



TRADE NOTICE NO. 03/2018 DATED 21.03.2018

Attention of the Trade is invited to the following Circulars issued by the Central Board of Excise and Customs, New Delhi for information and necessary action (copies attached).

S.N	Circular No.	Date	Subject
1	Circular No. 34/8/2018-GST	1st March 2018	Clarifications regarding GST in respect of certain services.
2	Circular No. 35/9/2018-GST	5 th March 2018	Joint Venture --- taxable services provided by the members of the Joint Venture (JV) to the JV and vice versa and inter se between the members of the JV.
3	Circular No. 36/10/2018-GST	13 th March, 2018	Processing of refund applications for UIN entities
4	Circular No. 37/11/2018-GST	15 th March, 2018	Clarifications on exports related refund issues.

2. All Trade Association/Chambers of Commerce and Members of Regional Advisory Committees are requested to publish the contents of this Trade Notice among their Members /Constituents.

Encl: As above

[sent on E-mail]

F.No.V/Misc-129/DMN/T/2017-18

Reshma Lakhani
(Reshma Lakhani) 21/3/18
Commissioner

Dated 21.03.2018

Copy to:

1. The Chief Commissioner, Central GST & CE, Vadodara Zone, Vadodara.
2. The Commissioner of UTGST & VAT, Daman & Diu.
3. The Commissioner of UTGST & VAT, Dadra & Nagar Haveli(Silvassa)
4. The Deputy/Assistant Commissioner, Division-I/II/III/IV/V/VI/VII/VIII/IX & X, Daman CGST & CE Commissionerate.
5. The Assistant Commissioner (Systems) for uploading the Trade Notice on Daman Commissionerate's website.
6. The Daman Industrial Association, Federation of Industries Association, Silvassa UT of D &NH with request to arrange delivery of the same to associates and trade members etc.
7. The JAC, Division-V is requested to send copies to trade associations of Diu.
8. Notice Board.
9. Guard File.

F. No. 354/17/2018-TRU

Government of India
Ministry of Finance
Department of Revenue
Tax research Unit

**Room No. 146G, North Block,
New Delhi, 1st March 2018**

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal
Commissioners/ Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Clarifications regarding GST in respect of certain services

I am directed to issue clarification with regard to the following issues as approved by the Fitment Committee to the GST Council in its meeting held on 9th, 10th and 13th January 2018:-

S. No.	Issue	Clarification
1.	Whether activity of bus body building, is a supply of goods or services?	In the case of bus body building there is supply of goods and services. Thus, classification of this composite supply, as goods or service would depend on which supply is the principal supply which may be determined on the basis of facts and circumstances of each case.
2.	Whether retreading of tyres is a supply of goods or services?	In retreading of tyres, which is a composite supply, the pre-dominant element is the process of retreading which is a supply of service. Rubber used for retreading is an ancillary supply. Which part of a composite supply is the principal supply, must be determined keeping in view the nature of the supply involved. Value may be one of the guiding factors in this determination, but not the sole factor. The primary question that should be asked is what is the essential nature of the composite supply and which element of the supply imparts that essential nature to

		<p>the composite supply.</p> <p>Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a supply of goods (retreaded tyres under heading 4012 of the Customs Tariff attracting GST @ 28%)</p>
3.	Whether Priority Sector Lending Certificates (PSLCs) are outside the purview of GST and therefore not taxable?	<p>In Reserve Bank of India FAQ on PSLC, it has been mentioned that PSLC may be construed to be in the nature of goods, dealing in which has been notified as a permissible activity under section 6(1) of the Banking Regulation Act, 1949 vide Government of India notification dated 4th February, 2016. PSLC are not securities. PSLC are akin to freely tradeable duty scrips, Renewable Energy Certificates, REP license or replenishment license, which attracted VAT.</p> <p>In GST there is no exemption to trading in PSLCs. Thus, PSLCs are taxable as goods at standard rate of 18% under the residuary S. No. 453 of Schedule III of notification No. 1/2017-Central Tax(Rate). GST payable on the certificates would be available as ITC to the bank buying the certificates.</p>
4.	<p>(1) Whether the activities carried by DISCOMS against recovery of charges from consumers under State Electricity Act are exempt from GST?</p> <p>(2) Whether the guarantee provided by State Government to state owned companies against guarantee commission, is taxable under GST?</p>	<p>(1) Service by way of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST under notification No. 12/2017- CT (R), Sl. No. 25. The other services such as, -</p> <ul style="list-style-type: none"> i. Application fee for releasing connection of electricity; ii. Rental Charges against metering equipment; iii. Testing fee for meters/ transformers, capacitors etc.; iv. Labour charges from customers for shifting of meters or shifting of service lines;

