

Office of the
Commissioner of State Tax,
(GST), 8th floor, GST Bhavan,
Mazgaon, Mumbai-400010.

TRADE CIRCULAR

To,

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No. JC/HQ-I/GST/Refund/Trade Circular/01/2017-18 Mumbai, Date: 01/09/2018

Trade Cir. No. 22 T of 2018

To,

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Subject : Processing of final refund under the GST.

- Ref.**
- (1) Trade Circular No. 49 of 2017 dated 28th Nov. 2017.
 - (2) Internal Circular No. 24A of 2017 dated 11th Dec. 2017.
 - (3) Internal Circular No. 27A of 2017 dated 30th Dec. 2017.
 - (4) Trade Circular 1T of 2018 dated 1st Jan. 2018.
 - (5) Trade Circular No. 8T of 2018 dated 21st Feb. 2018.
 - (6) Trade Circular No. 17T of 2018 dated 2nd June 2018.
 - (7) Internal Circular No. 19A of 2018 dated 18 July 2018

Sir/Gentlemen/Madam,

1. Background:

- 1.1. Your attention is invited towards the Trade and Internal Circulars cited at Ref. above, issued to explain procedure for manual processing of Refund claims under GST law. Central Board of Indirect Taxes and Customs (CBIC) had also issued the Circulars on the captioned subject matter.
- 1.2. Since issuance of aforesaid Circular(s), it has brought to the notice of this office that in many cases, during the verification of the claim of refund either provisionally or, as the case may be, the final refund, there are instances where the tax payer, has either erroneously claimed the refund of accumulated credit, or of the IGST paid in case

of exports. It has also been reported that in certain cases the refund is claimed in respect of input tax credit that is inadmissible under the GST law or where there is mis-match or un-match of the input tax credit availed by the recipient and that passed on by the supplier. It is further reported that due like reasons, Nodal Officer(s) have denied the refund either partly or fully. Therefore, under such circumstances, the Nodal Officers have rejected the refund so claimed.

- 1.3. On this background, refund claimed or granted erroneously necessitates the initiation of proceedings for Demand and Recovery under appropriate provisions of GST law.
- 1.4. For aforesaid reasons an Internal Circular 19A of 2018 dated the 18th July 2018 was issued and certain instructions/guidelines were given so as to examine the availment and utilization of Input Tax Credit by the taxable person who has filed refund application.
- 1.5. In continuation of the said Internal Circular, it has, now, become imperative to issue certain instructions with regards to the procedure to be followed for verification of availment of input tax credit, rejection of refund, re-credit of rejected refund, initiation of Audit proceedings and subsequent actions for raising demands and recovery of the same.
- 1.6. As explained above, the Internal Circular 19A of 2018 dated the 18th July 2018 had outlined the procedure for verification input tax credit vis-à-vis its admissibility/non-admissibility and maintenance of refund related information in the Annexure(s) appended to said Circular.
- 1.7. The verification of ITC need to be undertaken in terms of provisions contained in CHAPTER V and more particularly section 16, 17, 18, 19, 20 and 21 of Maharashtra Goods and Services Tax Act, 2017 (hereinafter referred to as “MGST Act”) which determines the admissibility or in-admissibility of the ITC.

2. Applicability of this Trade Circular:

- 2.1. The procedure and methodology laid down in this Trade Circular shall be applicable to all the pending 10% refund claim pertaining to the

Export of goods or services or both and in respect of all the pending refund applications pertaining to the supplies made to the Developer of SEZ or SEZ Unit, inverted tax structure and deemed export.

2.2. To explain aforesaid aspects this Trade Circular is divided into **TWO** parts as given below:

Sr. No.	Particulars	Aspects covered
1.	PART-A	Legal aspects about the admissibility or in-admissibility of ITC under MGST Act and rules made thereunder
2.	PART-B	Quantification of eligible and in-eligible refund amount, and further process in this behalf.

PART-A

Legal aspects about the admissibility or in-admissibility of ITC under MGST Act and rules made thereunder:

1. Verification of refund claim and related documents:

1.1. It may be worth to note that the Refund application in FORM-GST-RFD-1A, debit entry in the Electronic Credit Ledger/Cash Ledger (wherever required), GSTR-3B, GSTR-1, tax invoices and auto-drafted invoice level inward supplies details in FROM-GSTR-2A are vital and primary documents that facilitates determination of the eligible amount of refund under SGST Act/CGST Act/IGST Act/Cess Act.

