

To implement the recommendations of GST Council in its 47th meeting at Chandigarh, CBIC came out with various Circulars clarifying aspects relating to filing of GSTR-3B return, refunds, penal provisions etc. We provide a brief of some important recommendations as below.

Filing of GSTR-3B Returns

CBIC has amended Form GSTR-3B wherein changes have been made from outward tax liability and ITC reversals. From ITC standpoint, GSTR-3B return have been amended to change Table 4(B)(1) so as to disclose reversals on account of Rule 38 i.e., Banking / FIs /NBFCs, Rule 42 and 43 i.e., reversal of account of exempted and taxable supplies etc., Section 17(5) of CGST Act, 2017 i.e., blocked credit.

Similarly, caption of Table 4D has been changed from "Ineligible Credits" to "Other Details" for disclosure purposes. Previous entries have been deleted and new entries have been incorporated as follows:

- Details of ITC reclaimed which was earlier reversed as reflected in Table 4(B)(2) as "Others";
- Details of ineligible ITC under Section 16(4) of CGST Act, 2017 i.e., ITC in relation to input invoices of previous FY which was not availed till September / November GSTR-3B return;
- Details of ineligible ITC not available due to Place of supply provisions.

CBIC has issued a detailed Circular and clarified the following for filing of GSTR-3B returns:

Type of Supply	Filling of information in Form GSTR-1 and GSTR-3B
Interstate supply to unregistered persons	GSTR-1: Table 7B or Table 5 or Table 9 or Table 10 GSTR-3B: Place of supply-wise in Table 3.2 (<i>Auto populated</i>)
Supply to registered persons paying tax under composition scheme and UIN holders	GSTR-1: Table 4A or Table 4C or Table 9 GSTR-3B: Place of supply-wise in Table 3.2 (<i>Auto populated</i>)
Any amendments or advance adjustments relating to above mentioned supplies	GSTR-1: Table 9 or Table 10 o Table 11 GSTR-3B: Place of supply-wise in Table 3.2

Similarly, CBIC has clarified on the ITC reporting in GSTR-3B. The Circular provides that except for ineligible ITC on account of limitation period under Section 16(4) of CGST Act, 2017 and due to difference in place of supply, the entire ITC is auto-populated in Table 4 of GSTR-3B. In other words, even the in-eligible credits under Section 17(5) of CGST Act, 2017 are also auto-populated.

The Circular clarified as follows:

Type of Credit	Filling of information in Form GSTR-3B
Reversals to be reported in Table 4(B)(1)	• Rule 42 and 43 for proportionate reversals; • Rule 38 relating to 50% reversals by banks, FIs and NBFCs; • In-eligible credits as per Section 17(5) of CGST Act, 2017.

Reversals to be reported in Table 4(B)(2) as "Other Reversals"	Temporary reversals such as: • Rule 37 reversals relating to 180 days payment; • Section 16(2)(b) of CGST Act, 2017 reversals relating to non-receipt of supplies; • Section 16(2)(b) of CGST Act, 2017 reversals relating to non-payment of taxes by the suppliers; • Any other reversals of ITC claimed owing to any mistake.
How these temporary reversed ITC would be reclaimed?	Such ITC would be reclaimed on satisfaction of requisite conditions under Table 4(A)(5) of GSTR-3B. The corresponding amount would also be disclosed under Table 4(D)(1) of GSTR-3B.
Whether the ineligible ITC due to limitation under Section 16(4) of CGST Act, 2017 need to be depicted in GSTR-3B?	Yes. Such details are available in Table 4 of FORM GSTR-2B and should be reported in Table 4(D)(2) of GSTR-3B.
Whether the ineligible ITC due to difference in place of supply need to be depicted in GSTR-3B?	Yes. Such details are available in Table 4 of FORM GSTR-2B and should be reported in Table 4(D)(2) of GSTR-3B.

One of the important take away is that businesses need to first avail the in-eligible ITC (As per Section 17(5) of CGST Act, 2017) and then reverse the same in GSTR-3B. A question arises whether a business can choose not to avail the in-eligible ITC in GSTR-3B at the first instance so as to avoid any possible scenario is lower reversal?

(Reference: Circular 170/02/2022-GST Dated 06.07.2022)

ITC related Clarification

CBIC has issued following clarifications:

Particulars	Remarks
Whether the provisions of sub-clause (i) of clause (b) of sub-section (5) of section 17 of the CGST Act bar availment of ITC on input services by way of "leasing of motor vehicles, vessels or aircraft" or ITC on input services by way of any type of leasing is barred under the said provisions	It is clarified that "leasing" referred in sub-clause (i) of clause (b) of sub-section (5) of section 17 refers to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items. Accordingly, availment of ITC is not barred under sub-clause (i) of clause (b) of sub-section (5) of section 17 of the CGST Act in case of leasing, other than leasing of motor vehicles, vessels and aircrafts.

