unit by way of refund, which implied that the goods became exempted from payment of duty. The taxpayer received the goods under cover of tax invoice from its J&K unit and claimed transitional credit under table 7(a). Claim of such credit resulted in undue double benefit to the taxpayer once in the form of refund and second in the form of transitional credit.

Whereas the department is of the opinion that as per Section 140(1) of the CGST Act 2017, a registered person, other than a person opting to pay tax under Section 10, shall not be allowed to take credit where the said amount of credit relates to the goods manufactured and cleared under such exemption notification as are notified by the Government.

**Business scenario IV** - A taxpayer, a first stage dealer, also engaged in providing Business Auxiliary Service, availed transitional credit in terms of section 140(1) and on duties paid on inputs held in stock on the appointed day under section 140(3) of the CGST Act.

The taxpayer under the erstwhile law availed Cenvat credit of service tax paid on warehouse rent and carried forward the same as balance of credit. The warehouse was taken on lease to store the imported goods meant for subsequent sales and had no connection to the output service provided by the taxpayer, which was on account of the sales commission received from the parent company. Therefore, the lease rent paid for warehousing the imported goods did not fall within the ambit of “input service” as defined in the CCR, 2004. Consequently, the service tax credit availed and carried forward as transitional credit was inadmissible and recoverable from the taxpayer along with interest.

**Business scenario V -** Section 140(3) of the Central Goods and Services Act (CGST Act), 2017 stipulates that a registered person who was providing works contract service and was also availing the benefit of Notification No. 26/2012-ST dated 20 June 2012 (provides abatement to the persons discharging service tax under the category of construction services) shall be entitled to avail credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

Please note that if taxpayer had been paying service tax under works contract service without availing the benefit of Notification No. 26/2012-ST, dated 20 June 2012, the taxpayer is not eligible to carry forward the credit.

**Business scenario VI** - A taxpayer had claimed transitional credit of duty paid on coal held in stock under section 140(3) of the CGST Act. During verification of the claim, Audit noticed that the transitional credit included Clean Energy Cess on coal in Table 7(a) A of Tran 1 return, which was not eligible.

**Business scenario VII** -A taxpayer had claimed credit in respect of duty paid goods held in stock under Table 7(a) B of Tran 1 return. On verification of the claim, it was noticed that the taxpayer had claimed credit on the goods through Tran 1 against which no supporting documents were available.

Audit further noticed that the input tax claimed was credited to ECL even before the taxpayer filed Tran 2 return. Further, the ECL of the taxpayer was again credited with ₹ 1.06 crore when these goods were supplied on payment of GST and subsequently declared in Tran 2. This resulted in double credit to the ECL.

**Business scenario VIII** - A taxpayer had claimed transitional credit of eligible duties paid on goods held in stock under proviso to Section 140(3) of the Act. The taxpayer had declared the details of stock of electronic goods falling under chapter heading 84 and 85, valued at ₹ 7.21

crore. The eligible duties in respect of these goods were claimed under column 6 of Table 7(a) B of Tran 1 amounting to ₹ 1.17 crore, which was credited to the ECL as input tax credit under CGST on 29 August 2017 without the taxpayer filing Tran 2.

On verification of the claim, Audit noticed that the taxpayer had filed Tran 2 for the period from July 2017 to December 2017 declaring supply of these goods on payment of GST and the corresponding CGST credit of ₹ 0.30 core attributed to the supply was credited to the ECL during March 2018. This resulted in double credit to the ECL, and the credit of ₹ 1.17 crore afforded through Tran 1 was irregular.

**Business scenario IX -** A taxpayer had claimed transitional credit under Table 5(a), 6(a) and 7(b) of Tran 1, under Section 140(1), (2) and (5), respectively. The taxpayer had not declared any duty paid goods held in stock on the appointed date in Table 7(a)B, and was thus not eligible for credit under Section 140(3) of the Act.

However, Audit noticed that the ECL of the taxpayer was credited with CGST component based on the supply of duty paid goods as declared in Tran 2. This was contrary to the provisions of Section 140(3) of the Act. Hence, the amount of credit afforded to ECL on the basis of Tran 2 filed during the period from July 2017 to December 2017, was irregular as the goods were not held in stock on the appointed date.

**Business scenario X -** A taxpayer had claimed transitional credit of eligible duties on goods i.e. motor vehicle parts, held in stock on appointed date. On verification of the claim, it was noticed that the taxpayer had claimed credit of duty paid on goods not declared in the details of closing stock furnished in Tran 1 return and on some goods the supply was shown more than the quantity of stock declared in Tran 1. These goods were supplied on payment of duty during the period from July 2017 to December 2017 and declared in the Tran 2 returns. Thus, the taxpayer by declaring supply of goods in excess of the stock held, received excess credit in the ECL. The credit claimed on goods which were not in stock on the appointed date had resulted in excess credit in the ECL.

**20.7.6. Precautions for Table 7(b):**

**20.7.6.1 Precaution 12:** This table captures transitional credit taken on such inputs or input services which were received after 1st of July, 2017 but taxes on which were paid under the existing law (Goods/ Services in Transit). **It does not apply to capital goods.** This table also captures credit distributed by the Input Service Distributor.

Ensure that the duty paying document exist and confirm that the duty or the tax paying document were recorded in the books of account as per the conditions prescribed in law. It should also be ensured that the condition for availing ISD credit as prescribed in law are satisfied.

**Business scenario I** – Where the input services have already been received on the invoice date i.e. before 30 June 2017, the credits are required to be taken through table 5(a) instead of table 7(b) of Tran-1 declaration.

**Business scenario II** - As per Section 140(5) of CGST Act, 2017, transitional credit can be availed in respect of inputs or input services received on or after 1 July 2017, the duty or tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of accounts of such person within a period of thirty days from the appointed day (1 July 2017). The period of thirty days may, on sufficient cause being shown, can be extended by the Commissioner for a further period not exceeding thirty days.

Invoices which are entered in the books of accounts beyond the permissible period of 30 days, are not eligible to be carried forward under the Act, ibid. The ineligible transitional credit needs to be recovered from the taxpayer.

**Business scenario III** -A taxpayer had claimed transitional credit in respect of inputs or input services received on or after the appointed day under section 140(5) of the Act. On scrutiny of the claim, it was noticed that the taxpayer had taken credit on certain input services which were not accounted for within the time limit specified. The taxpayer had not received any extension of time limit from the jurisdictional Commissioner to avail the credit on these tax paying documents. Hence, the credit claimed on the documents which were not accounted for within the specified time limit was contrary to the provisions resulting in irregular claim.

**Business scenario IV -** A taxpayer had claimed transitional credit under section 140(5) of CGST Act on inputs and input services received on or after the appointed date. On verification of the claim under Table 7(b) of Tran 1 return, it was noticed that the taxpayer had claimed credit on rolling resistance testing machine, mixer feeding system and parts of the machines used in the manufacture of tyres which come under capital goods whereas section 140(5) of CGST Act provides for transition of duty or tax paid in respect of inputs or input services only. Therefore, the credit claimed on these goods was irregular.

**Business scenario V -** A taxpayer had claimed transitional credit under section 140(5) of the Act on inputs and input services received on or after the appointed date. Audit noticed that the taxpayer had claimed Cenvat credit of duty paid on paper making machines, transformers, other machines and parts of machines which the taxpayer had declared as capital goods. As the provisions do not provide for transition of duty paid in respect of capital goods, the transitional Cenvat credit claimed in respect of these goods was irregular.

**Business scenario VI -** Credit under Section 140 (5) of CGST Act is permitted in respect of eligible duties and taxes paid under the existing law. A taxpayer had claimed transitional credit in respect of goods received on or after the appointed date. During verification of the claim, Audit noticed that the taxpayer had claimed credit on the basis of documents which did not contain duty paid details, indicating the taxpayer had not borne the incidence of duty. Hence, the credit claimed by the taxpayer was ineligible for transition.

**Business scenario VII -** As per Rule 4(1) of Cenvat Credit Rules, 2004, the Cenvat credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or the in the premises of the provider of output service, provided that the manufacturer or the provider of output service shall not take Cenvat credit after one year of the date of issue of any of the documents specified in Sub-Rule (1) of Rule 9.

A taxpayer had claimed input tax credit in respect of goods received on or after the appointed date under Section 140(5) of CGST Act. However, during verification of the claim it was noticed that the taxpayer had claimed credit in respect of duty paid documents that were time barred for claiming credit as per Cenvat credit rules. Further, the goods were cleared earlier than one year from the appointed date, which does not satisfy the condition that the goods were received on or after the appointed date. Hence, the credit claimed on these invoices was irregular.

**20.7.7. Precautions for Table 7(c):**

**20.7.7.1 Precaution 13:** Here, Credit can be claimed in TRAN-1 in respect of Amount of VAT and Entry Tax paid on inputs supported by invoices/documents evidencing payment of tax

carried forward to electronic credit ledger as SGST/UTGST under sections 140(3), 140(4)(b) and 140(6).

**20.7.8. Precautions for Table 8:**

**20.7.8.1 Precaution 14:** The credits under Section 140(8) are eligible for transfer to any of the registered persons having the same Permanent Account Number (PAN) for which the centralized registration was obtained under the existing law.

Centralised registered units must have distributed their credit through table 8. The units receiving the credit are not required to file TRAN1 to receive this credit. The receiving units have got credit on the basis of credit distributed by the Centrally registered unit. Ensure that receiving units have not filed TRAN 1 to avail this credit as this would lead to double credit to receiving unit. Also confirm that resultant credit in the ledger of the distributing Centrally registered unit was reduced by the amount of credit distributed through Table 8.

**Business scenario I** - A taxpayer had transitioned closing balance of Cenvat credit into GST from his legacy service tax returns filed for the month of June 2017. The taxpayer had centralised registration under the existing service tax provisions, covering two of his registered premises at Hyderabad and Chennai. However, the taxpayer, from the claim furnished under Table 8 of Tran 1 return, had transferred to his other registered premises which were not covered under the centralised registration under the existing law. This was irregular as the credit transfer is permissible only to the registered persons having the same PAN for which the centralized registration was obtained under the existing law.

The Ministry of Finance stated that, with the introduction of GST, the Cenvat credit accumulated with the erstwhile centralized registrants was allowed to transition to all its constituent entities, whose activities were hitherto monitored and taxes were paid centrally. Thus, the provisions were designed to allow them to distribute the accumulated credit across these constituents irrespective of the fact that they were part of the erstwhile centralized registration.

Reply of the Ministry is not tenable as the units which were not part of the erstwhile centralized units were not part of the erstwhile value added tax chain, and hence were not eligible for credit accumulated under legacy rules. Further, section 140(8) of the Act specifically mentions that the credit claimed by the centralized units is eligible for transfer only to the registered persons for which the centralized registration was obtained under the existing law.

