

No. 12-25/2018-19-EXN-GST-(575)-16797-815

**Government of Himachal Pradesh,
Excise and Taxation Department**

To

1. The Additional/Jt. Commissioner of State Taxes and Excise,
(South Zone, North Zone, Central Zone), Shimla, Palampur, Mandi,
H.P.
2. The Joint Commissioner of State Taxes and Excise,
Flying Squad, (Central Zone, North Zone, South Zone), Una,
Palampur, Parwanoo, H.P.
3. The Dy. Commissioner of State Taxes and Excise,
Shimla, Solan, BBN Baddi, Sirmour, Bilaspur, Hamirpur, Mandi,
Kullu, Chamba, Kangra, Revenue Distt Nurpur and Una, H.P
4. The Asstt. Commissioner of State Taxes and Excise,
Incharge Distt. Kinnour, H.P

Dated

Shimla-9

20-07-2020.

Sir,

Subject: Clarification on refund related issues – Reg.

Various doubts have arisen on some of the issues relating to GST refunds. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of the law, in exercise of powers conferred by section 168 of the Himachal Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as “HPGST Act”), the issues are clarified hereunder:

2. Bunching of refund claims across Financial Years

2.1 It may be recalled that the restriction on clubbing of tax periods across different financial years was put in vide para 11.2 of the Circular No. 37/11/2018-GST dated 02.08.2019. The said circular was rescinded being subsumed in the Master Circular on Refunds No. 125/44/2019-GST dated 10.12.2019 and the said restriction on the clubbing of tax periods across financial years for claiming refund thus has been continued vide Paragraph 8 of the Circular No. 125/44/2019-GST dated 10.12.2019, which is reproduced as under:

*“8. The applicant, at his option, may file a refund claim for a tax period or by clubbing successive tax periods. **The period for which refund claim has been filed, however, cannot spread across different financial years.** Registered persons having aggregate turnover of up to Rs. 1.5 crore in the preceding financial year or the current financial year opting to file **FORM GSTR-1** on quarterly basis, can only apply for refund on a quarterly basis or clubbing successive quarters as aforesaid. However, refund claims under categories listed at (a), (c) and (e) in*

para 3 above must be filed by the applicant chronologically. This means that an applicant, after submitting a refund application under any of these categories for a certain period, shall not be subsequently allowed to file a refund claim under the same category for any previous period. This principle / limitation, however, shall not apply in cases where a fresh application is being filed pursuant to a deficiency memo having been issued earlier.”

2.2 Hon'ble Delhi High Court in Order dated 21.01.2020, in the case of M/s Pitambra Books Pvt Ltd., vide para 13 of the said order has stayed the rigour of paragraph 8 of corresponding Circular No. 125/44/2019-GST dated 10.12.2019 issued by the Central Government and has also directed the Central Government to either open the online portal so as to enable the petitioner to file the tax refund electronically, or to accept the same manually within 4 weeks from the Order. Hon'ble Delhi High Court vide para 12 of the aforesaid Order has observed that the **Circulars can supplant but not supplement the law. Circulars might mitigate rigours of law by granting administrative relief beyond relevant provisions of the statute, however, Government is not empowered to withdraw benefits or impose stricter conditions than postulated by the law.**

2.3 Further, same issue has arisen, especially those received from the merchant exporters wherein merchant exporters have received the supplies of goods in the last quarter of a Financial Year and have made exports in the next Financial Year i.e. from April onwards. The restriction imposed vide para 8 of the master refund circular prohibits the refund of ITC accrued in such cases as well.

2.4 On perusal of the provisions under sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 and sub-section (3) of section 54 of the HPGST Act, there appears no bar in claiming refund by clubbing different months across successive Financial Years.

2.5 The issue has been examined and it has been decided to remove the restriction on clubbing of tax periods across Financial Years. Accordingly, circular No. 125/44/2019-GST dated 10.12.2019 stands modified to that extent i.e. the restriction on bunching of refund claims across financial years shall not apply.

3. Refund of accumulated input tax credit (ITC) on account of reduction in GST Rate

3.1 It has been noticed that some of the applicants are seeking refund of unutilized ITC on account of inverted duty structure where the inversion is due to change in the GST rate on the same goods. This can be explained through an illustration. An applicant trading in goods has purchased, say goods “X” attracting 18% GST. However, subsequently, the rate of GST on “X” has been reduced to, say 12%. It is being claimed that accumulation of ITC in such a case is also covered as accumulation on account of inverted duty structure and such applicants have sought

refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the HPGST Act.

3.2 It may be noted that refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the HPGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the HPGST Act. It is hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the HPGST Act would not be applicable in cases where the input and the output supplies are the same.