1.2. Among aforesaid documents, the applicant is required to submit along with refund application in FORM-GST-RFD-01A with requisite declarations and undertakings, the tax invoices, Statement in Proforma (in Excel) attached to Internal Circular 19A of 2018 dated 18th July 2018 and soft copy of latest GSTR-2A consisting details of supplies made for the month for which refund application is filed.

- 1.3. In case, the supplier has carried out the amendments, to the invoices uploaded with return in FORM-GSTR-1, in the subsequent return period or has added certain missed invoices in the subsequent month GSTR-1 return, it becomes necessary to provide all such information i.e. auto-drafted GSTR-2A in order to cross-verify the ITC availed by the refund applicant and that passed on by the supplier.
- 1.4. There would be situations where the refund applicant is filing return in GSTR-1 with monthly periodicity, whereas the supplier is filing his GSTR-1 return quarterly. Under such eventuality, to compute the match, mis-match or un-match of ITC qua these tax payers who opts of submit GSTR-1 quarterly, it would be absolutely necessary that the refund applicant shall take return filing frequency into account and submit the GSTR-2A or inward supply invoices details to the concerned Nodal Officer.
- 1.5. It may be noted that the GSTR-2A has been made available on the SAP portal. For accessing said GSTR-2A and more details please refer USER MANUAL available on the SAP portal.
- 1.6. On this backdrop, to determine the refund amount correctly, the Nodal Officer shall adhere to the procedure given in earlier Circulars and verify the documents and GSTR-1, GSTR-2A, GSTR-3B and FORM-GST-RFD-1A and all the documents mentioned in those Circulars, carefully and collate all the information contained therein and apply the appropriate provisions contained under section 16 to section 21 as also the formula given in rule 89(4) or 89 (5) of the MGST Rules. On careful examination of aforesaid, the Nodal Officer shall determine ITC that is:
 - (1) **Admissible**
 - (2) **In-admissible or in-eligible**
 - (3) **Un-match or mis-match**

2. Legal provisions relating to availment of Input Tax Credit:

- 2.1. In order to decide the admissibility or in-admissibility or ineligible ITC, the provisions of section(s) 16 to 21 shall be taken into consideration. The important provisions are discussed herein under:

2.2. On fulfilling following conditions Registered person is entitled to avail the input tax credit *[Please see section 16]*,

- (1) recipient is in possession of the tax invoice or debit note issued by the supplier holding the VALID GST number (GSTIN).
- (2) the recipient has received the goods except in the cases where transaction is in bill to ship to nature. *[Please see Explanation to section 16(2)(b)]*.
- (3) tax charged in respect of supply has been actually paid to the Government either in cash or through utilization of input tax credit admissible in respect of said supply. (Except for Composition tax payer, the payment of tax can only be made through GSTR-3B and hence to allow claim of ITC qua supplier, the filing of GSTR-3B becomes mandatory). *[Please section 16(2)(c)]*.
- (4) recipient has furnished the return in FORM-GSTR-3B and FORM-GSTR-1.
- (5) in case the goods are received in the lots then the recipient shall be entitled to take ITC upon receipt of last lot or instalment.
- (6) in case the tax payer has failed to pay to the supplier of goods or services both (except the supplies where tax is payable on reverse charge basis), the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier then **such input tax credit may be taken once said outstanding payment is made to the supplier.**
- (7) In case, the registered person has claimed depreciation in respect of the tax component of the cost of the capital goods and plant and machinery, as per the Income Tax Act, 1961, then the ITC in respect of said component of tax shall not be allowed. So as to ascertain this, the Nodal Officer need to raise specific query to the tax payer and ask for the explanation in this behalf. The ITC claimed under this scenario is in-eligible/in-admissible. In

other words, no refund is available in respect of such ITC; even in the cases where refund is claimed of IGST paid.

- (8) The registered person *shall not be* entitled to take ITC in respect of any invoice or the debit note for supply of goods or services or both after the due date for furnishing the return for the month of September of the following financial year to which such tax invoice or debit note relates or furnishing the relevant annual return, whichever is earlier.

2.3. **Apportionment of the credit:** The Refund Processing Officer is required to determine the apportionment of the credit, on the basis of the contingencies given in section 17, 18, 19, 20 and 21 of the MGST Act. The important provisions are briefly discussed below:

(1) **Apportionment of Credit attributable to business purpose and for other than business purposes:**

- (a) Section 17 of the MGST Act provides that the registered person shall be entitled to take the credit to the extent as is attributable to the purpose of the business or the taxable supply.
- (b) In other words, the taxable person *shall not be* entitled to take the input tax credit in respect of the goods or services or both that are used for other than the business purposes or are used for making the exempt supplies.
- (c) On this basis, admissibility or in-admissibility of the input tax credit shall be determined proportionately. For this purpose, please visit the provisions given in rule 42 and 43 of the MGST Rules.

