



THE INSTITUTE OF
CHARTERED ACCOUNTANTS OF INDIA
(SET UP BY AN ACT OF PARLIAMENT)

HAPPY Onam

THRISSUR BRANCH
OF SOUTHERN INDIA REGIONAL COUNCIL
OF INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA



2022 SEPTEMBER

E-NEWSLETTER

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EDITOR'S DESK



My dear Members,

At the outset let me wish all of you a colourful Onam. I hope you all were able to spend quality time with your near and dear ones. Afterall, Onam is indeed a festival of unity, vibrance and love.

Most of you must be busy conducting Tax Audits and Company Audits. I am certain that you must be in the quest of decoding the changes in Tax Audit Reporting Requirements and not to mention complicated Schedule III Amendments in Companies Act, 2013. In the process of understanding the complexities of the same, do remember to make detailed notes which will serve as an internal office tool also which can be used for knowledge sharing purpose.

"Gaining knowledge is the first step to wisdom. Sharing it, is the first step to humanity." Learn and Share, it will help you go a long to achieve the ultimate goal of having had the fortune of training many successful Future Chartered Accountants.

On the occasion of Teacher's Day (September 5th) I would like to say that we may come across many people in our lives who are teachers. They guide us, inspire us, support us and teach us. In return for the distinguished role that they play in our lives let us always show our RESPECT and HUMILITY towards them.

"Those who educate children well are more to be honoured than parents, for these only gave life, those the art of living well."- Aristotle

Let us yearn to set a good example as a GURU/teacher to our Articled Assistants and Trainees.

In this month's newsletter we have an article by CA Mini Chandran- detailing the nail-biting experience with the never-ending GST circulars.

Happy Reading

Thank you.

Jai Hind, Jai ICAI

CA DIVYA DHARMARAJAN
SICASA COORDINATOR

CHAIRMAN'S MESSAGE



Dear professional colleagues,

August being not that much of a hectic month for members we at Thrissur branch had planned lots of CPE programmes. We all know that that as extensions will not be there in the month of September and the same cut of dates to file the tax audit report, a chunk of the CPE programmes was conducted in August itself.

We had a CPE seminar on Financial Reporting of Non – Corporate Entities whose faculty was CA.Rengarajan G. We had a half CPE Seminar on “Taxation of Trusts & Panel Discussion of Recent Direct Tax Changes” whose faculty of CA.Prasanth Sreenivas. After the same we had a panel discussion on direct changes which was led by CA Anoop G and panellists were CA Mahadevan N V and CA Prasanth Sreenivas. We also had a CPE seminar on “Chit funds-accounting problems and solutions” in association with All Kerala Chit Association which was inaugurated by Shri C P Vincent, Dist Registrar of Chits and the faculty was CA.Vipin K K. The programme was well attended not only by members but also by representatives of around 200 Chit companies from various parts of Kerala.

The branch conducted a one-day conference in association with Women’s Club of THRISSUR Branch of ICAI under Women member Empowerment Group of the Institute. The same being inaugurated by CA.Deena Jacob (Co- Founder & CFO open financial technologies Pvt Ltd, had wonderful speakers like CA.Revathy Reghunathan ,CA. Divya Abhishek , CA.Deepa Praveen and Ms. Latha Hemanth handling various sessions. Sobha developers were the main sponsors for the programme.

The branch also conducted a one-day CPE Seminar on GST in association with Manappuram Group. The same being inaugurated by Mr. V P Nandakumar, MD & CEO of Manappuram Group, the faculty were CA.Sankaranarayanan V & CA. Ramankutty K R. Manappuram Finance Ltd had sponsored the programme also.

We had also conducted a Webinar on Cyber Security and Awareness and the same was handled by Mr.Sreeshankar Gurujalam, ISAC India. The branch celebrated the Independence Day on 14th August by hoisting the tricolour. Members and students attended both the above programmes at large.

As exams were being conducted in various schools the branch could conduct only one Career Counselling programme. The branch organised a special counselling programme for students of CA Intermediate May 2023 Examination, and also honoured around 30 newly qualified CAs. The Management Committee of the branch also met once during the month i.e., on 04/08/2022. We are pleased to inform that the branch premises near Sakthan stand has been made fully functional and full-time classes are being delivered there. Apart from the coaching classes for Foundation, Intermediate and Final the branch conducted GMCS course also.

Onam is round the corner and festive activities are picking up. I use this occasion to wish members a very Happy Onam in advance.