**Business scenario II**- A taxpayer who is centrally registered provider of taxable services under the existing law, had claimed the transitional credit of Cenvat credit from the legacy returns under section 140(8) of the Act. The taxpayer had carried forward Cenvat credit into his ECL and distributed the ITC among its other units having the same PAN number.

During verification of the claim, it was noticed that the taxpayer had revised the legacy return for the period ending with the day immediately preceding the appointed date. The original return with the closing balance of Cenvat credit amounting to ₹ 112.38 crore was filed on 14 August 2017 and the revised return with closing balance of Cenvat credit ₹ 118.99 crore was filed on 28 September 2017, within the stipulated 90 days from the appointed date. However, it was observed that the ECL of the taxpayer was credited with the amount carried over from the revised return, which had higher Cenvat credit amount. This was in contravention to the rule provisions which stipulated that revised amount is permissible only when the credit had been reduced from that claimed earlier. The deviation from the rules provisions had resulted in excess credit of ₹ 6.61 crore.

**20.7.9. Precautions for Table 11:**

**20.7.9.1 Precaution 15:** Ensure that the service tax claimed as credit was indeed paid under the existing law and supplies were indeed made after 1st July, 2017. Credit of VAT cannot be taken as CGST credit and vice-versa.

**Business scenario I** - A taxpayer had claimed transitional credit under Table 11 of Tran 1 return. The credit claimed was in respect of service tax paid on mobilisation advances against which the supplies were made after the appointed date. However, the Authority of Advance Ruling vide order No.03/ARA/2020 dated 31st March 2020 had ruled that the taxpayer was not liable to pay GST on the mobilisation advances transitioned into GST regime. Thus, the taxpayer would not pay GST on the supply made after the appointed date against the mobilisation advances transitioned into GST.

However, it is noticed that the taxpayer had claimed transitional credit on the service tax paid on mobilisation advances that remained unadjusted as on the appointed date, which is irregular as the tax is not liable on the supply to that extent.

**Business scenario II** - A taxpayer had claimed transitional credit under Table 11. On verification, it was noticed that the credit claimed by the taxpayer included Cenvat credit on the input services on which tax was paid under reverse charge basis. As the supplies in this case were made prior to the appointed date for which payment was also made under the existing rules, credit was irregular.

**Business scenario III** - A taxpayer engaged in works contract supply had claimed transitional credit, being service tax paid on advances received prior to the appointed date under Section 142(11)(c) of the CGST Act. Verification of the claim revealed that in many instances the credit was claimed in respect of the projects for which supplies had already been completed to the extent of advances received, indicating completion of provision of services to that extent. However, the taxpayer claimed credit stating that the supply was to be made after the appointed date, which is irregular.

**Business scenario IV** - A taxpayer, engaged in supply of construction services, had claimed transitional credit of service tax under Section 142(11)(c) of CGST Act. The credit was claimed in respect of service tax paid on advances received during the month of June 2017.

However, verification of service tax returns (ST3) of the taxpayer for the relevant period revealed that the taxpayer had not discharged any service tax liability during the period in respect of the advances received. Hence, the credit claimed in this case was without discharging service tax liability under the provisions of chapter V of the Finance Act, 1994.

**20.7.10. Misc. Precautions:**

**20.7.10.1 Precaution 16:** Ensure that credit which can be taken legally through TRAN 1 is not taken through return in FORM GSTR-3B. This can lead to double credit being taken. If there is no double credit and only procedural irregularity that credit was taken through GSTR 3B which should have been taken through TRAN 1, before the closing date of filing of TRAN 1, i.e. by 27/12/2017, the taxpayers should submit a statement of reconciliation of credits and credit regularised where otherwise admissible as per the law.

**Business scenario I** - A taxpayer had claimed transitional credit amounting to ₹ 3.90 crore, which was credited to the ECL on 19th December 2017. Out of this, the taxpayer had paid back irregular transitional credit of ₹ 1.28 crore on 31st January 2020. Though the Department had directed the taxpayer to pay the interest on the irregular credit claimed, the taxpayer

contested the interest liability and the same was not recovered. However, Audit noticed that the taxpayer had utilized the irregular credit of ₹ 1.28 crore towards CGST payment during the month of December 2017 itself. Hence, the irregular credit claimed had resulted in short payment of duty attracting interest liability under Section 50(1) of the Act.

## 20.8 Departmental Notifications/Orders – Extention of time limit to submit Tran 1 on account of technical difficulties on the common portal

In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Board of Excise and Customs has issued Notification No. 48 /2018 – Central Tax dated 10.09.2018 to make the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

2. In the Central Goods and Services Tax Rules, 2017,
(i) in rule 117,
(a) after sub-rule (1), the following sub-rule shall be inserted, namely:- "(1A) Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in FORM GST TRAN-1 by a further period not beyond 31st March, 2019, in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension."

Further CBIC has issued the following Notifications / Orders to extend the date for submitting the declaration electronically in FORM GST TRAN-1:

| Notfn. Number | Date | Subject |
|---|---|---|
| 49/2019 – Central Tax | **09.10.2019** | To extend the date for submitting the declaration electronically in FORM GST TRAN-1 by a further period not beyond **31st December, 2019**. |
| 02/2020 – Central Tax | **01.01.2020** | To extend the date for submitting the declaration electronically in FORM GST TRAN-1 by a further period not beyond **31st March, 2020**. |

| Order Number | Date | Subject |
|---|---|---|
| Order No. 03/2017-GST | **21.09.2017** | Extension of time limit for submitting the declaration in FORM GST TRAN-1 under rule 117 of the Central Goods and Services Tax Rules, 2017 till **31st October, 2017.** |
| Order No. 07/2017-GST | **28.10.2017** | Extension of time limit for submitting the declaration in FORM GST TRAN-1 under rule 117 of the Central Goods and Services Tax Rules, 2017 till **30th November, 2017**. |

| | | |
|---|---|---|
| Order No. 9/2017-GST | **15.11.2017** | Extension of time limit for submitting the declaration in FORM GST TRAN-1 under rule 117 of the Central Goods and Services Tax Rules, 2017 till **27th December, 2017**. |
| Order No. 4/2018-GST | **17.09.2018** | Extension of time limit for submitting the declaration in FORM GST TRAN-1 under rule 117(1A) of the Central Goods and Service Tax Rules, 2017 till **31.01.2019** in certain cases. |
| Order No. 01/2019-GST | **31.01.2019** | Extension of time limit for submitting the declaration in FORM GST TRAN-1 under rule 117(1A) of the Central Goods and Service Tax Rules, 2017 till **31.03.2019** in certain cases. |
| Order No. 01/2020-GST | **07.02.2020** | Extension of time limit for submitting the declaration in FORM GST TRAN-1 under rule 117(1A) of the Central Goods and Service Tax Rules, 2017 till **31.03.2020** in certain cases. |

## 20.9 Departmental instructions for departmental officials – Transitional provisions

| Number | Date | Subject |
|---|---|---|
| 267/8/2018-CX.8 | 14.03.2018 | Guidance Note on Verification of transitional credit |

## 20.10 Issues in filing Tran 1 - Setting up of an IT Grievance Redressal Mechanism

CBIC has issued Circular No. 39/13/2018-GST dated 3rd April 2018 for Setting up of an IT Grievance Redressal Mechanism to address the grievances of taxpayers due to technical glitches on GST Portal**.**

It has been decided to put in place an IT-Grievance Redressal Mechanism to address the difficulties faced by a section of taxpayers owing to technical glitches on the GST portal and the relief that needs to be given to them. The relief could be in the nature of allowing filing of any Form or Return prescribed in law or amending any Form or Return already filed. The details of the said grievance redressal mechanism are provided below:

2. Introduction Where an IT related glitch has been identified as the reason for failure of a class of taxpayer in filing of a return or a form within the time limit prescribed in the law and there are collateral evidences available to establish that the taxpayer has made bonafide attempt to comply with the process of filing of form or return, GST Council has delegated powers to the IT Grievance Redressal Committee to approve and recommend to the GSTN the steps to be taken to redress the grievance and the procedure to be followed for implementation of the decision.

3. Scope Problems which are proposed to be addressed through this mechanism would essentially be those which relate to Common Portal (GST Portal) and affect a large section of taxpayers. Where the problem relates to individual taxpayer, due to localised issues such as nonavailability of internet connectivity or failure of power supply, this mechanism shall not be available.

4. IT-Grievance Redressal Committee Any issue which needs to be addressed through this mechanism shall be identified by GSTN and the method of resolution approved by the GST Implementation Committee (GIC) which shall act as the IT Grievance Redressal Committee. In GIC meetings convened to address IT issues or IT glitches, the CEO, GSTN and the DG (Systems), CBEC shall participate in these meetings as special invitees.

**5. Nodal officers and identification of issues**

5.1 GSTN, Central and State government would appoint nodal officers in requisite number to address the problem a taxpayer faces due to glitches, if any, in the Common Portal. This would be publicized adequately.

5.2 Taxpayers shall make an application to the field officers or the nodal officers where there was a demonstrable glitch on the Common Portal in relation to an identified issue, due to which the due process as envisaged in law could not be completed on the Common Portal.

5.3 Such an application shall enclose evidences as may be needed for an identified issue to establish bonafide attempt on the part of the taxpayer to comply with the due process of law.

5.4 These applications shall be collated by the nodal officer and forwarded to GSTN who would on receipt of application examine the same. GSTN shall after verifying its electronic records and the applications received, identify the issue involved where a large section of tax payers are affected. GSTN shall forward the same to the IT Grievance Redressal Committee with suggested solutions for resolution of the problem.

**6. Suggested solutions**

6.1 GST Council Secretariat shall obtain inputs of the Law Committee, where necessary, on the proposal of the GSTN and call meeting of GIC to examine the proposal and take decision thereon.

6.2 The committee shall examine and approve the suggested solution with such modifications as may be necessary.

6.3 IT-Grievance Redressal Committee may give directions as necessary to GSTN and field formations of the tax administrations for implementation of the decision.

**7. Legal issues**

7.1 Where an IT related glitch has been identified as the reason for failure of a taxpayer in filing of a return or form prescribed in the law, the consequential fine and penalty would also be required to be waived. GST Council has delegated the power to the IT Grievance Redressal Committee to recommend waiver of fine or penalty, in case of an emergency, to the Government in terms of section 128 of the CGST Act, 2017 under such mitigating circumstances as are identified by the committee. All such notifications waiving fine or penalty shall be placed before GST Council.

7.2 Where adequate time is available, the issue of waiver of fee and penalty shall be placed before the GST Council with recommendation of the IT-Grievance Redressal Committee.