(2) **Banking company or a financial institution including a non-banking financial company:**

- (a) Banking company or a financial institution including a non-banking financial company (for short “Banking Company”) that is engaged in supplying services by way of accepting deposits, extending loans or advances. As the majority of the supply of Banking Company relates to accepting deposits,

extending loans or advances, which is exempted from the GST (Notification No. 12/2017-Entry-27 Service Code-9971). In order to facilitate better compliance, Banking Company, may exercise the options as given below:

- (i) either comply with the provisions of section 17(2) as discussed in preceding i.e. avail the credit in the proportion of taxable supply and exempt supply; or
 - (ii) alternatively, avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse.
- (b) Once the Banking Company chooses one of the option as above, it is not allowed to withdraw the said option during the remaining part of the financial year.
- (c) the restriction of fifty per cent. is not applicable to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number. In other words, the restriction of 50% ITC in relation to inter-branch taxable supply is not applicable.
- Example. State Bank of India, Mazgaon Branch make the tax paid supply to State Bank of India, Delhi branch or one business vertical of SBI is making tax paid supply to another business vertical of SBI provided they are having the same PAN. The aforesaid restriction of 50% ITC is not applicable.

(3) In addition to the aforesaid aspects, it may be noted that the registered taxable person **shall not take credit of input tax in respect of the contingencies given in clause (A) to (I) below:**

—

- (A) motor vehicles and other conveyances except when they are used for making the following taxable supplies, —
- ✓ of such vehicles or conveyances; or
 - ✓ of transportation of passengers; or
 - ✓ for imparting training on driving, flying, navigating such vehicles or conveyances;

- (B) motor vehicles and other conveyances for transportation of goods;
- (C) the following supply of goods or services or both—
- (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;
 - (ii) membership of a club, health and fitness centre;
 - (iii) rent-a-cab, life insurance and health insurance except where the services as notified are obligatory for an employer to provide to its employees under any law for the time being in force; or
 - (iv) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and
 - (v) travel benefits extended to employees on vacation such as leave or home travel concession;
- (D) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;
- (E) 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.
- the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;
- (F) tax paid in respect of supplies received from the tax payer who opts to pay an amount in lieu of tax under composition as per section 10 of the MGST Act

- (G) goods or services or both received by a non-resident taxable person except on goods imported by him;
- (H) goods or services or both used for personal consumption;
- (I) goods that are lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

2.4. The availability of credit is also dependent on the conditions and restrictions given in section 18, the important provisions are discussed in the TABLE below, -

Sr. No.	Conditions and restrictions	Availability of input tax credit	Inputs in column (c) are held
(a)	(b)	(c)	(d)
(1)	taxable person has applied for registration within the 30 days from the date on which he has become liable for registration. <i>[Section 18(1)(a)]</i>	in respect of inputs held, - (i) in stock and (ii) inputs contained in semi-finished or finished goods held in stock	• on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act
(2)	Registration has been taken voluntarily [See section 25(3) of the MGST Act] provided that the Turn-over has not been exceeded the threshold limit on the date of registration. <i>[Section 18(1)(b)]</i>	in respect of inputs held, - (i) in stock and (ii) inputs contained in semi-finished or finished goods held in stock	• on the day immediately preceding the date of grant of registration.
(3)	Where registered person ceases to pay tax under section 10. <i>[Section 18(1)(c)]</i>	in respect of inputs held,- (i) in stock and (ii) inputs contained in semi-finished or finished goods held	• on the day immediately preceding the date from which he becomes liable to pay tax at normal rate.

Sr. No.	Conditions and restrictions	Availability of input tax credit	Inputs in column (c) are held
(a)	(b)	(c)	(d)
		in stock and on capital goods	<ul style="list-style-type: none"> input tax credit shall be available as determined under rule 44 of MGST Rules.
(4)	<p>Where an exempt supply of goods or services or both by a registered person becomes a taxable supply.</p> <p>Section 18(1)(d)]</p>	<p>in respect of inputs held, -</p> <p>(i) in stock and</p> <p>(ii) inputs contained in semi-finished or finished goods held in stock and on capital goods exclusively used for such exempt supply.</p>	<ul style="list-style-type: none"> on the day immediately preceding the date from which such supply becomes taxable the set-off on the Capital Goods is to be reduced as provided in rule 40(1)(iv).
(5)	<p>A registered person in respect of supply of goods or services or both to him after the expiry of ONE year from the date issuance of tax invoice relating to said supply shall not be entitled to claim ITC in aforesaid circumstances.</p>		<ul style="list-style-type: none"> [Section 18(2)]