Jai ICAI Jai Hind

CA. AJITH KAIMAL R
CHAIRMAN

NAIL BITING WITH GST CIRCULARS

Especially, in the manufacturing industries, when inputs GST rate is higher than outputs GST rate, the ITC is accumulated in the Electronic Credit Ledger. This amount remain unutilized practically for long period, so that refund of the same becomes necessary, to avoid blocking of working capital unnecessarily blocked in above differential rate structure. In 47th GST council meeting, some of the GST rated have been increased, to diminish inverted duty refund.

Meaning of Inverted Duty Structure

Inverted duty structure means rate of tax on inputs being higher than the rate of tax on output supplies.

As per proviso to section 54(3) of the CGST Act, 2017, refund of unutilized input tax credit shall not be allowed other than: -

- (i) Zero rated supplies made without payment of tax (Under LUT option)
- (ii) Inverted Duty Structure (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) except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council, which we, discuss in the later part of the article.

Earlier, in State Vat if the particular product used as industrial inputs which was taxed at concessional rate of Vat (5%) instead of normal rate prescribed for that products which may be normally higher than 5%. When the GST was introduced the concept of production/manufacture was replaced, by inward or outward supply, the concept of industrial inputs (concessional VAT rate) has gone, which is the main reason for the refund under Inverted duty structure. To avoid the refund under this inverted duty structure recently Government has increased the GST rate on certain products w.e.f. 18-7-2022.

3. Time Limit for Inverted Duty Structure Refund

As per Explanation 2(e) to section 54 of CGST Act 2017, refund claim can be filed within two years from the due date for furnishing of return under section 39 for the period in which such claim for refund arises (With effect from 1-2-2019).



CA MINI CHANDRAN

Prior to this CGST Amendment Act 2018 the time limit to filed refund application under invested Duty structure was two years from the end of the financial year in which such claim for refund arises. In view of the above amendment, the time limit for claiming the refund on account of inverted duty stands reduced.

Time period between date of refund claim (FORM GST RFD-01) and deficiency memo (FORM GST RFD-03) will be ignored for calculating time limit of two years in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies-Proviso to rule 90(3) of CGST Act inserted with effect from 18-5-2021.

47th GST council GST Notification No.13/2022 C.T, dated 5-7-2022 period from 1-3-2020 to 28-2-2022 to be excluded for computation of limitation period provided under section 54. (The above notification retrospective effective from 1-3-2020)

At this juncture, the time limit prescribed under section 54 not applicable if the tax is collected without authority of law. (Comsol Energy v. State of Gujarat (2021) 127 taxmann.com 736 (Guj HC). For example, GST collected on Import of ocean freight on CIF contracts as per notification which is ultra vires or unconstitutional as per MO hit Minerals (P) Ltd. case by Supreme Court is deemed to be without authority of law, the time limit is not applicable.

4. Formula for refund on account of inverted duty structure

Existing Formula: (CGST Rule 89(5))

Maximum Refund Amount= (Turnover of inverted rated supply of goods and services) *Net ITC-Adjusted Total Turnover) -- Tax Payable on such inverted rate supply of goods and services

With effect from 5-7-2022 (47th GST Council Meeting) formula is redefined as per Notification No.14/2022-CT, dated 5-7-2022 and CGST rule 89(5) modified accordingly.

New Formula: (WEF 05.07.2022)

(Turnover of inverted rated supply of goods and services)
*(Net ITC adjusted Total Turnover)-tax payable on such
inverted rated supply of goods and services) *(Net
ITC/ITC availed on inputs and inputs services)

Example: A taxpayer is making some supplies liable to
12% GST while his inputs and input services are charged
to 18% GST

(a) Adjusted Total Turnover- Rs.5000

(b) Turnover of inverted rated supply-Rs.500

(c) Tax Payable on such inverted rated supply- Rs.60

(d) Net ITC (inputs) - Rs.1000

(e) ITC availed on inputs and inputs services - Rs.1000 +
500 =1500

Pre-Amendment Eligibility of Refund (Before 5-7-2022)

$500/5000*1000-60=Rs.40$

Post Amendment Eligibility of Refund (WEF 5-7-2022)

$(500/5000*1000) -(60*1000/1500) =Rs.60$

Due to this amendment in the above cases, we can get
additional refund Rs.20 (60-40)

5. Turnover of inverted rated supply of goods and services

Not only the inverted rated supply of goods but also
services also eligible for refund calculation.