**8. Resolution of stuck TRAN-1s and filing of GSTR-3B**

8.1 A large number of taxpayers could not complete the process of TRAN-1 filing either at the stage of original or revised filing as they could not digitally authenticate the TRAN-1s due to IT related glitches. As a result, a large number of such TRAN-1s are stuck in the system. GSTN shall identify such taxpayers who could not file TRAN-1 on the basis of electronic audit trail. It has been decided that all such taxpayers, who tried but were not able to complete TRAN-1 procedure (original or revised) of filing them on or before 27.12.2017 due to IT-glitch, shall be provided the facility to complete TRAN-1 filing. It is clarified that the last date for filing of TRAN 1 is not being extended in general and only these identified taxpayers shall be allowed to complete the process of filing TRAN-1.

8.2 The taxpayer shall not be allowed to amend the amount of credit in TRAN-1 during this process vis-à-vis the amount of credit which was recorded by the taxpayer in the TRAN-1, which could not be filed. If needed, GSTN may request field formations of Centre and State to collect additional document/ data etc. or verify the same to identify taxpayers who should be allowed this procedure.

8.3 GSTN shall communicate directly with the taxpayers in this regard and submit a final report to GIC about the number of TRAN-1s filed and submitted through this process.

8.4 The taxpayers shall complete the process of filing of TRAN 1 stuck due to IT glitches, as discussed above, by 30th April 2018 and the process of completing filing of GSTR 3B which could not be filed for such TRAN 1 shall be completed by 31st May 2018.

9. The decisions of the Hon'ble High Courts of Allahabad, Bombay etc., where no case specific decision has been taken, may be implemented in-line with the procedure prescribed above, subject to fulfilment of the conditions prescribed therein. Where these conditions are not satisfied, Hon'ble Courts may be suitably informed and if needed review or appeal may be filed.

**20.11** GST Policy Wing, **CBIC issued instruction to all Principal/Chief Commissioners on various Writ Petitions filed in various HC's related to TRAN 1**

**GST Policy Wing, CBIC has issued instructions -** F. No. CBEC-20/10/11/2019 – GST/1001/ dated June 26, 2020**, as a number of writ petitions / PILS / appeals have been or are being filed in the various High Court(s) by taxpayers who were not able to carry forward or transition the accumulated CENVAT credit under the erstwhile regime to GST regime due to non-filing of TRAN-1/ TRAN-2 within due date due to technical glitches or various other reasons.**

Correspondences, in this regard, are received from the field formations / jurisdictional Commissionerates seeking comments/inputs on the policy issues or questions of law challenged in the said Writ petitions for filing counter affidavit in the matter. In all these cases, the petitioners, time and again, challenge the transitional provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act, 2017) and rules made thereunder.

The issues raised in most of such writ petitions/ PILs/ Appeals are similar in nature. However, inputs/ comments on the policy issues/ questions of law have to be provided to the field formations by the Policy Wing separately in each such reference from the filed formations. This not only requires duplication of efforts of the Policy Wing but also may result in undue delay in filing appropriate reply/ counter affidavit in the Courts by the field formations.

For ease of reference and in order to ensure that no such separate references are required to be made by the field formations to Policy Wing of CBIC seeking inputs/ comments on policy matters in the writ petitions / PILS / appeals filed on issues pertaining to transitional credit, including issues related to non-filing of TRAN-1/ TRAN-2 by due date and other related issues, a list of policy issues/questions of law, that are often challenged in the said writ petitions, has been compiled along with the comments of the Policy Wing thereon and is enclosed as Annexure – A.

It is requested that the field formations; under your jurisdiction may be advised to refer to the comments of the Policy Wing given in the said Annexure while filing any reply/counter-affidavit against the writ petitions / PILS / appeals related to transitional provisions. No separate reference may be made to the Policy Wing in respect of the issues covered in the said Annexure. Only if any fresh policy issue/ question of law is raised in any writ petitions / PILS / appeals which is not covered under Annexure-A enclosed herewith, the matter should be referred to the Policy Wing giving details of the specific policy issue/ question of law on which comments/ inputs of the Policy Wing are sought.

It is also reiterated that references should not be made to Policy Wing in a routine manner seeking para-wise comments on the Writ petitions/ PILs/ appeals as such and only a self-contained reference may be made to the Policy Wing clearly pointing out the exact policy issue(s) (which is/ are not covered under Annexure-A) on which comments/inputs are sought from the Policy Wing. Further, such references need to made only with the approval of the concerned Commissioner.

## 20.12 Key Judicial Observations of various High Courts– Issues related to Transitional Provisions – Technical glitches

**20.12.1 – Vested right cannot be defeated on account of any irregularity in the system evolved by the Government.** [The High Court of Gujarat at Ahemadabad - BODAL CHEMICALS LTD. vs Union of India – HC-GW-76-2022-GJ]

The writ applicant filed GST TRAN – 1 wherein the balance of the Cenvat Credit lying with the writ applicant on 30.06.2017 including the un-utilized balance of ISD Cenvat Credit was Rs.20,52,989/-. The writ applicant filed a return in Form CGST – 06 with details of balance of Cenvat Credit lying on 30.06.2017 for transferring such credit to the GST regime. However, on account of an error in the GST network, the Cenvat Credit balance in the return was shown at Rs.2,96,528/-. The ISD balance of Rs.20,52,989/- was not added or included in the balance of the ISD credit in the return.

The writ applicant has been requesting the Nodal Officer and also the jurisdictional Assistant Commissioner of GST for correcting the balance in the ISD return by including the balance credit of Rs.20,52,989/-. Over a period of time, many representations have been filed by the writ applicant as regards the aforesaid but of no avail. In such circumstances referred to above, the writ applicant is here before this Court with the present writ application.

Mr. Lodha, the learned Standing Counsel would submit that the writ applicant cannot redress any grievance as it failed to follow the due procedure for distributing the TRAN – 1 credit to its branch offices/units in accordance with the existing law. In such circumstances, the transitional credit would not be available to the writ applicant. He would submit that the ISD mechanism facilitates distribution of credit of taxes paid to its units in the same tax period. The ISD itself cannot discharge any tax liability and remit the tax to Government account.

We are of the view that the respondents cannot raise their hands in despair saying that it is not possible to correct or take care of the technical glitches. The writ applicant herein has been running from pillar to post requesting the respondents to provide a solution and take care of the technical error and glitch that occurred as regards furnishing the GSTR – 6 return for recording and distributing the ISD credit of Rs.20,52,989/-. As usual, there is no response at the end of the GSTN. The writ applicant is not allowed to distribute the ISD credit of Rs.20,52,989/- as the same has not been recorded, reported and declared in the GSTR – 6 return.

Mr. Tripathi is right in his submission that the credit is a tax paid by the registered person on input transactions and therefore, **the credit of such tax already paid to the credit of the Central Government is a vested right of the person. Such vested right cannot be defeated on account of any irregularity in the system evolved by the Government**.

For all the afore going reasons, this petition succeeds and is hereby allowed. The respondents are directed to allow the writ applicant to furnish manually the GSTR – 6 return with details of the ISD credit of Rs.20,52,989/- and also permit distribution of such credit to the constituents of the writ applicant. Let this entire exercise be undertaken within a period of six weeks from the date of the receipt of writ of this order.

**20.12.2 – Denial of credit of tax/duty paid under existing Acts would amount to violation of Article 14 and 300A of Constitution of India.**

High Court of Kerala at Ernakulam has concurred with the observations of the High Court of Punjab & Haryana in Adfert Technologies Pvt. Ltd. v. Union of India and others - HC-GW-608-2019-PJ that denial of credit of tax/duty paid under existing Acts would amount to violation of Article 14 and 300A of Constitution of India. Unutilized credit has been recognized as vested right and property in terms of Article 300A of the Constitution of India.

Further, By not allowing the right to carry forward the CENVAT credit for not being able to file the form GST Tran-1 within the due date may severely dent the writ-applicants working capital

and may diminish their ability to continue with the business. Such action violates the mandates of Article 19(1)(g) of the Constitution of India.

While dismissing an appeal filed by Revenue **against the decision of Single member bench of HC, the is held that** Granting an opportunity of hearing is only to enable the process of decision-making simpler. It is one of the basic principles of natural justice. In the process of rendering justice, an opportunity of hearing is a basic postulate. The challenge now raised by the appellant against the opportunity of hearing directed to be afforded by the learned Single Judge in the impugned judgment is therefore not tenable. Ref: - Union of India **Vs M/S Merchem India Pvt. Ltd -** HC-GW-417-2021-KER

**20.12.3 – Unutilized credit arising on account of duty/tax paid under erstwhile Acts is vested right which cannot be taken away on procedural or technical grounds.**

Punjab and Haryana High Court in the case of *Adfert Technologies Pvt. Ltd. v. Union of India and others* - HC-GW-608-2019-PJ, has directed Revenue to permit the Petitioners to file or revise where already filed incorrect TRAN-1 either electronically or manually statutory Form(s) TRAN-1 on or before 30th November 2019. It observed as -

- Unutilized credit arising on account of duty/tax paid under erstwhile Acts is vested right which cannot be taken away on procedural or technical grounds.

- Division Bench of Gujrat High Court in the case of Siddharth Enterprises Vs The Nodal Officer HC-GW-1025-2019-GJ, has dealt with issue involved at length. It has been held that denial of credit of tax/duty paid under existing Acts would amount to violation of Article 14 and 300A of Constitution of India. Unutilized credit has been recognized as vested right and property in terms of Article 300A of the Constitution of India.

- The High Court was not in agreement with the cited judgment by the Revenue of Hon'ble Gujrat High Court in Willowood Chemicals case as the Gujrat High Court itself in subsequent judgments and Delhi High Court in a number of judgments (as noticed hereinabove) have permitted petitioners (therein) to file TRAN-I Forms even after 27.12.2017. We also find that the Sub Rule (1A) added/inserted to Rule 117 w.e.f. 10.09.2018 has not been noticed in the said cited judgment by the Revenue, which goes to the roots of findings recorded by the Hon'ble Gujrat High Court.

- The Revenue is at liberty to verify genuineness of claim of Petitioners but nobody shall be denied to carry forward legitimate claim of CENVAT / ITC on the ground of non-filing of TRAN-I by 27.12.2017.

**20.12.4 – Supreme Court dismissed SLP against HC order in the case of *Union of India and others* v. Adfert Technologies Pvt. Ltd.- SC-GW-413-2020**

The Supreme Court didn't inclined to exercise its jurisdiction under Article 136 of the Constitution and dismissed the Special Leave Petition filed by the Revenue against the above order of Punjab and Haryana High Court in the case of *Adfert Technologies Pvt. Ltd. v. Union of India and others* - HC-GW-608-2019-PJ,

**20.12.5 – Supreme Court directed the Government to file an affidavit meeting the assertion that due to technical glitches and problems faced, in the case of** UNION OF INDIA & ORS. Versus NATIONAL ENGINEERING CO. - SC-GW-337-2019

The petitioner-Union of India shall file an affidavit meeting the assertion that due to technical glitches and problems faced, the respondents-tax payers were not able to upload and file Form GST TRAN-01 or fill up details.