		<p>v. charges for duplicate bill; provided by DISCOMS to consumer are taxable.</p> <p>(2) The service provided by Central Government/State Government to any business entity including PSUs by way of guaranteeing the loans taken by them from financial institutions against consideration in any form including Guarantee Commission is taxable.</p>
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2. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

Yours Faithfully,

Harsh Singh
Technical Officer (TRU)
Email: harshsingh.irs@gov.in
Tel: 011-23095543

F. No. B-1/20/2016-TRU

Government of India
Ministry of Finance
Department of Revenue
Tax research Unit

**Room No. 146G, North Block,
New Delhi, 5th March 2018**

To,

The Principal Chief Commissioners/Chief Commissioners/ Principal
Commissioners/ Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Joint Venture ---taxable services provided by the members of the Joint Venture (JV) to the JV and vice versa and inter se between the members of the JV-reg

I am directed to say that in the Service Tax regime, CBEC vide Circular No. 179/5/2014 – ST issued from F.No. 179/5/2014-ST dated 24 September 2014 had clarified that if cash calls are merely transaction in money, then they are excluded from the definition of service provided in Section 65B (44) of the Finance Act, 1994. Whether a cash call is merely a transaction in money and hence not in the nature of consideration for taxable service, would depend on the terms of the Joint Venture Agreement, which may vary from case to case. The Circular clarified that cash calls, sometimes, could be in the nature of advance payments made by members towards taxable services received from joint venture(JV); and that payments made out of cash calls pooled by a JV towards taxable services received from a member or a third party is in the nature of consideration and hence attracts Service Tax. The Circular further stated that JV being an unincorporated temporary association constituted for the limited purpose of carrying out a specified project within a time frame, a comprehensive examination of the various JV agreements (at times, there could be number of inter se agreements between members of the JV) holds the key to understanding of the taxation of transactions involving taxable services between the JV and its members or inter-se between the members of a JV. Therefore, officers in the field formations were advised to carefully examine the leviability of service tax with reference to the specific terms/clauses of each JV agreement.

2. In the Service Tax Law, service was defined as an activity carried out by a person for another for consideration [Section 65B(44) of the Finance Act 1994]. Explanation 3 to the said definition stated than an unincorporated association or a body of persons as the case may be, and a member thereof shall be treated as distinct persons.

3. GST is levied on intra-State and inter-State supply of goods and services. According to section 7 of CGST Act, 2017, the expression “supply” includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business, and includes activities specified in Schedule II to the CGST Act, 2017. The definition of “business” in section 2(17) of CGST Act states that “*business*” includes provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members. The term person is defined in section 2(84) of the CGST Act, 2017 to include an association of persons or a body of individuals, whether incorporated or not, in India or outside India. Further, Schedule II of CGST Act, 2017 enumerates activities which are to be treated as supply of goods or as supply of services. It states in para 7 that *supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration* shall be treated as supply of goods. A conjoint reading of the above provisions of the law implies that supply of services by an unincorporated association or body of persons (AOP) to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of services. The above entry in Schedule II is analogous to and draws strength from the provision in Article 366(29A)(e) of the Constitution according to which a tax on the sale or purchase of goods includes a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

4. Therefore, the law with regard to levy of GST on service supplied by member of an unincorporated joint venture (JV) to the JV or to other members of the JV, or by JV to the members, essentially remains the same as it was under service tax law. Thus, it is clarified that the clarification given vide Board Circular No. 179/5/2014 – ST dated 24.09.2014 *ibid* in the context of service tax is applicable for the purpose of levy of GST also. It is reiterated that the question whether cash calls are taxable or not will entirely depend on the facts and circumstances of each case. ‘Cash calls’ are raised by an operating member of the joint venture on other members in proportion to their participating interests in the joint venture (unincorporated) to meet the expenditure on the operations to be carried out as per the approved work programme and budget. Taxability of cash calls can be further explained by the following illustrations:

Illustration A: There are 4 members in the JV including the operating member and each one contributes Rs 100 as part of their share. A total amount of Rs 400 is collected. The operating member purchases machinery for Rs 400 for the JV to be used in oil production.