(Reference: Circular 172/04/2022-GST Dated 06.07.2022)

Taxability on transaction between employer and employee

CBIC has issued following clarifications:

Particulars	Remarks
Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?	Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.

(Reference: Circular 172/04/2022-GST Dated 06.07.2022)

Utilisation of amount in cash ledger and credit ledger

CBIC has issued following clarifications:

Particulars	Remarks
For which types of payment can the amount in the electronic credit ledger be used?	It is clarified that any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person. However, amount in credit ledger cannot be used for payment of reverse charge liability. Also, amount in credit ledger cannot be used for making payment of any interest, penalty, fees or any other amount payable under the said acts. Similarly, electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash
For which types of payment can the amount in the electronic cash ledger be used?	The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the GST Laws

The question arises whether the pre-deposit while filing appeals be made through electronic credit ledgers. The judgment by Orissa High Court in the matter of Jyoti Construction bars it. However, post Circular it needs to be seen how courts interpret the issue.

(Reference: Circular 172/04/2022-GST Dated 06.07.2022)

Refund filed by recipients of Deemed Exports

CGST Act, 2017 and allied notifications and circulars have specified certain supplies of goods as deemed exports and allowed the refund of taxes on paid on such deemed exports. However, owing to GSTN portal functionality, the portal requires debit entry to be passed to claim refund of such tax paid. CBIC has issued following clarifications:

Particulars	Remarks
Whether the Input Tax Credit (ITC) availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports would be subjected to provisions of Section 17 of the CGST Act, 2017.	Considering the above stated difficulty, the tax paid on such supplies, has been made available as ITC to the recipients vide Circular No. 147/03/2021-GST dated 12.03.2021 only for enabling them to claim such refunds on the portal. The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, the ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017.
Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the "Net ITC" for computation of refund of unutilised ITC under rule 89(4) & rule 89 (5) of the CGST Rules, 2017.	The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the "Net ITC" for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.

(Reference: Circular 172/04/2022-GST Dated 06.07.2022)

Clarifications on Refund due to inverted tax structure

Vide earlier Circular No. 135/05/2020-GST dated 31.03.2020, CBIC clarified that in case of change in tax rate of particular item, the refund under inverted tax structure is not available.

However, to take care of scenarios wherein supplies have been made owing to concessional lower rate, the CBIC clarified as follows for availability of refund under inverted tax structure:

Refund related clarifications to be issued

Particulars	Remarks
To which scenario the clarification is applicable?	The clarification applies to scenario where: • Rate of tax on outward supply is lower than rate of tax in input at same time; and • Such lower rate on outward supply is due to a concessional notification

Whether inverted tax structure refund is available in above scenario?	Yes, such a refund would be available in accordance with Section 54(3)(ii) of CGST Act, 2017.
---	---

(Reference: Circular 173/05/2022-GST Dated 06.07.2022)

Procedure for recredit pursuant to excess or erroneous refund sanctioned

CGST Rules, 2017 were amended to provide for machinery provisions for providing such a recredit. The CBIC now issued a Circular prescribing procedure for such a recredit as follows:

Particulars	Remarks
What are the types of refund claim wherein recredit can be made under this Circular?	Excess or erroneous refunds of following types are covered: • Refund of IGST obtained in contravention of sub-rule (10) of rule 96. • Refund of unutilised ITC on account of export of goods/services without payment of tax. • Refund of unutilised ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without payment of tax. Refund of unutilised ITC due to inverted tax structure
What is the procedure to be followed?	• Claimant to pay back the excess or erroneous refund along with applicable interest and penalty through Form DRC-03. Taxpayer to put following in DRC-03 text box: <i>"deposit of erroneous refund of unutilised ITC, or the deposit of erroneous refund of IGST obtained in contravention of sub-rule (10) of rule 96 of the CGST Rules"</i> • Claimant to file a written request in prescribed format Annexure A to the Circular; • Proper officer to scrutinize and re-credit through Form GST PMT-03A.
What is the timeline for such a recredit?	Preferably within 30 days: • Date of receipt of request for re-credit of erroneous refund amount so deposited; or • Date of payment of full amount of erroneous refund along with applicable interest, and penalty, wherever applicable Whichever is later.