2.5. In addition to the conditions and restrictions for availment of input tax credit, explained above, there are certain other contingencies given in section 18 where the input tax credit is not available or restricted. These aspects are explained in the TABLE below:

Sr. No.	Conditions and restrictions	Consequences
(1)	<p>Change in constitution on account of sale, merger, demerger, amalgamation, lease or transfer of business with specific provision of transfer of liabilities.</p> <p>[Section 18(3)]</p>	<ul style="list-style-type: none"> the said registered person shall be allowed to transfer the input tax credit which remains <u>unutilised</u> in his electronic credit ledger to such sold, merged, demerged,

Sr. No.	Conditions and restrictions	Consequences
		<p>amalgamated, leased or transferred business.</p> <ul style="list-style-type: none"> • FORM GST ITC-02 is required to be used for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee: [Please see the Rule 41 of the MGST Rules].
(2)	<p>Any registered person who has availed of the credit, -</p> <p>(a) but subsequently opt to pay tax under Composition Scheme, or</p> <p>(b) where the goods or services or both supplied by him become wholly exempt.</p> <p style="text-align: center;"><u>[Section 18(4)]</u></p>	<ul style="list-style-type: none"> • shall pay an amount through debiting the electronic credit ledger equivalent to the credit of input tax held, - <ul style="list-style-type: none"> ✓ in stock and ✓ inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately before the day on which option is exercised. ✓ the credit in respect of capital goods shall be reduced as given in rule 44(3) of the MGST Rules. ✓ it may be noted that any balance remaining in the electronic credit ledger after payment as aforesaid <u>shall lapse.</u>
(3)	<p>(a) In case of supply of capital goods or plant and machinery, on which <u>input tax credit has been taken</u>,</p> <p>(b) where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap,</p> <p style="text-align: center;">[Section 18(6)]</p>	<ul style="list-style-type: none"> • shall pay on transaction value as determined under section 15, an amount equal to the input tax credit taken on the said capital goods or plant and machinery • the credit in respect of capital goods shall be reduced as given in rule 44(3) of the MGST Rules. •

2.6. To determine the admissibility of ITC the provisions of section 19 relating to taking credit in respect of inputs and capital goods sent for job work; section-20 manner of distribution of credit by the Input Service Distributor and section 21-dealing with the manner of recovery of credit pertaining to the input service distributed in excess need to be kept in mind. These provisions may not be applicable to all tax payers seeking refund, however, these would be useful in the cases where aforesaid circumstances exist.

3. Availment of Transitional Credit under existing laws:

3.1. The Transitional Credit pertaining to the existing laws is allowed to be taken into Electronic Credit Ledger as per the conditions and restrictions provided under section 140 and 142 of the MGST Act. These aspects are explained in Internal Circular 1A of 2018 1st January 2018. It may be noted that the refund of Transitional Credit is not available when the goods or services are exported or are supplied to Developer of Special Economic Zone or SEZ Unit without payment of tax. This aspect has also been explained vide Trade Circular 17 T of 2018 issued on 2nd June 2018. Therefore, when the applicant files application for refund of accumulated ITC then the Nodal Officer shall not allow the refund on account of Transitional ITC taken into Electronic Credit Ledger under the GST.

PART-B

Quantification of eligible and in-eligible refund amount, and further process in this behalf.

1. **The documents or information related to input tax credit that need to be verified and kept on record:** For quantification of eligible or in-eligible refund the Nodal Officer shall verify the following documents or information:
 - 1.1. Physical copies of the inward supply tax invoices submitted by the refund applicant;
 - 1.2. As explained in Internal Circular 19A of 2018 dated 18th July, 2018, an auto-drafted GSTR-2A for the period corresponding such claim and

containing the details of the invoices for inputs or input services or, as the case may be the capital goods, shall be made available by the tax payer-refund applicant (hereinafter referred to as “claimant tax payer”). This auto-drafted GSTR-2A consists of invoice level details of the supplies made to the tax payer [i.e. recipient-refund applicant on the basis of which ITC is availed] which includes details of B2B invoices, credit/debit notes, Amendment to B2B invoices and Amendment to credit/debit notes, ISD Credit and Amendment to ISD credit etc.;

- 1.3. The Nodal Officer, may on SAP portal i.e. MAHAGST, raise a request as per the MANUAL available on the said portal. On accessing the GSTR-2A, as made available on the SAP portal, the Nodal Officer shall take appropriate care to examine the GSTR-2A of the relevant period including the GSTR-2A, the amendments made by the supplier in respect of the supplies made to refund applicant qua month for which the refund application is filed.
- 1.4. The return filing frequency of the supplier as also the amendments made to the subsequent months GSTR-1 and addition of missing invoices by the supplier shall also be taken into account while determining the match, un-match or mis-match in the input credit availed by the refund applicant and that is passed on by the supplier.