Illustration B: There are 4 members in the JV including the operating member and each one contributes Rs 100 as part of their share. A total amount of Rs 400 is collected. The operating member thereafter uses its own machine and performs exploration and production activities on behalf of the JV.

4.1 Illustration A will not be the subject matter of 'ST/GST' for the reason that the operating member is not carrying out an activity for another for consideration. In Illustration A, the money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.

4.2 On the other hand, in Illustration B, the operating member uses its own machinery and is therefore providing 'service' within the scope of supply of CGST Act, 2017. This is because in this scenario, the operating member is recovering the cost appropriated towards machinery and services from the other JV members in their participating interest ratio.

5. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

Yours Faithfully,

Harsh Singh
Technical Officer (TRU)
Email: harshsingh.irs@gov.in
Tel: 011-23095543

**F. No. 349/48/2017-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs
GST Policy Wing**

New Delhi, Dated the 13th March, 2018

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/
Commissioners of Central Tax (All)

The Principal Director Generals / Director Generals (All)

The Principal Chief Controller of Accounts, CBEC

Madam / sir,

Subject: Processing of refund applications for UIN entities

The GST Council, in its 23rd meeting held at Guwahati on 10th November 2017, has decided that the entities having Unique Identity Number (UIN) may be given centralized registration at the option of such entities. Further, it was also decided that the Central Government will be responsible for all administrative compliances in respect of such entities.

2. In order to clarify some of the 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 “CGST Act”) hereby clarifies the following issues:

3. **Status of registration for UINs:**

i. Entities having UINs are given a special status under the CGST Act as these are not covered under the definition of registered person. These entities have been granted UINs to enable them to claim refund of GST paid on inward supply of goods or services or both received by them. Therefore, if any such entity is making supply of goods or services or both in the course or furtherance of business then such entity will need to apply for GSTIN as per the provisions contained in the CGST Act read with the rules made thereunder.

ii. The process for applying for UIN has been outlined under Rule 17 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “CGST Rules”). As stated in the said rule, any person covered under clause (a) of sub-section (9) of section 25 of

the CGST Act may submit an application electronically in **FORM GST REG-13** on the common portal. Therefore, Specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries shall apply for grant of UIN electronically by filling **FORM GST REG-13**.

iii. Due to delays in making available **FORM GST REG-13** on the common portal, an alternative mechanism has been developed. Entities covered under clause (a) of sub-section (9) of Section 25 of the CGST Act may approach the Protocol Division, Ministry of External Affairs in this regard, who will facilitate grant of UINs in coordination with the Central Board of Excise and Customs (CBEC) and GSTN.

iv. It is clarified that the facility of single UIN is optional and an entity may seek more than one UIN.

4. **Filing of return by UIN agencies:**

i. The procedure for filing returns by UIN entities is specified under sub-rule (1) of Rule 82 of the CGST Rules. The UIN entity is required to file details of inward supplies in **FORM GSTR-11**.

ii. It may be noted that return in **FORM GSTR-11** is required to be filed only for those tax periods for which refund is being claimed. In other words, if an UIN entity is not claiming refund for a particular period, it need not file return in **FORM GSTR-11** for that period.