(Reference: Circular 174/06/2022-GST Dated 06.07.2022)

Procedure for refund of unutilised ITC on account of export of electricity

Particulars	Remarks
Under which category such a refund would be filed?	Under "Any Other". The claimant has to upload a Statement 3B on GSTN portal.
What other documents are to be uploaded?	• A statement containing the number and date of the export invoices. Such a statement has to be filed in prescribed Annexure I; • Details of energy exported, tariff per unit for export of electricity as per agreement; • Copy of statement of scheduled energy for exported electricity by Generation Plants issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under clause (nnn) of sub-regulation 1 of Regulation 2 of the Central

	Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010; and • The copy of agreement detailing the tariff per unit; • Calculation of refund amount Statement 3A of Form GST RFD-01 has to be uploaded in PDF also.
What is relevant date for filing such a refund claim?	The relevant date shall be the last date of the month, in which the electricity has been exported as per monthly Regional Energy Account (REA) issued by the Regional Power Committee Secretariat under regulation 2(1)(nnn) of the CERC(Indian Electricity Grid Code) Regulations, 2010.
What is refund claim calculation formulae?	$\text{Refund Amount} = (\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero rated supply of services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}$
What would be turnover of zero rated supply of electricity?	Quantum of Scheduled Energy exported, as reflected in the Regional Energy Account (REA) issued by Regional Power Committee (RPC) Secretariat for a particular month, will be deemed to be the quantity of electricity exported during the said month and will be used for calculating the value of zero-rated supply in case of export of electricity. Such monthly Regional Energy Account (REA) issued by Regional Power Committee (RPC) Secretariat, as uploaded on the websites of RPC Secretariat, can be downloaded by GST officers as well as the concerned electricity generator for the purpose of refund under Rule 89(4) of CGST Rules 2019. The calculation of the value of the exports of electricity during the month, can be done based on the quantity of scheduled electricity exported during the month by the exporter (as detailed in the REA for the month) and the tariff rate per unit (details of which will have to be provided by the concerned exporter based on agreed contracted rates).
How adjusted total turnover shall be calculated?	Adjusted Total Turnover shall be calculated as per the clause (E) of sub-rule (4) of rule 89. However, as electricity has been wholly exempted from the levy of GST, therefore, as per the definition of adjusted total turnover provided at clause (E) of the sub-rule (4) of rule 89, the turnover of electricity supplied domestically would be excluded while calculating the adjusted total turnover.
What if there is a difference in quantum of electricity mentioned in invoice and that in statement of scheduled energy uploaded with REA on Regional Power Committee website?	In such cases, turnover of export of electricity shall be calculated using the lower of the quantum of electricity exported mentioned on the statement of scheduled energy exported and that mentioned on the invoice issued on account of export of electricity.
Is there any specific clarification on ITC to be calculated?	It has been clarified that proper officer shall invariably verify that no ITC has been availed on the inputs and inputs services utilised in making domestic supply of electricity. In other words, the claimant needs to satisfy the requirement of Section 17(3) of CGST Act, 2017 and Rule 42 and 43 of CGST Rules, 2017.

Whether claimant needs to pass debit entry?	Yes, the proper office would inform the claimant in writing the amount for passing debit entry in electronic credit ledger through Form DRC-03.
---	---

(Reference: Circular 175/07/2022-GST Dated 06.07.2022)

Clarification on demand and penalty in respect of fake invoices

The CBIC clarified as follows:

Particulars	Remarks
What action can be taken against supplier of fake invoices?	As there is no supply by the registered supplier of fake invoices in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, no tax liability arises against the registered supplier of fake invoices for the said transaction, and accordingly, no demand and recovery is required to be made against the registered supplier of fake invoices under the provisions of section 73 or section 74 of CGST Act in respect of the same. Besides, no penal action under the provisions of section 73 or section 74 is required to be taken against the registered supplier of fake invoices in respect of the said transaction. The registered supplier of fake invoices shall, however, be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both
What action can be taken against recipient of fake invoices who has taken ITC on such invoices?	Recipient shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act. Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken against Recipient under section 74 of CGST Act, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on Recipient under any other provisions of CGST Act, including under section 122
What action can be taken against recipient of fake invoices who has taken ITC on such invoices and raise invoice on his recipient (say R2) without actual supply?	The input tax credit availed by the recipient in his electronic credit ledger on the basis of tax invoice issued by supplier of fake invoice, without actual receipt of goods or services or both, is ineligible in terms of section 16 (2)(b) of the CGST Act. As there was no supply of goods or services or both by recipient to R2 in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/fraudulently availed by recipient in such case or tax liability in respect of the said outward transaction by recipient to R2 is required to be made from recipient under the provisions of section 73 or section 74 of CGST Act. However, in such cases, recipient shall be liable for penal action both under section 122(1)((ii) and section 122(1)(vii) of the CGST Act,

	for issuing invoices without any actual supply of goods and/or services as also for taking/utilizing input tax credit without actual receipt of goods and/or services
--	---

(Reference: Circular 171/03/2022-GST Dated 06.07.2022)

Abbreviations:	
CGST	Central Goods and Service Tax
IGST	Integrated Goods and Service Tax
ITC	Input Tax Credit
GSTN	Goods and Service Tax Network
Section 73 CGST	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts
Section 74 CGST	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts
Section 74 CGST	Penalty for certain offences.