In the recent Circular No.173/05/2022, dated 6-7-2022, it
has been clarified that where inputs and output goods are
same, but the output supplies are made under a
concessional notification resulting in a lesser rate of tax
on output supplies than on inputs, the credit accumulated
on account of the same is admissible for refund under
clause (ii) of the first provision to section 54(3) of the
CGST Act. So that discussed turnover also included in
the inverted rated turnover even though the GST rate is
reduced by way of concessional notification.

With reference to above points, it is necessary as per
earlier Circular No.135/05/2020-GST, dated 31-3-2020
(Ref. paragraph no.3.2) that the refund of accumulated
ITC under clause (ii) of the first proviso to Section 54(3)
of the CGST would not be applicable in cases where the
input and the output supplies are the same. But Circular
No.37/11/2018-GST dated 15-3-2018 it was clarified
that supplier who supplies goods at concessional rate is
eligible for refund on account of inverted tax structure as
per clause (ii) of the first proviso to Section 54(3) of the
CGST Act.

Finally, as per the Circular No. 173/05/2022, dated
6-7-2022, the turnover is considered to be inverted duty
turnover, even its normal GST rate is reduced by
concessional notification that results in its inputs GST rate
higher.

For example, any equipment or instruments sold to
research institution is taxed at concessional rate 5% by
GST Notification No. (45/2017-CT(Rate) can be included
in inverted duty structure for refund or otherwise it is
option of the dealer to set off the same in other GST
liability without applying for refund, if possible.

6. Net ITC

It shall mean input tax credit availed on inputs during the
relevant period other than the input tax credit availed for
which refund is claimed under sub rules (4A) or 4(B) or
both.

Only inputs, not input services and capital goods are
eligible for refund. Further as per section 54(3) refund of
unutilized input tax credit (this includes inputs, input
services also) shall be allowed, whereas the CGST rule
89(5) Explanation (a) restricts refund only, to inputs only
not input services and capital goods.

The conflict of section (54(3) versus rule 89(5) is finally
resolved in the recent decision of Supreme Court in VKC
Footsteps India Pvt. Ltd. Reported at 2021-VIL-81-SC) it
holding that only inputs are eligible for inverted duty
structure refund. The Explanation (a) of rule 89(5) of the
CGST Rules which defines Net ITC, excludes Input
Services from its purview is valid. Finally, the Inputs are
eligible, for refund under Invested Duty structure. Input
services and capital goods are not eligible for considering
the inverted duty structure refund.

But new formula introduced in the 47th GST council
meeting, the GST on input services would also be
considered for refund calculation. It may increase the
refund as explained in the in item 4 above.

As per paragraph no. 36 of Circular No.125/44/2019-GST
dated 18-11-2019 input credit available only in GSTR-2A
is eligible for refund after deducting ineligible credit.
Even after introduction of 16(2) (aa) with effect from
1-1-2022, input tax credit reflected in GSTR 2A is eligible
for the purpose of refund. Even today as per above
analysis only GSTR 2A is relevant not GSTR-2B but for
the of taking ITC 2B is more relevant.

2. Export of goods attracting nil rate of duty--Bar on refund under inverted duty structure

As per second proviso to section 54(3) of the CGST Act, no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty.

Third proviso to section 54(3) provides that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

The term 'duty' is defined under clause (15) of section 2 of the Customs Act, 1956 to mean a duty of customs leviable under the Act. There may be cases that customs duty is leviable on certain goods, but the same is exempt from levy by issuing a specific exemption notification or there is Nil rate of duty on some goods.

In this regard some doubts have arisen as to whether restriction contained under second proviso to section 54(3) is applicable in respect of export of goods which attract Nil rate of duty.

In order to decide the above issue, let us see difference between the expression 'leviable to duty' under clause (15) of section 2 of the Customs Act and the expression 'subjected to duty' used in sub-section (3) of section 54 of the CGST Act.

Now the question arises as to whether where goods attract nil rate of customs duty or where the customs duty is exempted by issuing an exemption notification, the goods would be still regarded as 'leviable to customs duty' and whether it can be regarded as 'subjected to export duty' as no customs duty is payable on such goods.