Further, The factual assertions made in the writ petitions in this regard will be dealt with concretely and expressly and if required, by taking the help of experts.

**20.12.6 – HC directs to GSTN to either modify or make changes in the portal to facilitate the Petitioner filing TRAN-1 to claim the ITC or accept returns manually [**Ashok Kumar Meher -versus- Commissioner of Sales Tax & GST, Odisha, Cuttack and others - W.P.(C) No.12763 of 2021 – HC-GW-46-2021-OD]

The High Court of Orissa held that the plea of technical difficulties or technical glitches will not come in the way of the order being given effect to. For this purpose a direction is issued to GSTN to either modify or make changes in the portal to facilitate the Petitioner filing TRAN-1 to claim the ITC or accept returns manually against the old RC so that the Petitioner can avail of the ITC.

**20.12.7 – Delhi HC - Rule 117 has to be read and understood as directory and not mandatory - permitted to file relevant TRAN-1 Form on or before 30.06.2020.**

The Delhi High Court in the case of Brand Equity Treaties Limited and others vs. Union of India & ors. - W.P.(C) 11040/2018 and C.M. No. 42982/2018 and connected - HC-GW-329-2020-DL observed as under -

- The purport of the transitory provisions is to allow a smooth migration from the erstwhile service tax regime to the new GST regime and the interpretation must be in consonance with the said purpose.
- In absence of any consequence being provided under Section 140, to the delayed filing of TRAN-1 Form, Rule 117 has to be read and understood as directory and not mandatory.
- We, therefore, have no hesitation in reading down the said provision [ Rule 117] as being directory in nature, insofar as it prescribes the time-limit for transitioning of credit and therefore, the same would not result in the forfeiture of the rights, in case the credit is not availed within the period prescribed.
- This however, does not mean that the availing of CENVAT credit can be in perpetuity. Transitory provisions, as the word indicates, have to be given its due meaning. Transition from pre-GST Regime to GST Regime has not been smooth and therefore, what was reasonable in ideal circumstances is not in the current situation. In absence of any specific provisions under the Act, we would have to hold that in terms of the residuary provisions of the Limitation Act, the period of three years should be the guiding principle and thus a period of three years from the appointed date would be the maximum period for availing of such credit.
- Since all the Petitioners have filed or attempted to file Form TRAN-1 within the aforesaid period of three years they shall be entitled to avail the Input Tax Credit accruing to them. They are thus, permitted to file relevant TRAN-1 Form on or before 30.06.2020.

- Respondents are directed to either open the online portal so as to enable the Petitioners to file declaration TRAN-1 electronically, or to accept the same manually.
- We are also of the opinion that other taxpayers who are similarly situated should also be entitled to avail the benefit of this judgment.
- Therefore, Respondents are directed to publicise this judgment widely including by way of publishing the same on their website so that others who may not have been able to file TRAN-1 till date are permitted to do so on or before 30.06.2020.

It is to be noted that the Revenue has filed an SLP before the Supreme Court and The Supreme Court has stayed the operation of the impugned order. Ref: UNION OF INDIA VERSUS BRAND EQUITY TREATIES LIMITED & ORS. - Petition(s) for Special Leave to Appeal (C) No(s). 7425-7428/2020 - SC-GW-420-2020.

**Note**

Section 140 provides for availment of credit in respect of eligible duties and taxes in such manner as may be prescribed, and there was no mention of any such condition/ limitation for availment of transitional in Section 140 in form of time limit or one time revision in the Act, other than the conditions provided under various sub-sections of Section 140. Such limitation of filing declaration in Form TRAN-1/ TRAN-2 within due date and facility of one time revision only was provided in Rule 117/ 117A and Rule 120A respectively.

The same had been challenged in various judicial fora on the grounds that only the relevant rules provide for a time while there was no restriction for availment of transitional credit in the relevant section of the Act. While the department had challenged the above mentioned court cases in appropriate legal forum.

The matter was discussed in the Law Committee and it was felt that there is a need to have an enabling provision in the Act for prescribing such time limit (conditions and limitations) to take transitional credit in the Rules on availment of transitional credit retrospectively, w.e.f. 01.07.17. Accordingly, The Government amended section 140 of the CGST Act 2017 vide section 128 of the Finance Act 2020 with retrospective effect.

The question arises that whether such retrospective amendment can change the legal position as held by The Delhi High Court in the case of Brand Equity Treaties Limited and others vs. Union of India & ors. - W.P.(C) 11040/2018 and C.M. No. 42982/2018 and connected - HC-GW-329-2020-DL

**20.12.8 – Inadvertent and genuine mistakes in filling up the correct details of credit in TRAN-1 Form should not preclude taxpayers from having claims** [ Delhi High Court in the case of R.R. Distributors PVT. LTD. Versus Commissioner of Central Tax, GST, Delhi North & anr. - W.P.(C) 4143/2020 - HC-GW-450-2021-DL]

This Court has observed that inadvertent and genuine mistakes in filling up the correct details of credit in TRAN-1 Form should not preclude taxpayers from having claims examined by the authorities in accordance with law.

Failure on the part of the Petitioner to give relevant details in TRAN-1 Form can only be taken as a procedural lapse which should not cause any impediment to its right to claim transitional ITC.

The court viewed that the non filing of part 7B of table 7(a) and table 7(d) of TRAN-1 Form cannot impair the rights of the petitioner to claim transitional ITC, if he is otherwise eligible.

Further, The court directed the Revenue to either open the online portal so as to enable the Petitioner to file the rectified TRAN-1 Form electronically, or accept the same manually with necessary corrections, on or before 30th June, 2021. The Petitioner will thereafter be permitted to correspondingly file the TRAN-2 Form which also shall be accepted either electronically by opening the online portal, or manually.

**Note**

The Delhi High Court in the case of Blue Bird Pure Pvt. Ltd. v. Union of India and Ors. [HC-GW-983-2019-DL], Bhargava Motors v. Union of India and Ors. [HC-GW-996-2019-DL] and Kusum Enterprises Pvt. Ltd. and Ors. v. Union of India and Ors., [HC-GW-700-2019-DL] had directed the Respondents to enable the Petitioner to rectify TRAN-1 Form. Further, this Court, in the case of Lease Plan India Private Limited v. Government of National Capital Territory of Delhi and Ors.[ HC-GW-982-2019-DL], Godrej & Boyce Mfg. Co. Ltd. v. Union of India and Ors.[ HC-GW-596-2021-MH], Arora & Co v. Union of India & Ors. [HC-GW-973-2019-DL], has taken a similar view.

**20.12.9 – Due date contemplated under Rule 117 of the CGST Rules for the purposes of claiming transitional credit is procedural in nature and thus should not be construed as a mandatory provision. [** Siddharth Enterprises Vs The Nodal Officer HC-GW-1025-2019-GJ,- R/SPECIAL CIVIL APPLICATION NO. 5758 of 2019 With 5759, 5760 and 5762 of 2019]

The Gujarat High Court directed to permit the writ-applicants to allow filing of declaration in form GST TRAN-1 and GST TRAN-2 so as to enable them to claim transitional credit of the eligible duties in respect of the inputs held in stock on the appointed day in terms of Section 140(3) of the Act. It is further declared that the due date contemplated under Rule 117 of the CGST Rules for the purposes of claiming transitional credit is procedural in nature and thus should not be construed as a mandatory provision.

**20.12.10 - Time limit stipulated under Rule 117 of the Rules is not ultra vires of the Act.** [ Nelco Limited vs The Union of India and others - WRIT PETITION NO. 6998 OF 2019 - HC-GW-422-2020-MH]

The Bombay High Court held that the time limit stipulated under Rule 117 of the Rules is not ultra vires of the Act. This Rule is traceable to the power conferred under section 164(2) of the Act. The time limit stipulated in Rule 117 is in consonance with the transitional nature of the enactment, and it is neither arbitrary nor unreasonable. Availment of input tax credit under section 140(1) is a concession attached with conditions of its exercise within the time limit.

**20.12.11 CENVAT credit is a mere concession and it cannot be claimed as a matter of right. [**JCB India Limited Versus The Union of India and others - Writ Petition No.3142 of 2017 - HC-GW-547-2018-MH ]

CENVAT credit is a mere concession and it cannot be claimed as a matter of right. If the CENVAT Credit Rules under the existing legislation themselves stipulate and provide for conditions for availment of that credit, then, that credit on inputs under the existing law itself is not a absolute but a restricted or conditional right. It is subject to fulfilment or satisfaction of certain requirements and conditions that the right can be availed of.

The Bombay High Court didn't found from the scheme of the new law that the object and purpose sought to be achieved after its introduction of the new law is of not permitting the

existing law arrangement to continue endlessly. Some day or some time has been stipulated as appointed day for the new regime to come into force. For it to come into force and function effectively, the transitional arrangements have been made. They have clear nexus, therefore, with the object sought to be achieved. They cannot be struck down as having no such relation or nexus.

The Bombay High Court held that there is nothing indefeasible or absolute in the right claimed under the existing law or in transitional arrangements set out, or in the substantive provisions permitting availing of input tax credit, then, all the more the challenge must fail. availing of input tax credit, then, all the more the challenge must fail.

**20.12.12 - If there is a conflict between the substantive provision of the statute and the Rules framed thereunder then it is the statute which will have a overriding effect.** [CESTAT Bangalore – Punjab National Bank vs. Commissioner of Central-tax - ST. APPEAL NO. 20068 OF 2020]

Assessee filed original return of service tax for period 1-4-2017 to 30-6-2017 on 31-8-2017 and disclosed closing balance of cenvat credit of service tax as nil - Assessee filed transitional return in Form GST TRAN-1 on 31-8-2017 with nil value - Subsequently assessee filed revised return of service tax for period 1-4-2017 to 30-6-2017 on 4-9-2017 as a result of which cenvat credit of service tax had increased by Rs. 15.74 lacs - Thereafter assessee filed a claim for refund of Rs. 15.74 lacs on 30-7-2018 in accordance with provisions of section 142(9)(b) of Central Goods and Services Tax Act, 2017.

It is a settled legal position that if there is a conflict between the substantive provision of the statute and the Rules framed thereunder then it is the statute which will have a overriding effect and in the present case section 142(9)(*b*) has a overriding effect over section 11B of the Central Excise Act, 1944.

It is a settled law that whenever two options are available, the assessee may choose the option which is more beneficial for them and in the present case the assessee/appellant has chosen to file the refund claim under section 142(9)(*b*) of CGST Act, 2017 which has a overriding effect over Section 11B of Central Excise Act, 1994. The appellant did not choose to carry forward the credit in Tran-1 and preferred to claim cash refund as provided under section 142(9) (*b*) of CGST Act, 2017.

CESTAT set aside the order rejecting the refund claim on ground that refund was time barred in view of section 11B of Central Excise Act, 1944. The original authority will grant the refund after verification of the document and after following the principles of natural justice.

