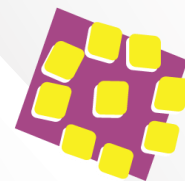


**Circulars to give the effect of  
the Recommendation of  
47<sup>th</sup> GST COUNCIL MEETING**

# **INDIRECT TAX**

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## CONTENTS

CBIC's policy wing has issued various circulars pursuant to the 47<sup>th</sup> GST Council meeting. We at Annveshan have made an attempt to provide the gist of circulars in a lucid manner.

	<b>Circular No</b>	<b>Date</b>	<b>Substance</b>
<b>A</b>	170/02/2022-GST	06 <sup>th</sup> July 2022	Mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B and statement in FORM GSTR-1
<b>B</b>	171/03/2022-GST	06 <sup>th</sup> July 2022	Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices
<b>C</b>	172/04/2022-GST	06 <sup>th</sup> July 2022	Clarification on the various issue pertaining to GST
<b>D</b>	173/05/2022-GST	06 <sup>th</sup> July 2022	Clarification on the issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification
<b>E</b>	174/06/2022-GST	06 <sup>th</sup> July 2022	Prescribing manner of re-credit in electronic credit ledger using FORM GST PMT-03A
<b>F</b>	176/08/2022-GST	06 <sup>th</sup> July 2022	Withdrawal of Circular No. 106/25/2019-GST dated 29.06.2019

**A. Mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B and statement in FORM GSTR-1 - Circular No 170/02/2022-GST**

In order to bring uniformity in return filing, the following clarification has been issued;

**I. Inter-State supplies made to un-registered persons, composition taxable persons, and UIN holders:**

Transaction pertaining to above has to be disclosed in the following manner

<b>Nature of supply</b>	<b>Form GSTR 3B</b>	<b>Form GSTR 1</b>
Inter-State supply to the unregistered persons	Disclosure to be made in table 3.2 – Place of supply wise	Disclosure to be made in table 7B or table 5 or table 9/10 as the case may be
Inter-State supply to the composition taxable person and supply to UIN Holders	Disclosure to be made in table 3.2 – Place of supply wise	Disclosure to be made in table 4A or 4C or 9 as the case may be

It is further advised that any amendment carried out in Table 9 or Table 10 of FORM GSTR-1 or any entry in Table 11 of FORM GSTR-1 relating to such supplies should also be given effect to while reporting the figures in Table 3.2 of FORM GSTR-3B.

**II. Furnishing of information regarding ITC availed, reversal thereof, and ineligible ITC in Table 4 of GSTR-3B:**

As we know Table ITC available in Table 4(A) will be auto-populated from GSTR2B and is before any reversals. It is clarified that Net ITC which is credited to Electronic Credit Ledger must be after deducting the ITC under various reversals rules. In order to ensure the same following clarifications are issued.

- a. ITC not available due to limitation of time:** Where ITC is not eligible due to the limitation of time as specified under Section 16(4) of the Act, the same has to disclose in 4(D)(2) of the GSTR 3B.

Further, it is also clarified that where the recipient of the intra-state supply is located in a different state/UT than that of the place of supply, in such cases also disclosure should be made in 4(D)(2) of the GSTR 3B

- b. Absolute and non-absolute reversals:** Circular has grouped the ITC reversals into two groups say absolute and non-absolute nature. Where ITC reversals are in absolute nature, meaning they are permanent in nature and not reclaimable in the future has to report in 4(B)(1) of GSTR

3B. Examples are Rule,42 and Rule 43 credits,(reversals on account of exempted supply), Section 17(5) Credits (blocked credits)

Non-absolute reversals are temporary in nature and reclaimable in the future and it has to be reported in table 4(B)(2) of the GSTR 3B. Examples are Non-payment of consideration within 180 days, and goods that have not been received in the same month. Further, reversals of any credit because of inadvertent availment also have to be reported in Table 4(B)(2)

The ITC so reversed is reclaimed after fulfillment of conditions has to be disclosed in table 4(D)(1)

- c. **Mathematical equation:** Because of changes in disclosure norms, now the ITC creditable to electronic credit ledger will be  
**Table 4(c) = 4A – [4B(1)+4B(2)] – Refer Annexure 1 for Model GSTR-3B**

**Annveshan Comments:**

We at Annveshan welcome the clarification. Though this is the usual practice adopted by most of the industry, due to the lack of specific columns and tables, there was room for multiple but equally tenable views in respect of disclosures in Form 3B. With this, we hope the same will bring uniformity and it makes easy for the assessment from a department angle.