The CBIC vide para 3 of Circular No. 160/16/2021-GST, dt. 20-9-2021 examined the issue as to whether the first proviso to section 54(3) of CGST/SGST Act, prohibiting refund of unutilized ITC, is applicable in case of exports of goods which are having NIL rate of export duty. In the above Circular, it has been clarified that the term 'subjected to export duty' used in first proviso to section 54(3) of the CGST means where the goods are actually leviable to export duty and suffering export duty at the time of export. Therefore, goods in respect of which either NIL rate is Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under

Second Schedule to the Customs Tariff Act, 1975, cannot be considered to be subjected to any export duty under Customs Tariff Act, 1975.

It has been thus clarified that only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) from availment of refund of accumulated ITC. Goods, which are not subject to any export duty and in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, would not be covered by the restriction imposed under the first proviso to section 54(3) of the CGST Act for the purpose of availment of refund of accumulated ITC.

3. Orissa High Court's decision in favor of assessee

In the case of M/s B. S. Minerals v. State of Odisha and Others (W.P. (C) No. 34402 of 2021) it was held that that only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) from availment of refund of accumulated ITC. Goods, which are not subject to any export duty and in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, would not be covered by the restriction imposed under the first proviso to section 54 (3) of the CGST Act for the purpose of availment of refund of accumulated ITC.

Also, in the case of National Ventures (P) Ltd., v. UOI & Ors. (2022) 61 GSTL 395 (Ori-HC), the Orisha High Court examined the issue as to whether refund of input tax credit under inverted duty structure is allowable in respect of goods which are not subject to any export duty and in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975. In this case, the assessee challenged order passed by the Adjudicating authority rejecting the application for refund

of unutilized balance of input tax credit under section 54 of the Odisha Goods and Services Tax Act, 2017, on the ground that the levy of Nil Rate of Tax on exported goods, i.e., 'Iron Ore Fines' falling within the fold of Code No. 26011142 specified under Second Schedule of the Export Tariff appended to the Customs Tariff Act, 1975 does not qualify for refund of GST paid in view of Clause (i) of Proviso to sub-section (3) of section 54 of the OGST/CGST Act as arbitrary and without application of mind.

Keeping in view of the clarification of the CBIC and decision of the Court in B.S. Minerals case, the Court set aside the order passed by the Appellate Authority and remanded the matter to that authority for deciding the appeal afresh.

4. Conclusion

In view of the above discussion, it may be concluded that the restriction contained under sub-section (3) of section 54 is applicable only to those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export. It would not be applicable to the goods, which are not subject to any export duty and in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975.

Practical Titbits on Recent Amendments in GST

The CBIC has recently issued seven circulars on procedural and clarificatory aspects of GST law. Below, the learned Author has presented some of the clarifications, which he believes would have an impact on most taxpayers and therefore warrant attention of RTPs.

1. Furnishing of information regarding inter-state supplies made to unregistered persons, composition taxpayers and UIN holders

Many taxpayers were not reporting such details correctly in the Form GSTR-3B and the address of the customers in such transactions was not being correctly captured by the taxpayer in tax invoices. This issue was observed in those suppliers who were engaged in providing banking,

insurance, finance, stock-broking, telecom, digital payment facilitation, OTT platform services and E-commerce operators. This was resulting in incorrect declaration of place of supply on not only the tax invoices but also the GST returns. As per the Circular, it has been advised to report these details accurately and place of supply wise in the GST monthly returns.

The taxpayers have been advised to update their customer database properly with correct state name and address, to ensure correct state and place of supply is appearing on the GST invoices issued to such persons and disclose all such transactions place of supply wise in the GST returns.

In our view, for certain industries like banking, telecom, finance, OTT etc which have large, unregistered customers in their database, updating these details and ensuring correct data capture would be a herculean task and would increase the compliance burden.

2. Furnishing of input tax credit details

The Circular seeks to standardize the manner of reporting of input tax credit related details such as input tax credit availed, reversed, and not claimed. These provide guidance on bucketing of input tax credits to be reversed or not claimed and also guide on the presentation and disclosure aspects. Recently with effect from January 2022, the Form GSTR - 2B which auto populates the input tax credit details based on Form GSTR - 1 filed by suppliers (i.e., vendors of the taxpayer), was introduced and it was mandatory for taxpayers to reconcile their own input tax credit registers with this Form GSTR - 2B and restrict their input tax credit claims only to the extent the same reflected in Form GSTR - 2B. Thus, in our view, this Circular provides much needed clarifications on presentation and disclosure aspects including mismatches with Form GSTR - 2B and would streamline the government data collection.