## 20.13 Key Observations of Supreme Court– Issues related to Transitional Provisions

The Supreme Court of India in its decision dated 22 July 2022 [Union of India v. Filco Trade Centre Pvt. Ltd. and another] made following observation.

I. Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.

II. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise

the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).

III. GSTN has to ensure that there are no technical glitch during the said time.

IV. The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.

V. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.

VI. If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims.

Later, The Supreme Court on Friday i.e. 2nd September 2022 [Union of India v. Filco Trade Centre Pvt. Ltd. and another], gave the finance ministry further extension of 30 days for opening of the GST common portal. It also directed the GSTN to open the portal for 60 days from October 1 till November 30 so as to "give full effect" to its July 22 order that had allowed taxpayers to claim accumulated ITC accrued in the pre-GST indirect tax regime in 60 days ending October 31.

Further, Department sought a direction from Supreme Court to respective high courts where cases are pending, to keep open all questions of law decided by respective High Courts concerning section 140 of the CGST Act r/w the corresponding rules, notifications or directions. Both these requests have been allowed by the Supreme Court. Therefore, cases which are pending before respective High Courts, especially where Rules and subsequent amendments for transitional credit are under challenge will have to be argued in its own merits.

The time for opening the GST Common Portal is extended for a further period of four weeks from 2nd September 2022. It is clarified that all questions of law decided by the respective High Courts concerning Section 140 of the Central Goods and Service Tax Act, 2017 read with the corresponding Rule/Notification or direction are kept open.

## 20.14 Departmental Clarifications – Guidelines for filing /revising TRAN-1/TRAN-2

The CBIC vide *Circular No.180/12/2022-GST dated September 09, 2022* has issued guidelines for filing/revising TRAN-1/TRAN-2 in terms of order dated July 22, 2022 & September 02, 2022 of Hon'ble Supreme Court in the case of Union of India v. Filco Trade Centre Pvt. Ltd. and another .

The procedure provided by the CBIC for availing the transitional credit by filing /revising transitional forms is sequentially summarized as under:

**Step 1: Filing/revising TRAN-1 and TRAN-2 online on GSTN portal**

- The applicant may file declaration in FORM GST TRAN-1/TRAN-2 or revise earlier filed TRAN-1/TRAN-2 duly signed or verified through electronic verification code on the common portal. In cases where the applicant is filing a revised TRAN-1/TRAN-2, a facility for downloading the TRAN-1/TRAN-2 furnished earlier by him will be made available on the common portal.
- The applicant shall at the time of filing or revising the declaration in FORM GST TRAN1/TRAN-2, also upload on the common portal the pdf copy of a declaration in the format as given in **Annexure 'A'** of this circular. The applicant claiming credit in table 7A of FORM GST TRAN-1 on the basis of Credit Transfer Document (CTD) shall also upload on the common portal the pdf copy of TRANS-3, containing the details in terms of the Notification No. 21/2017- CE (NT) dated June 30, 2017.
- No claim for transitional credit shall be filed in table 5(b) & 5(c) of FORM GST TRAN-1 in respect of such C-Forms, F-Forms and H/I-Forms which have been issued after the due date prescribed for submitting the declaration in FORM GST TRAN-1 i.e. after December 27, 2017.
- Where the applicant files a claim in FORM GST TRAN-2, he shall file the entire claim in one consolidated FORM GST TRAN-2, instead of filing the claim tax period wise as referred to in sub-clause (iii) of clause (b) of sub-rule (4) of rule 117 of the Central Goods and Services Tax Rules, 2017. In such cases, in the column 'Tax Period' in FORM GST TRAN-2, the applicant shall mention the last month of the consolidated period for which the claim is being made.

**Step 2: Copy of documents to be submitted to GST authorities within 7 days**

- The applicant shall download a copy of the TRAN-1/TRAN-2 filed on the common portal and submit a self-certified copy of the same, along with declaration in **Annexure 'A'** and copy of TRANS-3, where ever applicable, to the jurisdictional tax officer within 7 days of filing of declaration in FORM TRAN-1/TRAN-2 on the common portal. The

applicant shall keep all the requisite documents/records/returns/invoices, in support of his claim of transitional credit, ready for making the same available to the concerned tax officers for verification.

- It is pertinent to mention that the option of filing or revising TRAN-1/TRAN-2 on the common portal during the period from October 01, 2022 to November 30, 2022 is a one-time opportunity for the applicant to either file the said forms, if not filed earlier, or to revise the forms earlier filed.

**Utmost care and precaution to be taken while filing transitional forms**

- The applicant is required to take utmost care and precaution while filing or revising TRAN1/TRAN-2 and thoroughly check the details before filing his claim on the common portal.
- In this regard, it is clarified that the applicant can edit the details in FORM TRAN-1/ TRAN-2 on the common portal only before clicking the 'Submit' button on the portal. The applicant is allowed to modify/edit, add or delete any record in any of the table of the said forms before clicking the "Submit" button. Once 'Submit' button is clicked, the form gets frozen, and no further editing of details is allowed. This frozen form would then be required to be filed on the portal using 'File' button, with Digital signature certificate (DSC) or an EVC. The applicant shall, therefore, ensure the correctness of all the details in FORM TRAN-1/ TRAN-2 before clicking the 'Submit' button. GSTN will issue a detailed advisory in this regard and the applicant may keep the same in consideration while filing the said forms on the portal.
- It is further clarified that pursuant to the order of the Hon'ble Apex Court, once the applicant files TRAN-1/TRAN-2 or revises the said forms filed earlier on the common portal, no further opportunity to again file or revise TRAN-1/TRAN-2, either during this period or subsequently, will be available to him.
- It is clarified that those registered persons, who had successfully filed TRAN-1/TRAN-2 earlier, and who do not require to make any revision in the same, are not required to file/ revise TRAN-1/TRAN-2 during this period from October 01, 2022 to November 30, 2022.

- In this context, it may further be noted that in such cases where the credit availed by the registered person on the basis of FORM GST TRAN-1/TRAN-2 filed earlier, has either wholly or partly been rejected by the proper officer, the appropriate remedy in such cases is to prefer an appeal against the said order or to pursue alternative remedies available as per law. Where the adjudication/ appeal proceeding in such cases is pending, the appropriate course would be to pursue the said adjudication/ appeal. In such cases, filing a fresh declaration in FORM GST TRAN-1/TRAN-2, pursuant to the special dispensation being provided vide this circular, is not the appropriate course of action.

**Step 3: Credit of claim in Electronic credit ledger after verification by proper officer**

- The declaration in FORM GST TRAN-1/TRAN-2 filed/revised by the applicant will be subjected to necessary verification by the concerned tax officers. The applicant may be required to produce the requisite documents/ records/ returns/ invoices in support of their claim of transitional credit before the concerned tax officers for verification of their claim.
- After the verification of the claim, the jurisdictional tax officer will pass an appropriate order thereon on merits after granting appropriate reasonable opportunity of being heard to the applicant.
- The transitional credit allowed as per the order passed by the jurisdictional tax officer will be reflected in the Electronic Credit Ledger of the applicant on the common portal.

## **20.15** The **Way Forward**

The taxpayers who could not claim transitional credit due to the technical glitch in the GST Portal can now file FORM TRAN-1 or FORM TRAN-2 as per the directions of the Hon'ble Supreme Court.

If the tax payers had made any technical, arithmetical or any other similar error or wrongful availment of ITC at the time of filing FORM TRAN-1 or FORM TRAN-2 the same can be

revised. Accordingly, such registered taxpayers should perform all necessary calculations and file appropriate FORM TRAN-1 or FORM TRAN-2.

While the Supreme Court decision is clearly a welcome move, it would be pertinent to keep a view of the following aspects which are likely to determine the future of this litigation:

1. Whether the department will be able to do scrutiny and reflect the eligible credit in the electronic credit ledger of an assessee within the time frame prescribed by the Supreme Court, as there is a likelihood of a huge number of assessees utilizing this window to avail the benefit.

2. Whether the department will intend to follow the strict language of Section 140 and deny the benefit in cases where the credit was not reflected in the ER-1/ST-3 or VAT-100, as the case may be, which may lead to a fresh round of litigation on the aspect of what can be allowed as an eligible credit.

3. Whether the GSTN system will be able to handle the filing of Form TRAN-1 and Form TRAN-2 without any technical glitches, in view of the fact that there could be a number of assessees who would make an attempt to claim back the rightful credit.

4. What shall be the impact of the Supreme Court judgment on the cases, where the assessees were allowed to transition the credit through GSTR-3B? Will such assessees have to reverse the credit and adopt the TRAN-1 or TRAN-2 route? If yes, could there be an interest liability for the period during which the credit was availed and reversed?

5. Will the scrutiny from the department give a final right to such credit or will the same be again subject to Section 73/Section 74 proceedings?

6. Whether this entire resolution will lead to a new round of litigation, due to the lack of a friendly approach at the ground level?

To conclude, it can be said that the Supreme Court has come up with simple and clear directions to be followed by the department. The proper implementation of the above directions is necessary at this stage to aid ‘ease of doing business’, and failure of the same will surely prompt a new round of litigation.

## 20.16 GSTN Portal releases advisory for filing Transition Form 1 and 2 (Tran 1 / 2) on the GST Portal

The Hon'ble Supreme Court of India vide order dated 22.07.2022 in the matter of Union of India vs. M/s. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709-32710/2018 have allowed the aggrieved taxpayers to file Form TRAN-1/TRAN-2 to claim the transitional Input Tax Credit (ITC). In compliance of the Hon'ble court's directive, the facility for filing TRAN-1/ TRAN-2 or revising the earlier filed TRAN-1/TRAN-2 on the GST common portal by aggrieved taxpayers, is now available on GSTN from 01.10.2022 till 30.11.2022.

All the aggrieved taxpayers who wish to file or revise TRAN-1/2 are hereby informed that the present process flow of TRAN filing is different from the filing process in the financial year 2017-18. As per the present flow the transitional credit availed by the taxpayer in TRAN-1/2 forms shall be verified by the jurisdictional tax officer before the credit entry is made in the respective ledgers.

The TRAN filing process has been improved vis-a-vis previous instance and the user interface of the portal has been made simpler for the taxpayers to file their TRAN-1/2 forms. However, before attempting to file the TRAN forms, the taxpayers should note some important points as mentioned below which would help them in smooth filing of the forms.