However, with due respect, we do not echo the clarification to classify Rule 42 to credits as absolute reversals since Rule 42 month-on-month restrictions are only provisional. As per Rule 42(2)(a) and (b), the same has to be recalculated based on full-year turnover and any excess reversed can be claimed back not later than November in the following year. Therefore, it cannot be counted as absolute reversals.

**B. Applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices - Circular No 171/03/2022-GST**

In order to ensure uniformity in the implementation of the provisions of law across the field formations in case of fake invoices, the Board clarifies the issues in detail as provided herein below.

	<b>Issues</b>	<b>Clarification</b>
1	<p>“A” a registered taxpayer has issued a tax invoice to another registered person “B” without any underlying supply of goods or services or both.</p> <p>What is the consequence in the hands of A?</p>	<p>As there is no supply by ‘A’ to ‘B’ in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, no tax liability arises against ‘A’ for the said transaction, and accordingly, no demand and recovery is required to be made against ‘A’ under the provisions of section 73 or section 74 of CGST Act in respect of the same and also no penal provisions applicable.</p> <p>However, A is liable for penal action under 122 of the CGST Act for the invoices without supply which imposes Rs 10,000 as penalty.</p>
2	<p>“B” avails input tax credit on the basis of the said tax invoice and utilizes the said ITC towards output tax liability.</p> <p>What is the consequence in the hands of B?</p>	<p>Since the registered person ‘B’ has availed and utilized fraudulent ITC he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act. No penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on ‘B’ under any other provisions of the CGST Act, including under section 122.</p>

**Annveshan Comments:**

Much-needed clarification. Now, it is clear from the clarification that when there is no supply, the provision of Section 74 is not invocable in the hands of the supplier and only when the credit from such supply is utilized by the recipient, Section 74 is invocable in the hands of the recipient.

**C. Clarification of various issues - Circular No 172/04/2022-GST:** The board has issued a clarification on the following issues;

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

We have tabulated the clarification in respect of the above herein below

- i. Refunds claimed by the recipients of supplies regarded as deemed export;

	<b>Issue</b>	<b>Clarification</b>
1	Whether the Input Tax Credit (ITC) availed by the recipient of deemed export supply for claiming a refund of tax paid on supplies regarded as deemed exports would be subjected to provisions of Section 17 of the CGST Act, 2017	The ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017.
2	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 unutilized ITC under rule 89(4) & rule 89 (5) of the CGST Rules, 2017	The ITC of tax paid on deemed export supplies, allowed to the recipients for claim refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST 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 unutilized ITC on account of zero-rated supplies under rule 89(4) or on account of the inverted rated structure under rule 89(5) of the CGST Rules, 2017.

**Annveshan Comments:**

We welcome beneficiary clarification but the moot question arises about the validity in the absence of an amendment to substantive legislation.

**ii. Interpretation of section 17(5) of the CGST Act;**

	<b>Issue</b>	<b>Clarification</b>
1	Whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?	It is clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the GST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act. The proviso is “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,”
2	Whether the provisions of sub-clause (i) of clause (b) of sub-section (5) of section 17 of the CGST 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?	It is clarified that “leasing” referred in sub-clause (i) of clause (b) of sub-section (5) of section 17 refers to the leasing of motor vehicles, vessels and aircrafts only and not to the leasing of any other items.

**Annveshan Comments:** As we know there is a restriction on availment of input tax towards food and beverages, etc, membership of club and travel benefit extended to employees under Section 17(5)(b). Also, we know that these services if incurred due to the obligation of any statute, the same is eligible for credit. However, in some instances, it was interpreted that the relaxation of eligibility to take credit is available only in respect of travel benefits and not on other services like food and beverages and club membership. Now it is clarified that the relaxation is applicable for whole clause b meaning thereby against all said services. We welcome the clarification and definitely it reduces the unwarranted litigation.

### III. Perquisites provided by the employer to the employees as per contractual agreement

	Issues	Clarification
1	Whether various perquisites provided by the employer to its employees in terms of the contractual agreement entered into between the employer and the employee are liable for GST?	Perquisites provided by the employer to the employee in terms of the contractual agreement entered into between the employer and the employee, <b>will not be subjected to GST</b> when the same is provided in terms of the contract between the employer and employee

**Annveshan Comments:** We foodies welcome the clarification with applause. There are many contradictory Advance Rulings in the matter where few say GST is leviable on recovery from employees and few say not. AARs in the case of Beumer India Pvt Ltd and Amneal Pharmaceuticals Pvt. Ltd has held it liable and whereas in the case of Tata Motors Ltd Integrated decisions and Systems India Pvt it was held as not liable. Now, this clarification puts rest on such contradictions.