3. Clarification regarding demand and penalty provisions concerning fake invoices

Fake invoicing is a serious menace under the GST laws and the authorities are taking a tough stand on all instances where GST invoices are being issued without any underlying supply of goods or services. Industry sought clarifications on demand and penalty provisions for fake invoices. In this regard, it was clarified that as person who has issued tax invoice, has done so without supply of any

underlying goods or services, the same does not qualify as a supply within meaning of GST laws. As there is no supply in respect of such tax invoice, no proceedings for demand, recovery and payment of tax can be initiated against such taxpayer. The person shall however be liable for penal action under section 122(1) (ii) of the CGST Act for issuance of tax invoice without actual supply of goods or services. The minimum penalty for such offence is Rs. 10,000.

Further, it was also clarified that the recipient of input tax credit cannot take input tax credit against such fake invoices. Any input tax credit availed and utilized needs to be reversed along with applicable interest. Authorities may also demand penalty by issuing a show cause notice under section 74 of the CGST Act.

Considering these clarifications, it is important for taxpayers to identify such fake invoices and ensure that they do not claim input tax credit against such fake invoices.

4. Perquisites provided by employer to employee under contractual agreement

Under the GST laws, services provided by an employee to employer in the course of employment, have been kept outside the ambit of GST as the same are neither a supply of goods nor services. It has been clarified by CBIC that perquisites provided by the employer to the employee under a contractual agreement shall not be subjected to GST when the same are provided in terms of the contract between the employer and employee. Thus, based on the Circular, it is advisable for companies to review that the employment letters issued to its employees clearly document and define all perquisites provided.

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

It is clarified that any payment towards output tax, whether self-assessed in the GST return or payable because of any proceeding instituted under the provisions of GST Laws (for example, department audits, show cause notices etc.) can be made by utilization of the amount available in the electronic credit ledger of a registered person. Thus, one can use unutilized input tax credit balance for such tax paid and need not pay the same in cash. There are some

restrictions on utilization of the input tax credit balance that are mentioned in the Circular. Taxpayers are advised to go through the circular carefully before utilizing their credit ledger balances for payments other than tax.

CA MINI CHANDRAN

Glimpses

AUGUST 22



05.08.2022

CPE SEMINAR ON FINANCIAL REPORTING OF NON - CORPORATE ENTITIES
SPEAKER: CA.RENGARAJAN G



12.08.2022

WEBINAR ON CYBER SECURITY AND AWARENESS
MR.SREESHANKAR GURUJALAM

Glimpses

AUGUST 22



25.08.2022

CPE SEMINAR ON TAXATION OF TRUSTS & PANEL DISCUSSION OF RECENT DIRECT TAX CHANGES
SPEAKER: CA. PRASANTH SREENIVAS



29.08.2022

CPE SEMINAR ON CHIT FUNDS-ACCOUNTING PROBLEMS AND SOLUTIONS
INAUGURATED BY : MR. CP VINCENT (THRISSUR DISTRICT REGISTRAR) SPEAKER: CA. VIPIN K K

Glimpses

AUGUST 22



30.08.2022

ONE DAY CPE SEMINAR ON GST

INAUGURATED BY : MR. VP NANDAKUMAR (MD AND CEO OF MANAPPURAM FINANCE LTD.)

SPEAKERS: CA.SANKARANARAYANAN V, CA.RAMANKUTTY K R



15.08.2022

INDEPENDENCE DAY CELEBRATIONS

FLAG HOISTING BY CHAIRMAN CA. AJITH KAIMAL R

Glimpses

AUGUST 22



20.08.2022

ONE DAY LADY CA CONFERENCE "JWALA'22", ORGANIZED BY WOMEN'S CLUB OF THRISSUR BRANCH OF ICAI
UNDER WOMEN MEMBER EMPOWERMENT GROUP OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

CHIEF GUEST: CA .DEENA JACOB (CO-FOUNDER & CFO OPEN FINANCIAL TECHNOLOGIES PVT LTD)

CONFERENCE DIRECTOR :CA. SRIPRIYA K (CHAIRPERSON,WMEC)

CONFERENCE COORDINATOR : CA. SATHEESAN P(CHAIRMAN SICASA, SIRC)

SPEAKERS: CA.REVATHY RAGHUNATHAN (REGIONAL COUNCIL MEMBER), CA.DIVYA ABHISHEK,
CA.DEEPA PRAVEEN, & MS.LATHA HEMANTH

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HAPPY Onam



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