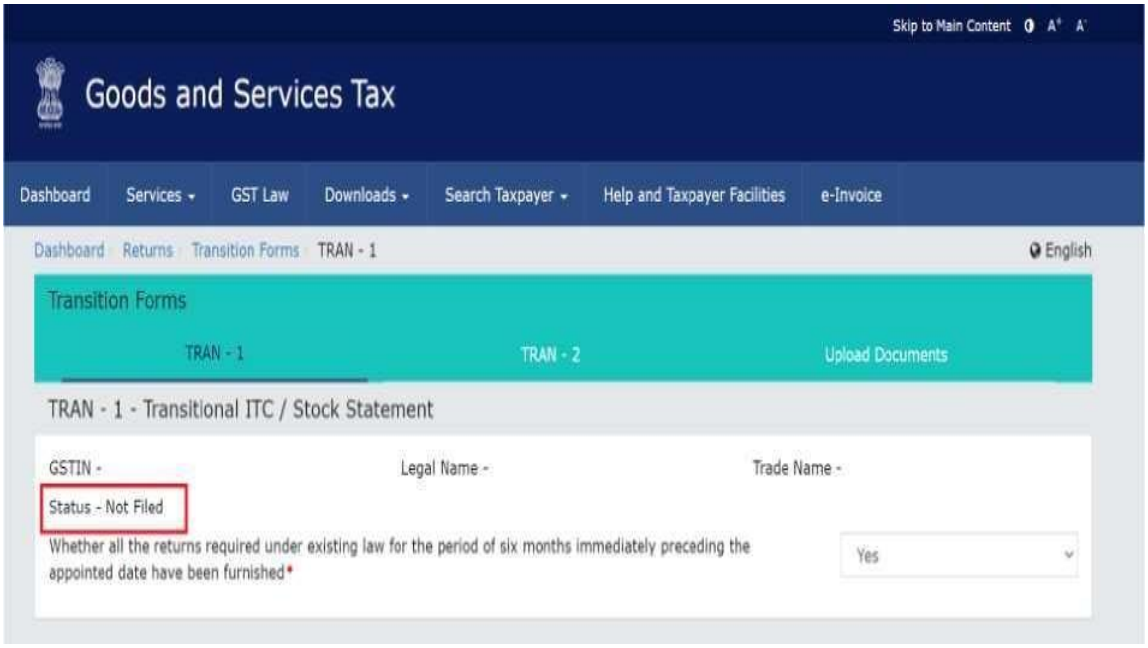
TRAN-2 form shall be made available only if the taxpayer has filed TRAN-1 and have made declaration in table 7 of TRAN-1. The taxpayer is requested to fill the complete details afresh in case they are revising the earlier filed TRAN-2 Form.

GSTN has issued a detailed advisory –

1. **Points to be Noted**:-

a. In compliance of the Supreme Court’s directive, the TRAN forms are enabled and the default filing status of TRAN forms for all taxpayers is now visible as “Not Filed”. The status “Not Filed”

only implies that TRAN forms are not filed in the new window provided by the Hon'ble court during 01.10.2022 to 30.11.2022.




***b. It is therefore clarified that those registered persons, who had successfully filed TRAN-1/TRAN-2 earlier, and who do not require to make any revision in the same, are not required to file/ revise TRAN-1/TRAN-2 again during this period from 01.10.2022 to 30.11.2022.***

c. The option of filing or revising TRAN-1/TRAN-2 on the common portal during the period from 01.10.2022 to 30.11.2022 is a one-time opportunity for the applicant to either file the said forms, if not filed earlier, or to revise the forms filed earlier.

d. Input Tax Credit shall reflect in the Credit ledger of the taxpayer post verification by the jurisdictional tax-officer.

## 2. Access / Navigation to file TRAN-1 / TRAN - 2 Forms:

How to access TRAN form:

a. Access the www.gst.gov.in. The GST Home page is displayed.
b. Login to the GST Portal with valid credentials.
c. Click the **Services > Returns > Transition Forms** command.

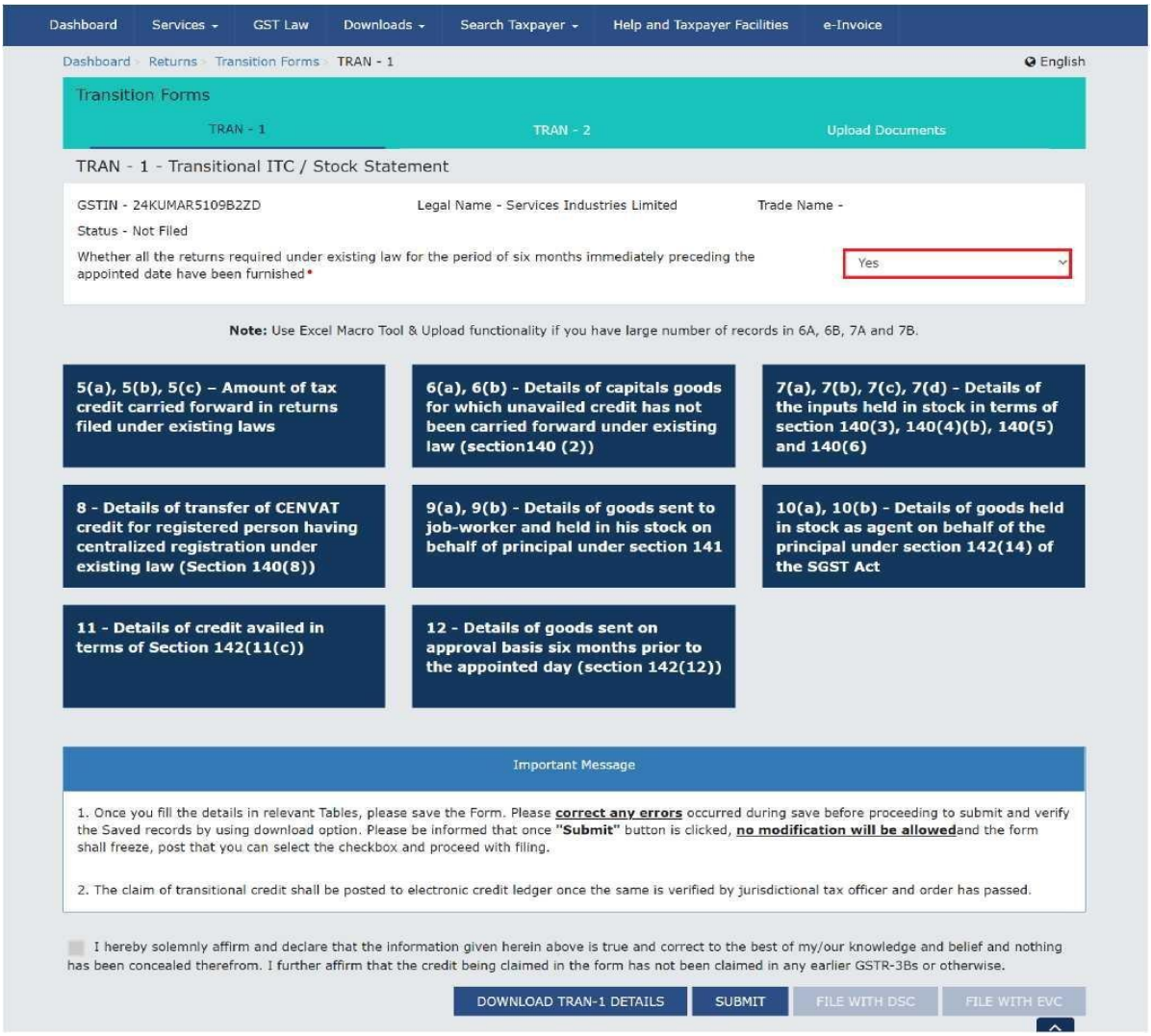
## 3. Guidelines for filing of GST TRAN-1

Attention of the taxpayers is drawn to follow the below-mentioned guidelines:

***a.*** The taxpayer can navigate to TRAN-1 forms post login by navigating to ***Services > Returns > Transition Forms.*** The **Transition Forms** page is then displayed.

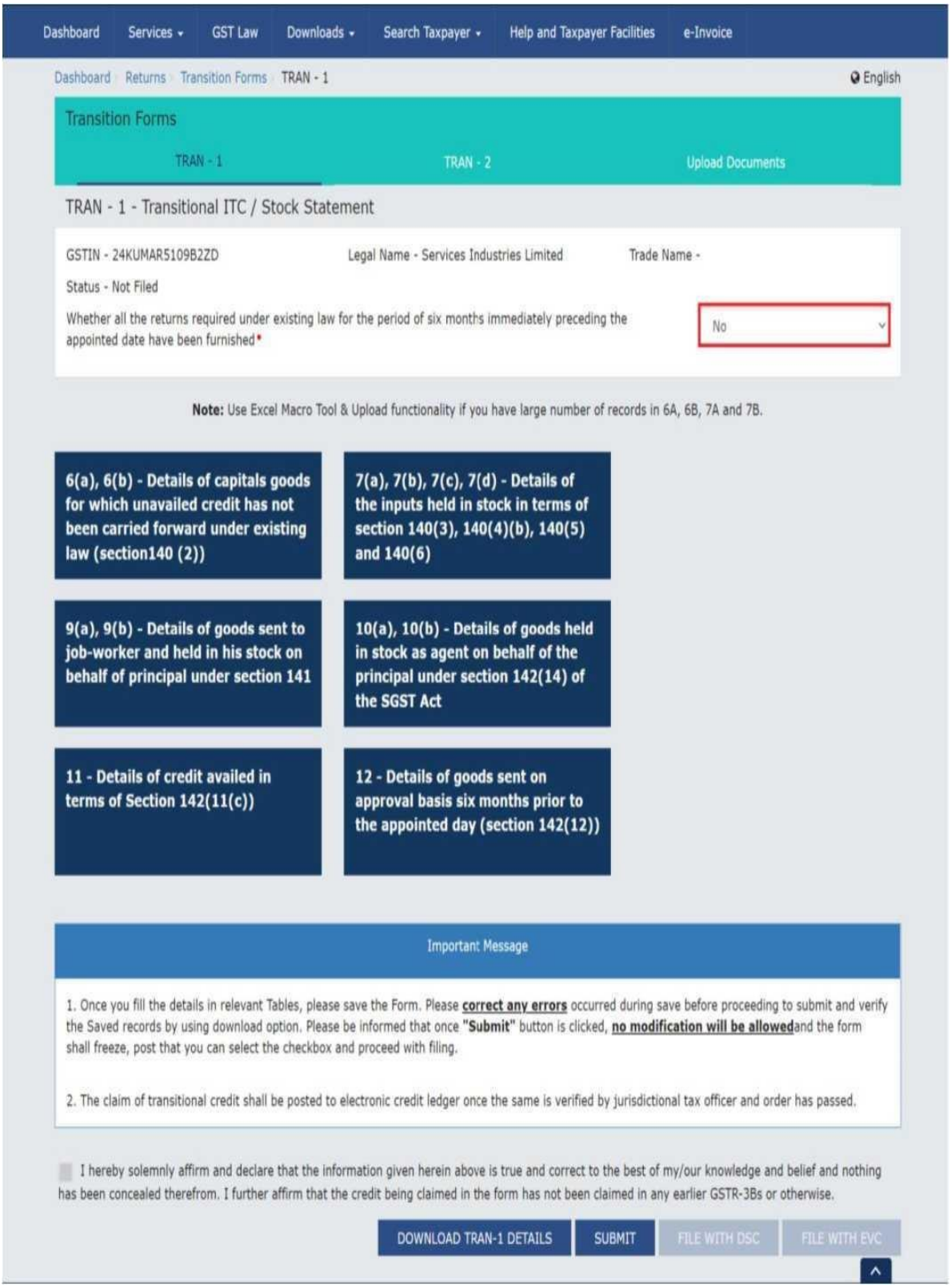
b. On the landing page the taxpayer would be provided with three tabs on the top band for TRAN - 1, TRAN -2 and Upload Documents respectively. The tile of Form TRAN - 1 will be visible by default.