Example:

- (a) Recipient M/s ABC has filed the refund application for Rs. 1,00,000/- for the month of December-2017 having monthly periodicity of filing GSTR-1.
- (b) M/s ABC has received the inward supply from the supplier, -
 - ❖ M/s XYZ whose frequency of filing return is monthly. He has supplied the goods through 4 invoices. However, while filing GSTR-1 he has missed one invoice and for one invoice ITC passed on is wrongly stated i.e. instead of say Rs, 500 of SGST and CGST credit each it has shown Rs.300 each.

- ❖ M/s XYZ has amended the one invoice in the month of February-2018 and shown the correct credit passed on at Rs. 500/- CGST and SGST each.
- ❖ M/s XYZ has added the missed invoice in the month of April-2018.

(c) In this case, the Nodal Officer is required first to confirm the mismatch or the un-match qua supplier. On confirming this, refund applicant may be asked to explain the same and produce the necessary details in this behalf i.e. the GSTR-2A for the month of February-2018 and April-2018, for the purpose of amendment to the invoice and addition of missed invoice.

- 1.5. In addition to the GSTR-2A available on the SAP portal, the Economic Intelligence Unit of the Department will also provide the information about the input tax credit passed on by the supplier and availed by the recipient i.e. refund applicant. This data would be at GSTIN level viz., B2B, debit notes and credit notes, amendment to B2B invoice and amendment to debit notes and credit notes. This data will give overall picture about the ITC as per GSTR-3B and passed on by the supplier. [This is the additional facility provided by the EIU].
- 1.6. In addition to the auto-drafted GSTR-2A, the tax payer may be asked to submit the details of inward supplies in the Proforma appended to the Internal Circular 19A of 2018 dated the 18th July 2018.
- 1.7. Further, in case the input tax credit claim pertains to the IGST on account of import of goods then the tax payer may be asked to produce the information in following format with the copies of the Bill of Entries filed while clearing the goods for home consumption:

Sr. No.	B.E. No.	Date of B. E.	C.I.F. Value	Basic Custom Duty paid	Integrated tax paid

1.8. In case the input tax credit claim pertains to the IGST on account of import of services then the tax payer may be asked to produce the information in following format:

Sr. No.	Country of Import	Invoice No.	Invoice Date	Tax rate (%)	Total Invoice Value	Total Taxable Value	IGST	CESS

2. Verification of tax invoices for inward supply, details of GST paid on reverse charge mechanism and other relevant documents:

2.1. Scrutiny of refund application, ARN receipt, Statement under rule 89 and Tax invoice etc.

- (1) Upon receipt of the Refund Application in FORM-GST-RFD-01A, ARN receipt and relevant Statement depending upon the Nature of refund, the Nodal Officer shall verify the content of the refund application and enclosures and declarations or undertaking enclosed therewith. These aspects had already been explained in the earlier Circulars issued in this behalf.
- (2) Comparison of Turn-over shown in refund application in FORM-GST-RFD-01A, GSTR-3B and GSTR-1, any deviation in this respect shall be reconciled. Unless said deviation is reconciled properly refund shall not be granted. Any deficiency in the refund application to be dealt with the procedure given in the earlier Circular(s).
- (3) The return filing status of refund applicant and status about the suppliers filing of GSTR-3B and GSTR-1 shall be confirmed. This may be done on the basis of the data provided by the EIU.
- (4) In case, the supplier has failed to file return in FORM-GSTR-3B or GSTR-1 or both, then this may be brought to the notice of the tax payer. After giving reasonable compliance window, if the default is not made good then the input tax credit in relation to these non-filers shall not be allowed.

- (5) In case of refund is on account of availment of IGST credit from the supplier who is located in other State and who has not filed the GSTR-3B or GSTR-1 or both, then recipient may be asked to pursue the supplier to make this default good.
- (6) The Nodal Officer shall ensure that the tax invoices submitted by the tax payer meets all the requirements given in rule 46 and rule 48 of the MGST Rules. Verification of inward supply tax invoices shall be carried out properly,
- (7) The verification of the outward supplies including confirmation of export from ICEGATE shall be done before grant of 90% refund.