5. **Applying for refund by UIN agencies:**

i. All the entities who have been issued UINs and are notified under Section 55 of the CGST Act will be eligible for refund of inward supply of goods or services in terms of notification No. 16/2017-Central Tax (Rate) dated 28th June 2017 as amended.

ii. It may be noted that the conditions specified under the said notification need to be complied with while applying for refund claims. Further, field officers are hereby instructed to ensure that all the certificates / undertaking etc. as stipulated in the said notification be duly checked while processing the refund claims.

iii. The procedure for filing a refund application has been outlined under Rule 95 of the CGST Rules which provides for filing of refund on quarterly basis in **FORM RFD-10** along with a statement of inward invoices in **FORM GSTR-11**. It is hereby clarified that **FORM GSTR-11** along with **FORM GST RFD-10** has to be filed separately for each of those quarters for which refund claim is being filed.

iv. Agencies which have been allotted UINs may visit User Manual / FAQ section on the common portal (www.gst.gov.in) for step by step instructions on how to file **FORM GSTR-11** and **FORM RFD-10**.

v. It is hereby clarified that all the entities claiming refund shall submit the duly filled in print out of **FORM RFD-10** to the jurisdictional Central Tax Commissionerate. All refund claims shall be processed and sanctioned by respective Central Tax offices. In order to facilitate processing of refund claims of UIN entities, a nodal officer has been designated in each State details of whom are given in **Annexure A**. Application for refund claim may be submitted before the designated Central Tax nodal officers in the State in which the UIN has been obtained.

vi. There may be cases where multiple UINs existed for the same entity but were later merged into one single UIN. In such cases, field formations are requested to process refund claims for earlier unmerged UINs also. Hence, the refund application will be made with the single UIN only but invoices of old UINs may be declared in the refund claim, which may be accepted and taken into account while processing the refund claim.

6. **Passing of refund order and settlement of funds:**

i. The facility of centralized UIN ensures that irrespective of the type of tax (CGST, SGST, IGST or Cess) and the State where such inward supply of goods or services have been procured, all refunds would be processed by Central authorities only. Therefore, field formations are advised that all refunds are to be processed on merits irrespective of where and which type of tax is paid on inward supply of goods or services or both by such entities.

ii. A monthly report as prescribed in **Annexure B** is required to be furnished to the Director General of Goods and Services Tax by the 30th of the succeeding month.

iii. Field officers shall send a copy of the order passed for such refunds to their State counterparts for information purposes only.

7. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

8. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

-sd-
(Upender Gupta)
Commissioner (GST)

<u>Annexure A</u>					
S.No.	State/UT	Nodal Commissionerate	Contact Address of the Commissionerate	Nodal Officer	Phone number and E-mail id of Nodal Officer
1	Andhra Pradesh	Guntur CGST	GST Bhavan, Kannavarithota, Guntur-522004	Mr. K. Mahipal Chandra, Assistant Commissioner	0863-2234713, mahipal.chandra@gov.in
2	Andaman & Nicobar Islands	Haldia	Assistant Commissioner of Central Tax. A & N Division, Kandahar Marg (VIP Road), Port Blair – 744103	Mr. T Inigo, Assistant Commissioner, Andaman & Nicobar	Inigo.timothy@gov.in
3	Arunachal Pradesh	Itanagar	CGST & CX Commissionerate, Itanagar-791110	Mr. N.K.Nandi, Assistant Commissioner	0360-2351213, nknandi2014@gmail.com
4	Assam	Dibrugarh	CGST & CX Commissionerate, Dibrugarh-786003	Mr. B.B.Baruah, Assistant Commissioner	0373-2314082 , Bbhusan.baruah@gov.in
5	Assam	Guwahati	CGST & CX Commissionerate, Guwahati-781005	Mr. Sanjeet Kumar, Assistant Commissioner	0361-2465197 , sanjeet.kumar@icegate.gov.in
6	Bihar	Patna-II	4th Floor, C.R.Building (Annexe), Bir Chand Patel Path, Patna-800001	Mr. Suhrit Mukherjee, Assistant Commissioner	0612-2504814, suhrit9933@gmail.com
7	Chandigarh	Chandigarh	Plot No. 19 Sector 17-C, C.R Building Chandigarh	Ms.Mamta Saini, Deputy Commissioner	0172-2704196, mamtasaini.india@gmail.com
8	Chhattisgarh	Raipur	Division-II, CGST Bhawan Civil Lines, Raipur	Mr. Sumit Kumar Agrawal, Assistant Commissioner	0771-2425636 sumitk.agrawal@gov.in
9	Dadra and Nagar Haveli	Daman	2nd Floor, Hani's Landmark, Vapi-Daman Road, Chala , Vapi, Gujarat	Mr. B.P. Singh, Additional Commissioner, Daman	0260-2460502, binay.singh@icegate.gov.in
10	Daman and Diu	Daman	2nd Floor, Hani's Landmark, Vapi-Daman Road, Chala , Vapi, Gujarat	Mr. B.P. Singh, Additional Commissioner, Daman	0260-2460502, binay.singh@icegate.gov.in
11	Goa	Goa	GST Bhavan, EDC Complex, Patto, Panaji-403001	Mr. S. K. Sinha, Additional Commissioner	0832-2437190, sanjay1.sinha@icegate.gov.in
12	Gujarat	Gandhinagar	O/o the Commissioner, CGST, Gandhinagar Custom House,Near All India Radio, Navrangpura, Ahmedabad-380009.	Dr. Amit Singal, Joint Commissioner	079-27540424, singalamit@rediffmail.com