c. For the question **Whether all the returns required under existing law for the period of six months immediately preceding the appointed date have been furnished**, select the ***Yes*** or **No** option as the case may be. The taxpayers are **advised** to carefully select an option as this is a very important step. If **'Yes'** is selected then the all tables of TRAN-1 shall be open for the taxpayers to fill in with the respective details. However, if the taxpayers select **'No',** then the system would not allow the taxpayersto fill details in Table 5 and Table 8 of TRAN-1 and these tables would be hidden from the taxpayers. These scenarios are displayed in the screenshots below:



i. When the taxpayer selects **Yes** option, the following page will be displayed:

ii. When the taxpayer selects **No** option, then tiles pertaining to details to be filed for table number 5 and 8 will be disabled and following page will be displayed:



d. **Caution: The taxpayers should ensure that there are no saved records in Table 5 & Table 8 of TRAN-1 forms before selecting *"No"* option. Selecting an option of Yes / No contradicting to the data filed / not filed in Table 5 and 8 of TRAN-1 respectively may result in denial of credit by the officer examining the details of the form filled.**

e. In case the records to be added in table 6(a), 6(b), 7(a) and 7(b) are substantial, the taxpayer can prepare the details offline by using the **'Excel template' and create the JSON** file and upload it in respective tables.

f. In case the records to be added in table 5(b), 9(a) and 9(b) are substantial, the taxpayer can prepare the details offline **by using the 'CSV template'** and upload the CSV file in respective tables.

g. In case, the records are not substantial and the taxpayers choose to file the form online, then they shall addthe details in the required tables and click the **Save** button on each table to save the added records.

h. The records which are added in table 5(b), 6(a), 6(b), 7(a), 7(b), 9(a) and 9(b) by using the JSON or CSV or online facility can also be downloaded by clicking a ***download*** button provided on the page. The taxpayers are advised to download the uploaded records and verify the same. This would ensure that correct records are added/ uploaded. Form should be submitted thereafter only.

i. Here it is pertinent to mention that taxpayers may find some records missing in downloaded Excel as compared to uploaded CSV, this may happen because of the reason that taxpayer may have uploaded an incorrect/incomplete CSV file while uploading. Therefore in such cases taxpayer is advised to enter data inmandatory fields in CSV and upload it again.

j. The taxpayer can also download the complete TRAN-1 details added by them by clicking on button "DOWNLOAD TRAN-1 DETAILS'. Taxpayers are hereby advised again to download the filled TRAN form in Excel file and verify the details before finally submitting Form TRAN-1.

k. As already stated earlier; the taxpayers must file the TRAN-1 form by clicking the "File with DSC" or "File with EVC" button after clicking the "Submit" button for submitting the TRAN-1 form.

l. Once TRAN-1 is Filed successfully, it cannot be revised. Taxpayer should verify details furnished by them before clicking on Submit button.

**For detailed step by step and frame by frame guidance in filing Tran-1 please refer to the Help manual here**

**https://tutorial.gst.gov.in/downloads/news/tran1manual_final_30_09_2022.pdf**

## 4. Precautions to be taken during TRAN-1/TRAN-2 filing:

a. The applicant is required to take utmost care and precaution while filing or revising TRAN 1/TRAN-2 andthoroughly check the details before filing his claim on the common portal. The taxpayers are advised to ***save*** the details periodically, download the added details and cross verify downloaded data with the added records/uploads, before submitting the forms.

b. In case a taxpayer has already filed his original TRAN and wants to revise his/her earlier filed TRAN, the taxpayer is requested to file the complete form with all the required details and **not the differential values***(i.e. the difference between originally claimed credit and credit being claimed now)*. The taxpayers are also provided with a **preview** functionality wherein they can **download** the currently filled TRAN forms in **Excel** format and ensure the correctness of the details filled by them before finally submitting the form.

c. The taxpayers are advised to save the added records using "Save" button on each table before navigating to other tables. At this stage, modifying and editing records is feasible.

d. The taxpayers are allowed to modify/edit, add or delete any record in any of the table of the said forms before clicking the "Submit" button. Once "Submit" button is clicked, the entries from the form gets locked, and no further editing of details would be allowed.

e. This locked form would then be required to be mandatorily filed on the portal using "File with DSC" or "File with EVC" button using Digital signature certificate (DSC) or an EVC.

**f. It is pertinent to note that if the submitted forms are not filed with DSC or EVC then the submitted forms would be considered as *Not Filed*** as it would be an ***unsigned form.***

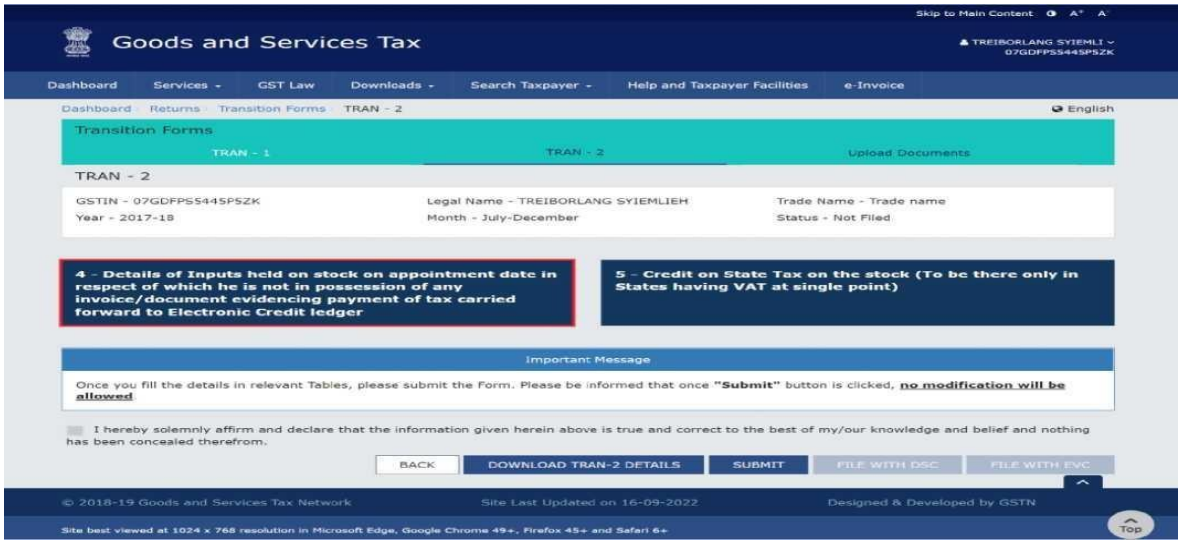
g. To facilitate the taxpayers further, the ***DOWNLOAD EARLIER FILED TRAN-1*** forms functionality will also be made available shortly.

## GST TRAN-2

**How to Navigate:** The taxpayer can navigate to TRAN-2 post logging into the Common portal bynavigating to ***Services > Returns > Transition Forms > TRAN-2.***

## Points to note:

a. The taxpayer shall file the entire claim in one consolidated FORM GST TRAN-2, instead of filing the claim tax period wise as referred to in sub-clause (iii) of clause (b) of sub-rule (4) of rule 117 of the Central Goods and Services Tax Rules, 2017. In the column "Tax Period" in FORM GST TRAN-2, the taxpayer shall mention the last month of the consolidated period for which the claim is being made.



b. TRAN-2 form shall be made available only if the taxpayer has filed TRAN-1 and have made declaration intable 7 of TRAN-1. The taxpayer is requested to fill the complete details afresh in case they are revising theearlier filed TRAN-2 Form.

c. In case the records to be added in table 4 and 5 are substantial, the taxpayer can prepare the details offline by using the ***"Excel template"*** and create the ***JSON file*** and upload it in respective table.

d. The records which are added in table 4 and 5 by using the JSON file or online can be downloaded in CSV file for ensuring that all the records are added and for its correctness.

e. In case, the records are not substantial and the taxpayers choose to file it online, then they shall add the details in the required tables and click the **Save** button on each table to save the added records.

f. The taxpayer can also download the complete TRAN-2 details added by them by clicking on button "DOWNLOAD TRAN-2 DETAILS". It is advisable that the taxpayer downloads the Excel file to verify the details before finally submitting the same.

g. Taxpayer must ensure correctness of the form before clicking on submit button, once the taxpayer has clicked on Submit button, they shall not be allowed to edit the form.

h. The taxpayers, who have filed TRAN-2 earlier, can download the earlier filed TRAN-2 form by clicking on ***DOWNLOAD EARLIER FILED TRAN-2*** button.

i. Taxpayers must file the TRAN-2 form after clicking the Submit button by EVC or DSC. The forms will besent to jurisdictional tax officers only on successful filing of TRAN-2 form.

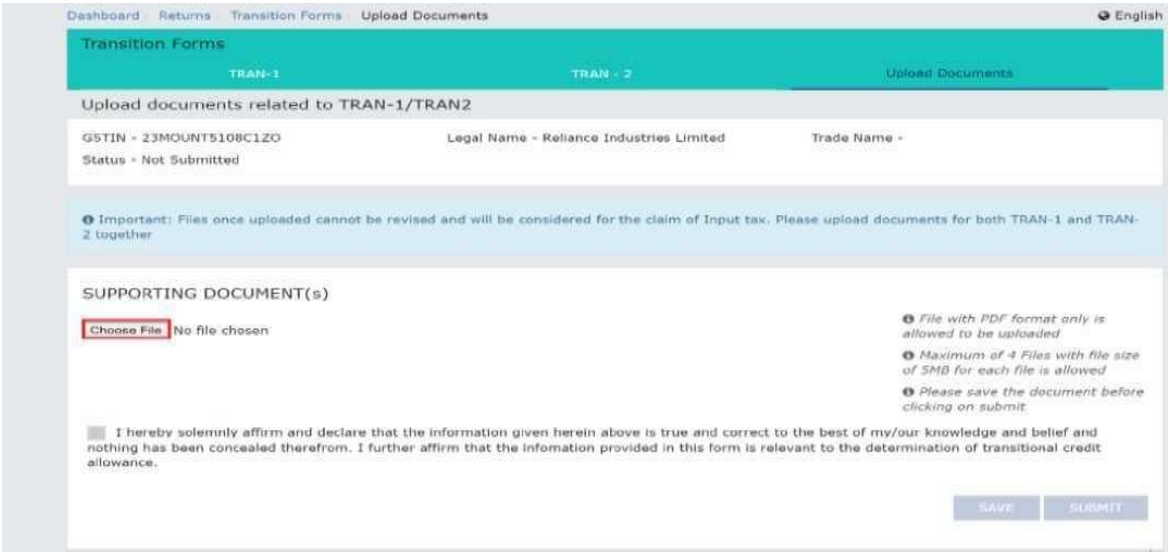
j. Once TRAN-2 is Filed it cannot be revised. Taxpayer to ensure every detail furnished by them is correctbefore clicking on Submit form.