### IV. Utilization of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities

	Issues	Clarifications
1	Whether the amount available in the electronic credit ledger can be used for making payment of any tax under the GST Laws?	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. The electronic credit ledger cannot be used to pay any tax payable under the reverse charge mechanism.



2	Whether the amount available in the electronic credit ledger can be used for making payment of any liability other than tax under the GST Laws?	It cannot be used for making payment of any interest, penalty, fees, or any other amount payable under the said acts. Similarly, an electronic credit ledger cannot be used for payment of an erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.
3	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 CGST 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.

**Annveshan Comments:**

We welcome the clarification with half heart. In the field, it is usual that the tax office demands remittance of tax in cash arising out of any proceedings initiated. Clarification made it clear it can be discharged through an electronic credit ledger. But at the same time ambiguity continues for payment in respect of interest and penalty through electronic credit ledger .

More often than not, the field formation suggests that taxpayers make a pre-deposit under service tax law in case of any appeals by using DRC 03 under GST. Now with this clarification, reading between the lines suggests the same is not allowed. The taxpayers should be mindful of this clarification while making pre deposits under service tax by using GST cash ledger

**D. Clarification on the issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification - Circular No 173/05/2022-GST**

It has been clarified vide Circular No.135/05/2020 that refund on account of inverted duty structure would not be admissible in cases where the input and output supply are same.

However, there may be instances where though inputs and output goods are same but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs. In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to the supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund under the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act, other than the cases where output supply is either Nil rated or fully exempted, and also provided that supply of such goods or services are not notified by the Government for their exclusion from the refund of accumulated ITC under the said clause.

Now it is clarified that refund shall be allowable on the same goods if rate of such output supply is less due to such concessional notification

**E. Prescribing manner of re-credit in electronic credit ledger using FORM GST PMT-03A – Circular No 174/06/2022-GST:**

In terms of the GST Law, the erroneous refund paid back by the taxpayer has to be re-credited to the electronic credit ledger of the taxpayer. However, in the absence of functionality in the common portal, the taxpayer was facing difficulty. Now the GSTN has developed the new functionality of Form GST PMT – 03A which allows officers to re-credit the electronic credit ledger of the taxpayer.

**Procedure:**

1. The taxpayer shall deposit the amount of erroneous refund through Form GST DRC-03 by debit of amount from electronic cash ledger.
2. The taxpayer shall clearly mention the reason for making payment in the text box.
3. The taxpayer shall make a written request, in the format enclosed as Annexure-A, to the proper officer to re-credit the amount.
4. The proper officer, on being satisfied that the full amount of erroneous refund along with applicable interest, as per the provisions of section 50 of the CGST Act, and penalty, wherever applicable, has been paid by the said registered person in FORM GST DRC-03 by way of debit in electronic cash ledger, he shall re-credit an amount in electronic credit ledger, equivalent to the amount of erroneous refund so deposited by the registered person, by passing an order in FORM GST PMT-03A, preferably within a period of 30 days from the date of receipt of the request for re-credit of erroneous refund amount so deposited or from the date of payment of full amount of

erroneous refund along with applicable interest, and penalty, wherever applicable, whichever is later

**F. Withdrawal of Circular No. 106/25/2019-GST dated 29.06.2019 - Circular No 176/08/2022-GST**

Circular No. 106/25/2019-GST dated 29.06.2019 wherein certain clarifications were given in relation to rule 95A for a refund of taxes paid on inward supply of indigenous goods by retail outlets established at the departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange.

In pursuance of the 47<sup>th</sup> GST Council Meeting, the said rule 95A has been omitted, retrospectively w.e.f. 01.07.2019 by Notification No 14/2022 dated 05<sup>th</sup> July 2022. Accordingly, the CBIC, withdraws, ab-initio, Circular No 106/25/2019-GST dated 29th June 2019.