13	Haryana	Gurugram	Plot No. 36-37, Sector-32, Gurugram	Mr. Raj Karan Aggarwal, Assistant Commissioner	0124-2380269, Aggarwalrajkar@gmail.com
14	Himachal Pradesh	Shimla	Camp at Plot No. 19 Sector 17-C, C.R Building Chandigarh	Mr.Nikhil Kumar Singh, Assistant Commissioner	0172-2704196, nikhil.singh@icegate.gov.in
15	Jammu and Kashmir	Jammu	OB-32, Rail Head Complex, Jammu	Mr.Prakash Choudhary, Assistant Commissioner	0191-2475320, prakash.online1984@gmail.com
16	Jharkhand	Ranchi	5th Floor, C.R.Building, 5-A, Main Road, Ranchi-834001	Mr. Debabrata Chatterjee, Assistant Commissioner	0651-2330218, debabrata.chaterjee@gmail.com
17	Karnataka	Bengaluru (South)	Bengaluru South Commissionerate, C.R. Building, Queen's Road, Bengaluru-560001	Mrs. Gayathri Chandra Menon, Assistant Commissioner	080-25522370 sd07.gst@gov.in
18	Kerala	Kochi	Central Revenue Building, I.S. Press Road, Kochi-682018	Mr. Ashwin John George, Assistant Commissioner	0484-2533169 ashwinjohngeorge@gmail.com
19	Lakshadweep	Kochi	Central Revenue Building, I.S. Press Road, Kochi-682018	Mr. Ashwin John George, Assistant Commissioner	0484-2533169 ashwinjohngeorge@gmail.com
20	Madhya Pradesh	Bhopal	Division – I Bhopal, Jail Road Paryawas Bhawan, Bhopal	Mr. Piyush Thorat, Assistant Commissioner	0755-2761620, piyushthorat19@gmail.com
21	Maharashtra	Mumbai Central	4 th Floor, GST Bhavan, 115, M.K.Road, Opp Churchgate Station, Mumbai-400020	Ms. Manpreet Arya, Additional Commissioner	022-26210384, manpreetarya@yahoo.co.in
22	Manipur	Imphal	CGST &CX Commissionerate, Imphal-795001	Mr. R.K.Shurchandra Singh,Assistant Commissioner	0385-2460735, shurchandra.rk@gov.in
23	Meghalaya	Shillong	CGST &CX Commissionerate, Shillong-793001	Mr. Om Prakash Tiwary, Assistant Commissioner	0364-2506758, tiwary.op@gov.in
24	Mizoram	Aizawl	CGST & CX Commissionerate, Aizawl-796001	Mr. L.Ralte, Deputy Commissioner	0389-2346515 , lal.ralte@icegate.gov.in
25	Nagaland	Dimapur	CGST &CX Commissionerate, Dimapur-797112	Mr. Gopeswar Chandra Paul, Assistant Commissioner	0386-2351772, paul.gopeswar3@gmail.com
26	NCT of Delhi	Delhi (South)	2nd & 3rd Floor, EIL Annexe Building, Bhikaji Cama Place, New Delhi, Delhi 110066	Mr. Shikhar Pant, Assistant Commissioner	011-40785842 shikhar.pant@gov.in

