CBIC issues clarifications on various provisions under GST

Executive summary
This Tax Alert summarizes the recent Circulars[1] issued by the Central Board of Indirect Taxes and Customs.
The clarifications have been issued in respect of:

- Scope of principal-agent relationship covered under Schedule I of the Central Goods and Services Tax (CGST) Act, 2017
- Procedure for recovery of arrears of wrongly availed CENVAT credit under the earlier law and inadmissible transitional credit under GST
- Procedural issues relating to refund, such as, submission of invoices, re-credit of electronic credit ledger in case of rejection of refund claim, disbursal of refund amount, etc.
- Applicability of E-way bill in case the goods are stored in the godown of transporter

Background

- Central Board of Indirect Taxes and Customs (CBIC) has issued Circulars clarifying certain issues under Goods and Services Tax (GST) basis representations received from trade and industry.

Circulars

Scope of principal-agent relationship in the context of Schedule I of the Central Goods and Services Tax (CGST) Act

- Schedule I lists the activities which are treated as supply even if made without consideration. Entry 3 of the said Schedule covers supply of goods—
  - by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
  - by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

- It is clarified that the key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not.

- If the invoice for further supply is being issued by the agent in his name, then any supply of goods from the principal to the agent would fall within the fold of the said entry. However, in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the CGST Act.

- Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent, then further provision of the said goods by the agent to the principal would be covered by the said entry.

- In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.

- The Circular also provides illustrations for better understanding.

Recovery of arrears of wrongly availed CENVAT credit and inadmissible transitional credit

- The Circular provides clarity on the process of recovery of arrears of wrongly availed CENVAT credit under the earlier law and the credit wrongly carried forward as transitional credit in the GST regime.

- Circular No. 42/16/2018-GST dated 13 April 2018 had clarified that the arrears arising under the earlier law shall be recovered as central tax liability and to be paid through the utilization of the amount available in the electronic credit or cash ledger. Further, the same shall be recorded in Part II of the electronic liability register.

- Since, the functionality to record this liability in the electronic liability register is not available, it is clarified that as an alternative method, the taxpayers may reverse the wrongly availed CENVAT credit and inadmissible transitional credit through Table 4(BX)(2) of Form GSTR-3B.

- Further, the applicable interest and penalty shall apply on all such reversals which shall be paid through entry in column 9 of Table 6.1 of Form GSTR-3B.

Clarification on refund related issues

- Submission of invoices for processing of refund claim

  - It was clarified vide Circular No. 37/11/2018-GST dated 15 March 2018 that the claimant is required to submit invoices of inputs, input services and capital goods while claiming refund on account of exports.

  - Trade and industry represented that such requirement is cumbersome and increases the compliance cost.

  - Hence, it has been decided that refund claim shall be accompanied by a copy of Form GSTR-2A. In case if Form GSTR-2A doesn’t contain details of all the invoices, the proper officer may call for hard copies of such invoices.

  - The Circular emphasizes that the proper officer shall not insist on the submission of an invoice (either original or duplicate), the details of which are present in Form GSTR-2A of the relevant period submitted by the claimant.

  - Further, the Circular requires the claimant to submit the details of the invoices on the basis of which input tax credit had been availed in the specified format.

- System validation in calculating refund amount

  - Currently, in case of refund of unutilized Input tax Credit (ITC), the common portal calculates the refund amount as per the prescribed criteria.

  - The amount of refund claim is to be debited from the electronic credit ledger of the claimant first against Integrated GST and then equally against Central GST and State GST. In case of deficiency, say in Central GST credit, the balance claim is to be adjusted against credit balance of State GST.

  - Since, the above facility is not available on common portal, the claimant is required to follow the order as explained for all refund applications filed after the date of this circular.