3. Claim of refund and cross-checking of the Input Tax Credit availed or utilized:

3.1. Verification of GSTR-RFD-01A, GSTR-3B and GSTR-2A:

- (1) As explained above, the verification of aforesaid application/returns shall be carried out with appropriate reconciliation.
- (2) It is necessary to compare the ITC claimed in GSTR-3B vis-à-vis that is claimed in FORM-GST-RFD-01A. The applicant shall be asked to explain the discrepancy in this behalf. The explanation in this behalf shall be kept on record.
- (3) The input tax credit availed/utilized by the tax payer for making outward supply i.e. Zero-rated supply of goods without payment of IGST or supply of goods or services or supply to the Developer of Special Economic Zone or Unit in SEZ with or without payment of IGST, or on account of inverted tax structure or deemed exports, need to be cross-checked appropriately.
- (4) The admissibility of ITC shall be determined on the basis of the provisions of MGST Act which are explained in the preceding Para's. Once the admissible or in-admissible ITC claim is determined then the exercise of matching of ITC shall be carried out.

3.2. Determination of eligible refund amount:

- (1) The supply on account of exports of goods without payment of IGST need to be verified from the ICEGATE portal. Whereas, exports of services with or without payment of IGST need to be verified and confirmed on the basis of the export/supply related documents including the Foreign inward remittance Certificate/Bank Reconciliation Certificate etc. The aspects of verification of outward supply i.e. the deemed exports, supplies having inverted tax structure including supplies made to merchant exporters with 0.05% SGST/CGST or 0.1% IGST had been elaborately explained in the Circular(s) issued from time to time, in this behalf.
- (2) In short, this Circular refers to the outward supply in the limited context of determination of the output liability or, as the case may be, confirming the nature of outward supply more particularly exports, inverted tax structure or the deemed exports.
- (3) On carrying out the verification as above, the eligible amount of refund need to be determined on the basis of the nature of refund viz. refund on account of IGST paid on export of services, refund of accumulated credit on account of export of goods etc. It may be noted that the rule 89(4) of the MGST Act/CGST Act provides for the formula for determination of refund amount.
- (4) Refund on account of inverted tax structure shall be processed as given in rule 89(5).
- (5) **Retrospective change in formula for calculation of refund on account of Inverted tax structure:** The amendment to rule 89(5) is explained below:
 - (a) Prior to 18th April 2018, the refund of accumulated input tax credit on account of inverted tax structure was calculated as per the formula given below:
Maximum Refund Amount = {(Turnover of inverted rated supply of goods) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods.

- Adjusted TO means total Turn-over less Nil rated and Exempted but including Zero rated supplies.
- ITC was having the same meaning given in rule 89(4) of the MGST Rules.

(b) **However, vide notification No. 21/2018 State tax dated the 18th April, 2018 formula in the sub-rule (5) of rule 89 was amended. The effect of 1st July 2017 to the said sub-rule was given vide notification No. 26/2018 State Tax dated 21-06-21018.**

(c) **The new formula made applicable retrospectively with effect from 1st July 2017, is as under:**

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

- **“Net ITC” 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 (4B) or both; and**
- **“Adjusted Total turnover” shall have the same meaning as assigned to it in sub-rule (4).]**

(d) **As appears from the aforesaid formula now the turn-over of supply of goods and services is required to be taken into account for determination of maximum amount of refund. Further, the term “Net ITC” after amendment includes “ITC” on account of inputs [as defined under 2(59)] i.e. inputs on account of goods other than capital assets.**

(6) **In view the said retrospective amendment the Nodal Officer shall take this into account and accordingly determine the maximum amount of refund allowable.**

