

No. EXN—C009(08)/1/2021-GST CELL-E&T-Part-I-22265-83

**Government of Himachal Pradesh,
Department of State Taxes and Excise.**

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

Dated

Shimla-9

14th July, 2022.

Subject: Clarification on various issues pertaining to GST-Reg.

Various doubts have been arisen on certain issues with respect to –

- i. refund claimed by the recipients of supplies regarded as deemed export;
- ii. interpretation of section 17(5) of the HPGST Act;
- iii. perquisites provided by employer to the employees as per contractual agreement; and
- iv. utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, in exercise of powers conferred under section 168 of the Himachal Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as “HPGST Act”), the issues are clarified as under.

S. No.	Issue	Clarification
Refund claimed by the recipients of supplies regarded as deemed export		
1.	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	The refund in respect of deemed export supplies is the refund of tax paid on such supplies. However, the recipients of deemed export supplies were facing difficulties on the portal to claim refund of tax paid due to requirement of the portal to debit the amount so claimed from their electronic credit

	<p>provisions of Section 17 of the HPGST Act, 2017.</p>	<p>ledger. Considering this difficulty, the tax paid on such supplies, has been made available as ITC to the recipients vide Circular No. 147/03/2021-GST dated 20.03.2021 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 HPGST 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 HPGST Act, 2017.</p>
<p>2.</p>	<p>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 HPGST Rules, 2017.</p>	<p>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 HPGST 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 HPGST Rules, 2017.</p>
<p>Clarification on various issues of section 17(5) of the HPGST Act</p>		
<p>3.</p>	<p>Whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the HPGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?</p>	<p>1. Vide the Himachal Goods and Service Tax (Amendment Act) 2019, clause (b) of sub-section (5) of section 17 of the HPGST Act was substituted with effect from 01.02.2019. After the said substitution, the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the HPGST Act provides as under: <i>“Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.”</i></p> <p>2. The said amendment in sub-section (5) of</p>

		<p>section 17 of the HPGST Act was made based on the recommendations of GST Council in its 28th meeting. The intent of the said amendment in sub-section (5) of section 17, as recommended by the GST Council in its 28th meeting, was made known to the trade and industry through the Press Note on Recommendations made during the 28th meeting of the GST Council, dated 21.07.2018. It had been clarified <i>“that scope of input tax credit is being widened, and it would now be made available in respect of Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force.”</i></p> <p>3. Accordingly, it is clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the HPGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the HPGST Act.</p>
<p>4.</p>	<p>Whether the provisions of sub-clause (i) of clause (b) of sub-section (5) of section 17 of the HPGST 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?</p>	<p>1. Sub-clause (i) of clause (b) of sub-section (5) of section 17 of the HPGST Act provides that ITC shall not be available in respect of following supply of goods or services or both—</p> <p><i>“(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:</i></p> <p><i>Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or</i></p>

		<p align="center"><i>services or both or as an element of a taxable composite or mixed supply”</i></p> <p>2. 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 HPGST Act in case of leasing, other than leasing of motor vehicles, vessels and aircrafts.</p>
Perquisites provided by employer to the employees as per contractual agreement		
5.	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?	<p>1. Schedule III to the HPGST Act provides that “services by employee to the employer in the course of or in relation to his employment” will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.</p> <p>2. 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.</p>
Utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities		
6.	Whether the amount available in the electronic credit ledger	<p>1. In terms of sub – section (4) of section 49 of HPGST Act, the amount available in the</p>

	<p>can be used for making payment of any tax under the GST Laws?</p>	<p>electronic credit ledger may be used for making any payment towards output tax under the HPGST Act or the Integrated Goods and Services Tax Act, 2017(hereinafter referred to as “IGST Act”), subject to the provisions relating to the order of utilisation of input tax credit as laid down in section 49B of the HPGST Act read with rule 88A of the HPGST Rules.</p> <ol style="list-style-type: none"> 2. Sub-rule (2) of rule 86 of the HPGST Rules provides for debiting of the electronic credit ledger to the extent of discharge of any liability in accordance with the provisions of section 49 or section 49A or section 49B of the HPGST Act. 3. Further, output tax in relation to a taxable person (i.e. a person who is registered or liable to be registered under section 22 or section 24 of the HPGST Act) is defined in clause (82) of section 2 of the HPGST Act as the <u>tax chargeable on taxable supply of goods or services or both but excludes tax payable on reverse charge mechanism.</u> 4. Accordingly, 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. 5. It is further reiterated that as output tax does not include tax payable under reverse charge mechanism, implying thereby that the electronic credit ledger cannot be used for making payment of any tax which is payable under reverse charge mechanism.
<p>7.</p>	<p>Whether the amount available in the electronic credit ledger can be used for making payment of any liability other</p>	<p>As per sub-section (4) of section 49, the electronic credit ledger can be used for making payment of output tax only under the HPGST Act or the IGST Act. It cannot be used for making payment of any interest, penalty, fees or any other amount payable</p>

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	than tax under the GST Laws?	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.
8.	Whether the amount available in the electronic cash ledger can be used for making payment of any liability under the GST Laws?	As per sub – section (3) of section 49 of the HPGST Act, 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.

3. This circular shall come into force w.e.f. 06.07.2022.
4. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice this office.

Yours Faithfully,

Sd/-

Yunus, (IAS)

**Commissioner of State Taxes and Excise,
Himachal Pradesh**