**For detailed step by step and frame by frame guidance in filing Tran-2 please refer to the Help manual here**

**https://tutorial.gst.gov.in/downloads/news/tran2manual_final_30_09_2022.pdf**

## UPLOAD DOCUMENTS

A separate facility to upload any supporting documents in GST transition is also provided to the taxpayers after filing the TRAN forms in the "**Upload Documents**" tab. The taxpayer can navigate post logging into the Common portal and navigating to ***Services > Returns > Transition Forms > Upload documents.***



i. Taxpayers are allowed to upload a maximum of four PDF documents of 5 MB each.

ii. Taxpayers are required to click submit button once all the required document is uploaded. Once the details are submitted, no further changes can be made. Taxpayer to ensure every document furnished by them is correct before clicking on Submit as they would be used by the officers to verify the ITC claim.

**For detailed step by step and frame by frame guidance to Upload Documents, please refer to the Help manual here:**

**https://tutorial.gst.gov.in/downloads/news/tranmanual_uploaddoc_30_09_2022.pdf**

The declaration in FORM GST TRAN-1/TRAN-2 filed/revised by the applicant will be subjected to necessary verification by the concerned tax officers. The applicant may be required to produce the requisitedocuments/ records/ returns/ invoices in support of their claim of transitional credit before the concerned tax officers for verification of their claim. After the verification of the claim, the jurisdictional tax officer will pass an appropriate order thereon on merits after granting appropriate reasonable opportunity of being heard to the applicant. The transitional credit allowed as per the order passed by the jurisdictional tax officer will be reflected in the Electronic Credit Ledger of the applicant on the GST common portal.

**For detailed step-by-step and frame-by frame guidance in filing transitional forms, please refer to the respective Help Manuals:**

- **TRAN-1:**
  **https://tutorial.gst.gov.in/downloads/news/tran1manual_final_30_09_2022.pdf**
- **TRAN-2:**
  **https://tutorial.gst.gov.in/downloads/news/tran2manual_final_30_09_2022.pdf**
- **Upload Documents:**
  **https://tutorial.gst.gov.in/downloads/news/tranmanual_uploaddoc_30_09_2022.pdf**

## Guidelines for verifying the Transitional Credit

Lastly, To ensure uniformity in the implementation of the directions of the Hon'ble Supreme Court across field formations, the CBIC, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), has issued Circular No. 182/14/2022-GST dated 10th of November, 2022 for the following guidelines for verifying the Transitional Credit:

### 1. Verification of the Transitional Credit

**1.** The jurisdictional tax officers can access the TRAN-1/TRAN-2 filed/revised by the applicant on their back office systems (which is the CBIC-AIO portal for the central tax officers, the respective State portal for MODEL-1 States and BO portal for MODEL 2 States). 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 as mentioned in Para 4.5 of Circular 180/12/2022 dated 09.09.2022.

**2.** The verification of the transitional credit shall be conducted by the jurisdictional tax officer

who will pass an appropriate order regarding the veracity of the claim filed by the applicant, based on all the facts and the provisions of the law. In respect of TRAN-1/TRAN-2 filed/revised by the applicant under the administrative control of the central tax authorities, such verification and issuance of order shall be done by the jurisdictional officer of central tax, whereas in respect of TRAN-1/TRAN-2 filed/revised by the applicant under the administrative control of the state tax authorities, the same shall be done by the jurisdictional officer of state tax. The jurisdictional tax officer shall start the verification process immediately on availability of TRAN-1/TRAN-2 filed/revised by the applicant on the back office system or on receipt of self-certified downloaded copy of the same from the applicant, whichever is earlier. It is needless to mention that principles of natural justice shall be followed in the process of passing the order relating to allowance or disallowance of the Transitional Credit.

**3.** The jurisdictional tax officer shall, on the basis of declaration made by the applicant in the format specified in Annexure A to Circular no. 180/12/2022 dated 09.09.2022, and on the basis of data available on the back office system, shall check whether the applicant had earlier filed TRAN-1/ TRAN-2 or not. In cases where TRAN-1/ TRAN-2 had already been filed by the applicant earlier, the tax officer shall check whether there is any change from the earlier filed TRAN-1/TRAN-2 or not. In case, there is no change from the earlier filed TRAN-1/ TRAN-2, then such claim of transitional credit is liable for rejection by the tax officer, through a reasoned order, after providing due reasonable opportunity to the applicant.

**3.1** In other cases, the jurisdictional tax officer shall proceed for verification of claim of transitional credit made by the applicant in FORM TRAN-1/TRAN-2. In this regard, in respect of transitional credit pertaining to central tax, he may refer to the guidelines detailed in Annexure I to this circular. In respect of verification of transitional credit pertaining to the State Tax/Union territory Tax, the tax officer may refer to the guidelines issued by the relevant state/UT, if any.

**3.2** There may be cases where the transitional credit claim filed/revised by the applicant may have components of both central tax and state/UT tax. In such cases, where the applicant is under the jurisdiction of central tax officer and where the transitional credit claimed has component of state/Union Territory tax also, the jurisdictional central tax officer shall refer the said claim for verification of component of state/UT tax to his counterpart state/UT tax officer. For this purpose, he shall share the list of GSTINs/ARNs with the counterpart officer, in respect of which verification report is needed from him, on a weekly basis, along with an intimation of the same to the nodal officer of central tax as well as state/UT tax referred in Para 6.1 below through his official email ID or physically. Similar action, as above, shall also be taken by the jurisdictional state/UT tax officers in cases where the applicant is under the jurisdiction of state/UT tax officer and where the transitional credit claimed has component of central tax also.

**3.3** The jurisdictional tax officer shall, in parallel, continue the verification of the remaining portion of the transitional credit at his end.

**3.4** The jurisdictional tax officer and the counterpart tax officer shall verify the transitional credit claimed under the CGST or the SGST head, as the case may be, by referring to the guidelines detailed in Annexure I to this circular for transitional credit pertaining to central tax and the guidelines issued by the relevant state/UT for verification of transitional credit pertaining to the State Tax/Union territory Tax, as applicable. While conducting the verification, the officer must also check whether any adjudication or appeal proceedings in TRAN-1/TRAN-2 related matter are pending/ concluded against the applicant. In such cases, where any adjudication or appellate proceedings have been initiated against the applicant in respect of TRAN-1/TRAN-2, the officer should take a note of the relevant facts in the notice/ order, and the grounds/reasons for inadmissibility of transitional credit, if any, in the said notice/ order.

**3.5** 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. In case, where the adjudication or appeal proceedings in respect of TRAN-1/TRAN-2 related matter are pending/ concluded against the applicant, the counterpart officer shall categorically bring out the relevant facts in his/her verification report along with his detailed findings, admissibility/ inadmissibility, reasons of inadmissibility thereof and the copy of the relevant notice and/or orders.

**3.6** For the purpose of verification of the claim of the transitional credit, the jurisdictional tax officer as well as the counterpart tax officer, if required, may call for relevant records including requisite documents/returns/invoices, as the case may be, from the applicant.

**3.7** After receiving the verification report from the counterpart officer, the jurisdictional tax officer shall decide upon the admissibility of the credit claimed by the applicant. In case the jurisdictional tax officer finds that the transitional credit claimed by the applicant is partly or wholly inadmissible as per the provisions of the Act and the rules thereof, then a notice shall be issued by the jurisdictional tax officer to the applicant preferably within a period of seven days from the receipt of report from the counterpart officer, seeking explanation of the applicant as to why the said credit claimed by him should not be denied wholly/partly, as the case may be. The applicant shall also be provided an opportunity of personal hearing by the jurisdictional tax officer in such cases. If required, the jurisdictional tax officer may seek comments of the counterpart officer on the submissions made by the applicant in so far as the said submission relates to the tax (central or State) being administered by such counterpart officer.

**3.8** 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. In any case, such order shall be passed within a period of 90 days from 01.12.2022 i.e. up to 28.02.2020.

**3.9** Where the amount credited to the electronic credit ledger pursuant to the originally filed TRAN-1/TRAN-2 exceeds the amount of credit admissible in terms of the revised TRAN-1/TRAN-2 filed by the applicant, such excess credit is liable to be demanded and recovered from the applicant, along with interest and penalty, in accordance with the provisions of Chapter XV of the Act and the rules made thereunder.

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

**3.11** It may be noted that consequent to reorganization of the state of Jammu & Kashmir and merger of the Union territories of Dadra and Nagar Haveli & Daman and Diu, the taxpayers of UT of Ladakh and the earlier UT of Daman and Diu have been allotted new GSTINs. Accordingly, the taxpayers of Ladakh and Daman and Diu can file/ revise TRAN-1/ TRAN-2 only through their newly allotted GSTINs. It is, therefore, advised that the concerned jurisdictional tax officers should take into consideration transitional credit, if any, claimed by such taxpayers under their previous GSTINs.

**2. Modalities of coordination between central tax authorities and state tax authorities**

**2.1** It is to be noted that all the Zonal Principal Chief Commissioner/ Chief Commissioners (PCCs/CCs) of Central Tax and Chief Commissioners/ Commissioners of Commercial Taxes (CCCTs/CCTs) of various states/UTs shall appoint nodal officer(s) in their respective formations immediately for proper co-ordination between central and state/UT authorities for verification of transitional credit claims and shall make available the details of the said nodal officers, along with their phone numbers and email IDs, to the counterpart tax authority. The nodal officers shall ensure that the verification reports/comments sought by the jurisdictional tax officers are being sent in a timely manner by the counterpart officers in their formations.

**2.2** It is the responsibility of the Zonal Principal Chief Commissioner/ Chief Commissioners (PCCs/CCs) of Central Tax and Chief Commissioners/ Commissioners of Commercial Taxes (CCCTs/CCTs) of various states/UTs to regularly monitor the progress made in this regard so that the timelines mentioned in the Hon'ble Supreme Court's order dated 22.07.2022 and 02.09.2022 are strictly adhered to by the field formations.

**3.** Where any communication is required to be made by the central tax officer with the applicant for the purpose of verification of TRAN-1/ TRAN-2, through a mode other than through the portal, the same should be made with the use of DIN, as per the guidelines mentioned in the CBIC Circular No. 122/41/2019-GST dated 5th November 2019.

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