3.3. Sanction or rejection of final refund of 10%:

- (1) The cases where final refund of 10% is pending i.e. where refund order in FORM-GST-RFD-06 is not issued, in all such cases the balance 10% refund shall be given only after undertaking Audit as provided under section 65 of the MGST Act.
- (2) The Audit should be undertaken so as to verify the extent of the ITC that is admissible. The Nodal Officer shall also verify the match, mis-match or un-match of ITC with the claim made by the refund applicant and that is passed on by the supplier.
- (3) In case the ITC claim is prima-facie found to be in-admissible or there is mis-match or un-match, then in all such cases the balance refund of 10% or such percentage of refund out of balance 10% found un-match or mis-match need to be rejected. For this show-cause in FORM-GST-RFD-08 need to issued. On receipt of reply in FORM-GST-RFD-09 which in case, in the opinion of the Nodal Officer is deficient in compliance, then such balance refund shall be rejected and refund rejection order in FORM-GST-RFD-06 shall be issued.
- (4) However, in the cases where the refund relating to the inverted duty structure, on account of supplies made to SEZ developer or unit or refund on account of deemed export is pending as on the date of issuance of this Trade Circular then in all such cases the refund shall be granted only after undertaking the Audit as contemplated under section 65 of the MGST Act.
- (5) The refund rejected as above shall be re-credited and for this the order in FORM-GST-1B shall be issued along with issuance of FORM-GST-PMT-03.

4. Initiation of Audit proceedings as per section 65 of the MGST Act:

4.1. Circumstances under which the Audit proceedings need to be issued:

- (1) Audit as per provisions of section shall be initiated in all the cases where, -

- (a) provisional and final refund of 90% and 10% is granted i.e. the order in FORM-GST-RFD-04 or, as the case may be FORM-GST-RFD-06 respectively, has been issued before the date of issuance of Internal Circular 19A of 2018 dated the 18th July 2018.
 - (b) the provisional refund of 90% is given before the issuance of Internal Circular 19A of 2018.
 - (c) refund relating to the inverted duty structure, on account of supplies made to SEZ developer or unit or refund on account of deemed export, whether or not pending as on the date of issuance of this Trade Circular.
- (2) The monetary limit for initiation of Audit under section 65 of the MGST Act, in the cases falling in category (a) above and where the cumulative refund granted qua tax payer (refund applicant) exceeds Rs. 1,00,000/-.
- (3) The limit of Rs. 1,00,000/- shall be computed considering the cumulative total of the refund claimed under SGST/CGST/IGST/Cess of all the application for refund so received.

4.2. Initiation of Audit proceedings:

- (1) The section 65 of the MGST Act empowers the tax authorities to undertake the Audit. In order to conduct the Audit under this section the Commissioner of State tax, Maharashtra State, is empowered to provide the criteria for selection of the cases for Audit under section 65 of the MVAT Act.
- (2) For initiation of Audit proceedings, the Nodal Officer shall issue a notice in FOR-GST-ADT-01. The Nodal Officer, depending upon the record to be verified may decide as to whether the Audit to be carried out at the business premises of the tax payer or at the office of the concerned Nodal Officer. The place at which the Audit is to be carried out shall be expressly marked in the said Notice.
- (3) The Nodal Officer while fixing the date on which the Audit is to be carried out shall give clear 15 days' time period. The Audit Notice

shall also mention the record to be verified. Notice for Audit may be given in respect of all the refund application for a financial year.

- 4.3. During the Audit proceedings the Nodal Officer shall seek all the documents based upon which the claim is made including the documents/tax invoices relating to the Input Tax Credit.
- 4.4. The Audit shall be completed within three months from the date of submission of the record by the tax payer. The Audit findings shall be communicated to the Tax payer.
- 4.5. In case the Tax payer accepts the Audit findings and make the payment of tax, interest as determined, through FORM-GST-DRC-03. In such case, the Audit proceedings shall be closed and the closure of the Audit proceedings shall be communicated to the said tax payer.
- 4.6. However, in the cases where the tax payer disputes the Audit findings and refuses to make the default good or fails to pay the amount as determined then in all such cases, as provided under section 65(7) of the MGST Act, the proceedings for demand and recovery shall be initiated as per the provisions of the section 73 or 74 of the MGST Act.

5. The issues that need to be considered while issuing the Show-cause Notice for Demand and recovery of the refund granted erroneously or ITC availed/utilized wrongly etc. :

- 5.1. **Legal provisions:** Section 73 of MGST Act, provides for determination of tax not paid or short paid or erroneously refunded, input tax credit wrongly availed or utilized for any reason other than fraud or any willful mis-statement or suppression of facts.
- 5.2. Whereas, the section 74 provides for determination of tax not paid or short paid or erroneously refunded input tax credit wrongly availed or utilized by **reason of fraud or any willful misstatement or suppression of facts.**
- 5.3. **Thus depending upon the nature of demand and recovery the provisions of section 73 or section 74 need to be used.**
- 5.4. **Issuance of Show-cause notice:**

(1) Show Cause Notice (for short “SCN”) is the starting point of legal proceedings against the tax payer. It lays down the entire

framework for the proceedings that are intended to be undertaken and therefore while preparing the show-cause notice these aspects should be kept in mind.