4. Change in manner of refund of tax paid on supplies other than zero rated supplies

4.1 Circular No. 125/44/2019-GST dated 10.12.2019, in para 3, categorizes the refund applications to be filed in **FORM GST RFD-01** as under:

- a. Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;
- b. Refund of tax paid on export of services with payment of tax;
- c. Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;
- d. Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax;
- e. Refund of unutilized ITC on account of accumulation due to inverted tax structure;
- f. Refund to supplier of tax paid on deemed export supplies;
- g. Refund to recipient of tax paid on deemed export supplies;
- h. Refund of excess balance in the electronic cash ledger;
- i. Refund of excess payment of tax;**
- j. Refund of tax paid on intra-State supply which is subsequently held to be inter- State supply and vice versa;**
- k. Refund on account of assessment/provisional assessment/appeal/any other order;**
- l. Refund on account of “any other” ground or reason.**

4.2 For the refund of tax paid falling in categories specified at S. No. (i) to (l) above i.e. refund claims on supplies other than zero rated supplies, no separate debit of ITC from electronic credit ledger is required to be made by the applicant at the time of filing refund claim, being claim of tax already paid. However, the total tax would have been normally paid by the applicant by debiting tax amount from both electronic credit ledger and electronic cash ledger. At present, in these cases, the amount of admissible refund, is paid in cash even when such payment of tax or any part thereof, has been made through ITC.

4.3.1 As this could lead to allowing unintended encashment of credit balances, this issue has engaged attention. Accordingly, vide notification No.16/2020-State Tax dated 23rd June, 2020, sub-rule (4A) has been inserted in rule 86 of the HPGST Rules, 2017 which reads as under:

*“(4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in **FORM GST PMT-03.**”*

4.3.2 Further, vide the same notification, sub-rule (1A) has also been inserted in rule 92 of the HPGST Rules, 2017. The same is reproduced hereunder:

*“(1A)Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under sub-section (5) of section 54 of the Act is due and payable to the applicant, he shall make an order in **FORM RFD-06** sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue **FORM GST PMT-03** re-crediting the said amount as Input Tax Credit in electronic credit ledger.”*

4.4 The combined effect the abovementioned changes is that any such refund of tax paid on supplies other than zero rated supplies will now be admissible proportionately in the respective original mode of payment i.e. in cases of refund, where the tax to be refunded has been paid by debiting both electronic cash and credit ledgers (other than the refund of tax paid on zero-rated supplies or deemed export), the refund to be paid in cash and credit shall be calculated in the same proportion in which the cash and credit ledger has been debited for discharging the total tax liability for the relevant period for which application for refund has been filed. Such amount, shall be accordingly paid by issuance of order in **FORM GST RFD-06** for amount refundable in cash and **FORM GST PMT-03** to re-credit the amount attributable to credit as ITC in the electronic credit ledger.

5. Guidelines for refunds of Input Tax Credit under Section 54(3)

5.1 In terms of para 36 of circular No. 125/44/2019-GST dated 10.12.2019, the refund of ITC availed in respect of invoices not reflected in **FORM GSTR-2A** was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule

(4) to rule 36 of the HPGST Rules, 2017 vide notification No. 49/2019-GST dated 01.11.2019, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the **FORM GSTR-2A** of the applicant.

5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in **FORM GSTR-1** and are reflected in the **FORM GSTR-2A** of the applicant. Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 10.12.2019 stands modified to that extent.

6. New Requirement to mention HSN/SAC in Annexure 'B'

6.1 References have also been received from the field formations that HSN wise details of goods and services are not available in **FORM GSTR-2A** and therefore it becomes very difficult to distinguish ITC on capital goods and/or input services out of total ITC for a relevant tax period. It has been recommended that a column relating to HSN/SAC Code should be added in the statement of invoices relating to inward supply as provided in **Annexure-B** of the circular No. 125/44/2019- GST dated 10.12.2019 so as to easily identify between the supplies of goods and services.

6.2 The issue has been examined and considering that such a distinction is important in view of the provisions relating to refund where refund of credit on Capital goods and/or services is not permissible in certain cases, it has been decided to amend the said statement. Accordingly, **Annexure-B** of the circular No. 125/44/2019-GST, dated 10.11.2019 stands modified to that extent.

6.3 A suitably modified statement format is attached for applicants to upload the details of invoices reflecting in their **FORM GSTR-2A**. The applicant is, in addition to details already prescribed, now required to mention HSN/SAC code which is mentioned on the inward invoices. In cases where supplier is not mandated to mention HSN/SAC code on invoice, the applicant need not mention HSN/SAC code in respect of such an inward supply.

7. This circular shall come into force w.e.f. 31.03.2020.

8. Difficulty, if any, in the implementation of this Circular may be brought to the notice of this office accordingly.

Dr. Ajay Sharma, (IAS)
Commissioner of State Taxes and Excise,
Himachal Pradesh

Annexure-B

Statement of invoices to be submitted with application for refund of unutilized ITC

Sr. No.	GSTIN of the Supplier	Name of the Supplier	Invoice Details			Category of input supplies		Central Tax	State Tax/ Union Territory Tax	Integrated Tax	Cess	Eligible for ITC	Amount of eligible ITC
			Invoice No.	Date	Value	Inputs/Input Services/capital goods	HSN/SAC						
1	2	3	4	5	6	7	8	9	10	11	12	13	14
												Yes/No/Partially	