

EY Tax Alert

CBIC amends Central Goods and Services Tax Rules for refund in case of inverted duty structure

Tax Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your Ernst & Young advisor.

Executive summary

Central Board of Indirect Taxes and Customs (CBIC) has issued a notification^[1] amending the Central Goods and Services Tax Rules, 2017.

The notification amends the formula for calculation of refund of input tax credit on account of inverted duty structure in line with the reading of the provisions of the Central Goods and Services Tax Act, 2017 (CGST Act).

Other important amendments:

- Amendment of various provisions relating to Consumer Welfare Fund (Fund) such as:
 - Accounts of the Fund maintained by the Central Government shall be subject to audit by the Comptroller and Auditor General of India.
 - Proceeds of the Fund can be given as a grant to the central and state governments as well as the regulatory authorities.
- Insertion of Form GSTR-10 (Final Return) to be submitted by a registered person who is required to furnish a return under section 39(1) of the CGST Act and whose registration has been cancelled.

¹ Notification No. 21/2018 - Central Tax dated 18 April 2018

Background

- Section 54(3) (ii) of the Central Goods and Services Tax Act, 2017 (CGST Act) allows refund of unutilized input tax credit (ITC) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.
- As per section 2(59) 'input' means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business.
- Section 2(83) defines 'outward supply' in relation to a taxable person, as supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business.

Earlier Provisions of Rule 89

- The refund amount as per Rule 89(5) was calculated as-

$$\{(\text{Turnover of inverted rated supply of goods}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}\} - \text{Tax payable on such inverted rated supply of goods.}$$
- Net ITC was determined basis Rule 89(4) as follows-
 Net ITC means 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.
- Reading of the provisions of section 54(3)(ii) suggest that only goods are considered on the input side whereas both goods and services are considered on the output side.
- On the other hand, the rule provides for a formula in which both goods and services are specified on input side (i.e. Net ITC) whereas only the supply of goods have been taken as a part of turnover.

Amendment through the Notification

Amended Provisions of Rule 89

- The said discrepancy between the provisions of the Act and the Rules have been rectified through Notification as follows:

$$\{(\text{Turnover of inverted rated supply of goods and services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}\} - \text{tax payable on such inverted rated supply of goods and services.}$$

- The definition of Net ITC has also been changed in the explanation to the above sub rule as follows-

Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both.

- Adjusted Total turnover" shall have the same meaning as assigned to it in sub-rule (4).
- Thus, as per the Rules only goods are considered on the input side whereas both goods and services are considered on the output side.

Other Important Amendments

- The notification also amends Rule 97 which contains various provisions relating to Consumer Welfare Fund (Fund). Some of the key amendments to the provisions of the Fund are as below:
 - Accounts of the Fund, maintained by the Central Government, shall be subject to audit by the Comptroller and Auditor General of India.
 - Proceeds of the Fund can be given as grant to central and state governments as well as regulatory authorities.
 - Up to 50 per cent of the amount credited to the Fund each year can also be used for publicity/ consumer awareness on GST, provided the availability of funds for consumer welfare activities of the Department of Consumer Affairs is not less than Rs 25 crore per annum
 - A list of the various recommendations that can be given by the Standing Committee.
 - The definitions of various terms used in Rule 97.
- New Form GSTR-10 (Final Return) which is required to be submitted by every registered person who is required to furnish a return under section 39(1) and whose registration has been cancelled.

Comments

While the government has removed the anomaly in the Rules dealing with the refund of inverted duty structure, the issue of refund of input services in such a scenario does not seem to have been addressed.



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