  - It is also clarified that no adverse view will be taken by the tax authority where the refund claims were filed before the issuance of the circular and such order is not followed.
Re-credit in electronic credit ledger in case of rejection of refund claim

If the refund of unutilized ITC is rejected on the ground of ineligibility, the amount would be re-credited to the electronic credit ledger with simultaneous issue of notice under section 73 or 74 of the CGST Act for recovery of ineligible ITC. The claimant can also voluntarily pay this amount, along with interest and penalty, if applicable, before service of the demand notice.

Further, in case the refund claim is rejected for reasons other than ineligibility, the rejected amount shall be re-credited to the electronic credit ledger only after the receipt of an undertaking from the claimant to the effect that he shall not file an appeal against the said rejection. In case he files an appeal and if the same is finally decided against the claimant, the amount will be re-credited to the electronic credit ledger.

Scope of Rule 96(10) of the CGST Rules

Rule 96(10) has been amended retrospectively by Notification No. 39/2018-Central Tax dated 4 September 2018. The amended Rule provides that the person claiming refund of integrated tax paid on exports of goods or services should not have -

- received supplies on which the benefit of Notification No. 48/2017-Central Tax or Notification No. 40/2017-Central Tax (Rate) or Notification No. 41/2017-Integrated Tax (Rate) has been availed; or
- availed the benefit under Notification No. 78/2017-Customs or Notification No. 79/2017-Customs

The circular clarifies that the restriction to claim refund applies only to those persons who are directly purchasing or importing goods and the benefit under the above notifications has been claimed on the said purchase or import.

For example, an importer (X) is directly purchasing/importing goods and benefit is claimed under the above notifications. In this case, the restriction under rule 96(10) is applicable to X. However, if X supplies the said goods, after importation, to a domestic buyer (Y), on payment of full tax, then Y can rightfully export these goods under payment of integrated tax and claim refund of the integrated tax so paid.

Disbursal of refund amount after sanctioning by the proper officer

It has been observed by the Government that tax authorities, after receiving a sanction order from their counterpart (Central or State), are refusing to disburse the relevant sanctioned amount questioning the validity of the sanction order on certain grounds like ineligibility of credit.

It is clarified that the remedy for correction of an incorrect or erroneous sanction order lies in filing an appeal against such order and not in withholding of the disbursement of the sanctioned amount.

It is further clarified that adjustment of the amount sanctioned as refund against any outstanding demand against the claimant can be carried out by the refund disbursing authority if not already done by the refund sanctioning authority.

Status of refund claim after issuance of deficiency memo

Certain field formations are issuing show cause notices to the claimants in cases where the refund application is not re-submitted after the issuance of a deficiency memo.

The Circular clarifies that show cause notices are not required to be issued where deficiency memos have been issued. A refund application which is re-submitted after the issuance of a deficiency memo has to be treated as a fresh application.

Treatment of refund applications where the amount of refund claimed is less than INR1,000

It is clarified that the limit of INR1,000 will be applicable for each tax head separately and not cumulatively. Further, the said limit will not apply in case of refund of excess balance in the electronic cash ledger.

E-way bill in case the goods are stored in the godown of transporter

In case the recipient stores the goods in the godown of the transporter, then such place has to be declared as an additional place of business by the recipient.

The Circular clarifies that the goods in movement including when they are stored in the transporter’s godown prior to delivery (even if the godown is located in the recipient’s city/town) need to be accompanied by a valid e-way bill.

Further, a valid e-way bill is required for movement of goods from transporter’s warehouse (declared as additional place of business of the recipient) to any other place of business of the recipient.

\[\text{Circular No. 61/2018 dated 4 September 2018}\]
Comments

Clarification on various issues concerning refund may ensure uniformity in the implementation of the provisions of the law and eliminate unwarranted subjectivity and litigation.

Allowing taxpayers to submit Form GSTR-2A in place of procurement invoices might provide relief from the huge compliance burden and document handling, especially where the number of invoices is large.

As recipient is required to declare the transporter’s godown as additional place of business, compliance issues may arise in case the recipient is not registered in the state where the transporter’s godown is located.
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