- (2) As per the provisions of section 73 and 74 of the MGST Act the issuance of SCN is a statutory requirement and it is the basic document for quantifying the dispute relating to tax liability or any punitive action to be undertaken for contravention of provisions of GST Act and the rules made thereunder, in the present scenario excess or wrong claim or grant of refund.
- (3) A SCN offers the tax payer an opportunity to submit his oral or written submission before the Adjudicating Authority on the charges alleged in the SCN. The issuance of show cause notice is a mandatory requirement according to the principles of natural justice as also the provisions of section 73(1) or 74(1) of the MGST Act.

5.5. Structure of SCN:

- (1) **A SCN should ideally comprise of the following parts, though it may vary from case to case:**
 - (a) Introduction of the case
 - (b) Legal frame work
 - (c) Factual statement and appreciation of evidences
 - (d) Discussion, facts and legal frame work relating thereto
 - (e) Discussion on Limitation period
 - (f) Calculation of additional tax and other amounts due such as interest, penalty etc.
 - (g) Statement of charges-exact nature of violation of law, rules or safeguards etc.
 - (h) Service of Show Cause Notice and documents and evidences relied upon.
 - (i) Filing of Written submissions by the Tax payer and evidences supported.
 - (j) Personal hearing
 - (k) Record of personal hearing:

- (l) Analysis of issues:
 - (m) Body of the order:
 - (n) Quantification of demand and issuance of Demand Notice in FORM-GST-DRC-07.
- (2) The show cause notice under section 73(1) or the section 74(1) shall be in **FORM-GST-DRC 01**.
- (3) The statement under 73(3) or the section 74(3), a summary thereof be issued in **FORM-GST-DRC-02**, specifying the details of the amount payable
- (4) In case before the service of notice (i.e. **FORM-GST-DRC-01**) or statement (**FORM-GST-DRC-02**) the person chargeable with tax discharges the liability voluntarily (Tax and Interest) in accordance with the provisions of section 73(5) or tax liability (tax, interest and penalty) in accordance with the provisions of section 74(5), the noticee shall intimate to the proper officer of such payment in **FORM-GST-DRC-03**. The proper officer shall issue an acknowledgment in **FORM-GST-DRC 04**.
- (5) Where the taxpayer or person makes payment of tax and interest under section 73(8) of the MGST Act or, as the case may be, tax, interest and penalty equivalent to 25% as per section 74(8) of the MGST Act, within the 30 days from the service of the notice, the said tax payer shall intimate the proper officer of such payment in **FORM-GST-DRC-03** and the proper officer shall issue an order in **FORM-GST-DRC-05. On payment of the tax and interest (73(8) or as the case may be, the tax, interest and penalty (74(8))**, then the proceeding shall be deemed to be concluded in respect of the said notice.
- (6) If the taxpayer or person chargeable with tax does not agree with the additional tax liability during the course of verification or thereafter, the taxpayer shall reply to the show cause notice in FORM-GST-DRC-06. [Please see per rule 142 (4)].
- (7) The Nodal Officer/Proper Officer, after considering the representation made by the taxpayer, shall upload electronically

the order in FORM-GST-DRC-07 [as given in rule 142 (5)], specifying the amount of tax, interest and penalty payable so that liability ledger of the taxpayer gets updated accordingly.

(8) The proper officer may for the purposes given in section 161 of the MGST Act, pass rectification order in FORM-GST-DRC-08 [as per rule 142 (7)].

3. This Trade Circular is clarificatory in nature and hence cannot be made use of for interpretation of provisions of the law. Difficulty if any, in the implementation of this Circular may be brought to the notice of the office of the Commissioner of State Tax, Maharashtra.

Yours faithfully,



(Rajiv Jalota)

Commissioner of State Tax (GST)
Maharashtra State, Mumbai.

No. JC/HQ-I/GST/Refund/Trade Circular/01/2017-18 Mumbai, Date 01/09/2018

Trade Cir. No. 22-T of 2017

Copy forwarded for information and necessary action to,-

- (1) The Joint Commissioner of State Tax, (MAHAVIKAS) with a request to upload this Trade Circular on MGSTD web-site.
- (2) Deputy Secretary, Finance Department, Mantralaya, Mumbai.
- (3) Accounts Officer, Sales Tax Revenue Audit, Mumbai and Nagpur.



(Shriram H. Umale)

Joint Commissioner of State Tax (H.Q.)1
Maharashtra State, Mumbai