27	Odisha	Bhubaneswar	C.R. Building, (GST Bhawan),Rajaswa Vihar, Bhubaneswar-751007	Mr. Sateesh Chandar, Joint Commissioner	0674-2589694 sateesh.chandar@nic.in
28	Puducherry	Puducherry	I, Goubert Avenue (Beach Road), Puducherry -605001.	Joint Commissioner	0413-2224062, 0413-2331244, pondycex.gst@gov.in
29	Punjab	Ludhiana	Central Excise House, F-Block, Rishi Nagar, Ludhiana.	Mr.Neeraj Soi, Deputy Commissioner	0161-2679452, soineeraj@gmail.com
30	Rajasthan	Jaipur	N.C.R. Building, Statue Circle, Jaipur	Mrs. Ruchita Vij, Additional Commissioner	0141-2385342 ruchitavij@gmail.com
31	Sikkim	Siliguri	Gangtok CGST Division, Indira Bypass Road, Sichey Near District Court, Gangtok – 737101	Mr. Puran Lama, Assistant Commissioner, Sikkim (Gangtok)	03592-284182, Gtk_div@rediffmail.com
32	Tamil Nadu	Chennai (North)	GST Bhawan, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai – 600034	Additional Commissioner	044-28331177, 044-28331188, commr-cexchn1@nic.in
33	Telangana	Hyderabad	O/o the Principal Commissioner of Central Tax, Hyderabad GST Commissionerate, GST Bhawan, L B Stadium Road, Basheerbagh, Hyderabad - 500004.	Mr. P. Anand Kumar, Additional Commissioner	040-23240725, ak.pulapaka@gov.in
34	Tripura	Agartala	CGST &CX Commissionerate, Agartala-799001	Mr. S.K.Mazumdar, Assistant Commissioner	0381-2304099 , sanjoymaz85@gmail.com
35	Uttar Pradesh	Lucknow	7-A, Ashok Marg,Lucknow-226001	Mr. Avijit Pegu, Assistant Commissioner	0522-2233001, avijit.pegu@icegate.gov.in
36	Uttarakhand	Dehradun	Office of the Commissioner, Central Goods & Services Tax, E-Block, Nehru Colony, Dehradun	Mr. Sanjay Kumar Shukla	0135-2668668, sanjay2.shukla@icegate.gov.in
37	West Bengal	Kolkata (North)	180, Shanti Pally, Rajganda Main Road, Kolkata	Mr. Shobhit Sinha, Assistant Commissioner	033-24416813, Shobhitsinha.jsr@gov.in

Annexure B

Office of the Commissioner -----

Report for the month of -----

<u>Name of the State</u>	<u>Details of the Entity</u>		<u>Time Period</u>		<u>Name of the State for which refund has been sanctioned</u>	<u>Central Tax</u>	<u>State Tax / UT Tax</u>	<u>Integrated tax</u>	<u>Cess</u>
	<u>Name</u>	<u>UIN</u>	<u>From</u>	<u>To</u>					

**F. No.349/47/2017-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs
GST Policy Wing**

New Delhi, Dated the 15th March, 2018

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/
Commissioners of Central Tax (All)

The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarifications on exports related refund issues- regarding

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 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'.

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)	<ul style="list-style-type: none"> ✓ Copy of FORM RFD-01A filed on common portal ✓ Copy of Statement 2 of FORM RFD-01A ✓ Invoices w.r.t. input, input services and capital goods ✓ BRC/FIRC for export of services ✓ Undertaking / Declaration in FORM RFD-01A
Export (goods or services) without payment of tax (Refund of accumulated ITC of IGST / CGST / SGST / UTGST / Cess)	<ul style="list-style-type: none"> ✓ Copy of FORM RFD-01A filed on common portal ✓ Copy of Statement 3A of FORM RFD-01A generated on common portal ✓ Copy of Statement 3 of FORM RFD-01A ✓ Invoices w.r.t. input and input services ✓ BRC/FIRC for export of services ✓ 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.

16. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

17. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Upender Gupta)
Commissioner (GST)