### Annexure 1 for Model GSTR-3B

**Illustration:**

1. A Registered person M/s ABC is a manufacturer (supplier) of goods. He supplies both taxable as well as exempted goods. In a specific month, say April, 2022, he has received input and input services as detailed in Table 1 below. The details of auto-population of Input Tax Credit on all Inward Supplies in various rows of Table 4 (A) of FORM GSTR-3B are shown in column (7) of the Table 1 below:

	<b>DETAILS</b>	<b>IGST</b>	<b>CGST</b>	<b>SGST</b>	<b>Total</b>	<b>REMARKS</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>	<b>(6)</b>	<b>(7)</b>
<b>1</b>	ITC on Import of goods	1,00,000	-	-	<b>1,00,000</b>	<b>Auto-populated in Table 4(A)(1)</b>
<b>2</b>	ITC on Import of Services	50,000	-	-	<b>50,000</b>	
<b>3</b>	ITC on Inward Supplies under RCM	-	25,000	25,000	<b>50,000</b>	<b>Auto-populated in Table 4(A)(3)</b>
<b>4</b>	ITC on Inward Supplies from ISD	50,000	-	-	<b>50,000</b>	<b>Auto-populated in Table 4(A)(4)</b>
<b>5</b>	ITC on other inward supplies	2,00,000	1,50,000	1,50,000	<b>5,00,000</b>	<b>Auto-populated in Table 4(A)(5)</b>
<b>6</b>	<b>Total</b>	4,00,000	1,75,000	1,75,000	<b>7,50,000</b>	

**Other relevant facts:**

**Note 1:** Of the other inward supplies mentioned in row (5), M/s ABC has received goods on which ITC is barred under section 17(5) of the CGST Act having integrated tax of Rs. 50,000/-

**Note 2:** In terms of rule 42 and 43 of the CGST Rules, M/s ABC is required to reverse ITC of Rs. 75,500/- integrated tax, Rs. 52,000/- central tax and Rs. 52,000/- state tax.

**Note 3:** M/s ABC had not received the supply during April, 2022 in respect of an invoice for an inwards supply auto-populated in row (5) having integrated tax of Rs. 10,000/-.

**Note 4:** M/s ABC has reversed ITC of Rs. 500/- central tax and Rs. 500/- state tax on account of Rule 37 i.e. where consideration was not paid to the supplier within 180 days.

**Note 5:** An amount of ITC of Rs 10,000/ central Tax and Rs 10,000/- state tax, ineligible on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act, has not been auto-populated in Table 4(A) of FORM GSTR-3B from GSTR-2B.

2. Based on the facts mentioned in Table 1 above, M/s ABC is required to avail ITC after making necessary reversals in Table 4 of FORMGSTR-3B as detailed in Table 2 below:

Details	IGST	CGST	SGST/ UTGST	Explanation
1	2	3	4	
(A) ITC Available  (Whether in full or part)	-	-	-	
1. Import of Goods	1,00,000	-	-	
2. Import of Services	50,000	-	-	
3. Inward Supplies liable to Reverse Charge (other than 1 & 2 above)	-	25,000	25,000	
4. Inward Supplies from ISD	50,000	-	-	
5. All other ITC	2,00,000	1,50,000	1,50,000	
(B) ITC Reversed / Reduced	-	-	-	
1. Reversal of ITC as per rule 42 and 43 of CGSTRules	125,500	52,000	52,000	Refer explanation (i) mentioned below.
2. Others	10,000	500	500	Refer explanation (ii) mentioned below.
(C) Net ITC Available (A)-(B)	2,64,500	122500	122500	$C=A1+A2+A3+A4+A5-B1-B2$
(D) Ineligible ITC				
1. As per section 17(5)	-	-	-	Refer explanation (iii) mentioned below.
2. Others	-	10,000	10,000	Refer explanation (iv) mentioned below

## **Explanations -**

### **i**

1. Refer para 4.3 (B) of circular
2. Reversal of Rs. 75,500/- integrated tax, Rs. 52,000/- central tax and Rs. 52,000/- state tax under rule 42 and 43 [Note 2]
3. Ineligible ITC of Integrated tax of Rs. 50,000/- under section 17(5) [Note 1]

### **ii**

1. Refer para 4.3 (C) of circular
2. Reversal of integrated tax of Rs. 10,000/-, where supply is not received [Note 3]
3. Reversal of ITC of Rs 500/- central tax and Rs 500/- state tax on account of Rule 37 [Note 4]

### **iii**

1. Refer para 4.3 (E) of circular
2. Reversals under section 17(5) are not required to be shown in this row. The same are to be shown under 4(B)(1)

### **iv**

1. Refer para 4.3(F) of circular
2. Ineligible ITC on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act, which has not been auto-populated in Table 4(A) of GSTR-3B

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