

**GOVERNMENT OF WEST BENGAL
DIRECTORATE OF COMMERCIAL TAXES
14, BELIAGHATA ROAD, KOLKATA-700015**

TRADE CIRCULAR No. 33/2018 (*Circular No. 45/19/2018-GST*)

DATED: 17.09.2018

Subject: Clarifications on refund related issues

The Commissioner *vide* Trade Circular No. 12/2017 dated 15th November 2017, No. 14/2017 dated 21st December 2017 read with corrigendum dated 6th February, 2018 and No. 05/2018 – GST dated 17th March, 2018 has laid down the procedure for manual filing and processing of different types of refund claims under GST and clarified the exports related refund issues.

2. Representations have been received seeking clarification on certain refund related issues. In order to clarify these issues and with a view to ensure uniformity in the implementation of the provisions of the law across the field formations (i.e., jurisdictional officers), the Commissioner, in exercise of its powers conferred by section 168(1) of the West Bengal Goods and Services Tax Act, 2017 (WBGST Act for short) hereby clarifies the issues raised as below:

3. Claim for refund filed by an Input Service Distributor, a person paying tax under section 10 or a non-resident taxable person:

3.1 Doubts have been raised in case of claims for refund filed by an Input Service Distributor (ISD for short), a person paying tax under section 10 of the WBGST Act (composition taxpayer for short) or a non-resident taxable person in light of para 2.0 of trade Circular No. 14/2017-GST dated 21.12.2017 which mandates that the refund claim for a tax period may be filed only after filing the details in **FORM GSTR-1** for the said tax period and that it is also to be ensured that a valid return in **FORM GSTR-3B** has been filed for the last tax period before the one in which the refund application is being filed.

3.2 In this regard, attention is invited to sub-section (1) of section 37 of the WBGST Act read with rule 59 of the West Bengal Goods and Services Tax Rules, 2017 (WBGST Rules for short) which mandates that every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish the details of outward supplies of goods or services or both effected during a tax period in **FORM GSTR-1**. Further, as per sub-section (2) of section 39 of the WBGST Act read with rule 62 of the WBGST Rules, a composition taxpayer is required to furnish the return in **FORM GSTR-4**; as per sub-section (4) of section

39 of the WBGST Act read with rule 65 of the WBGST Rules, an ISD is required to furnish the return in **FORM GSTR-6** and as per sub-section (5) of section 39 of the WBGST Act read with rule 63 of the WBGST Rules, a non-resident taxable person is required to furnish the return in **FORM GSTR-5**.

33 Thus, it is clarified that in case of a claim for refund of balance in the electronic cash ledger filed by an ISD or a composition taxpayer; and the claim for refund of balance in the electronic cash and/or credit ledger by a non-resident taxable person, the filing of the details in **FORM GSTR-1** and the return in **FORM GSTR-3B** is not mandatory. Instead, the return in **FORM GSTR-4** filed by a composition taxpayer, the details in **FORM GSTR-6** filed by an ISD and the return in **FORM GSTR-5** filed by a non-resident taxable person shall be sufficient for claiming the said refund.

4. Application for refund of integrated tax paid on export of services and supplies made to a Special Economic Zone developer or a Special Economic Zone unit:

It has been represented that while filing the return in **FORM GSTR-3B** for a given tax period, certain registered persons committed errors in declaring the export of services on payment of integrated tax or zero rated supplies made to a Special Economic Zone developer or a Special Economic Zone unit on payment of integrated tax. They have shown such supplies in the Table under column 3.1(a) instead of showing them in column 3.1(b) of **FORM GSTR-3B** whilst they have shown the correct details in Table 6A or 6B of **FORM GSTR-1** for the relevant tax period and duly discharged their tax liabilities. Such registered persons are unable to file the refund application in **FORM GST RFD-01A** for refund of integrated tax paid on the export of services or on supplies made to a SEZ developer or a SEZ unit on the GST common portal because of an in-built validation check in the system which restricts the refund amount claimed (integrated tax/cess) to the amount of integrated tax/cess mentioned under column 3.1(b) of **FORM GSTR-3B** (zero rated supplies) filed for the corresponding tax period.

43 In this regard, it is clarified that for the tax periods commencing from 01.07.2017 to 31.03.2018, such registered persons shall be allowed to file the refund application in **FORM GST RFD-01A** on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of **FORM GSTR-3B** filed for the corresponding tax period.

5. Refund of unutilized input tax credit of compensation cess availed on inputs in cases where the final product is not subject to the levy of compensation cess:

53 Doubts have been raised whether an exporter is eligible to claim refund of unutilized input tax credit of compensation cess paid on inputs, where the final product is not leviable to compensation cess. For instance, cess is levied on coal, which is an input for the manufacture of aluminum products, whereas cess is not levied on aluminum products.

54 In this regard, section 16 (2) of the Integrated Goods and Services Tax Act, 2017 (IGST Act for short) states that, subject to the provisions of section 17(5) of the WBGST Act, credit of input tax may be availed for making zero rated supplies. Further, as per section 8 of the Goods and Services Tax (Compensation to States) Act, 2017, (hereafter referred to as the Cess Act), all goods and services specified in the Schedule to the Cess Act are leviable to cess under the Cess Act; and vide section 11 (2) of the Cess Act, section 16 of the IGST Act is *mutatis mutandis* made applicable to inter-State supplies of all such goods and services. Thus, it implies that all supplies of such goods and services are zero rated under the Cess Act. Moreover, as section 17(5) of the WBGST Act does not restrict the availment of input tax credit of compensation cess on coal, it is clarified that a registered person making zero rated supply of aluminum products under bond or LUT may claim refund of unutilized credit including that of compensation cess paid on coal.

55 Such registered persons may also make zero-rated supply of aluminum products on payment of integrated tax but they cannot utilize the credit of the compensation cess paid on coal for payment of integrated tax in view of the proviso to section 11(2) of the Cess Act, which allows the utilization of the input tax credit of cess, only for the payment of cess on the outward supplies. Accordingly, they cannot claim refund of compensation cess in case of zero-rated supply on payment of integrated tax.

6. Whether bond or Letter of Undertaking (LUT) is required in the case of zero rated supply of exempted or non-GST goods and whether refund can be claimed by the exporter of exempted or non-GST goods?

61 As per section 16(2) of the IGST Act, credit of input tax may be availed for making zero rated supplies, notwithstanding that such supply is an exempt supply. Whereas, as per section 2 (47) of the WBGST Act, exempt supply includes non-taxable supply. Further, as per section 16(3) of the IGST Act, a registered person making zero rated supply shall be eligible to claim refund when he either makes supply of goods or services or both under bond or letter of undertaking (LUT) or makes such supply on payment of integrated tax.

62 However, in case of zero rated supply of exempted or non-GST goods, the requirement for furnishing a bond or LUT cannot be insisted upon. It is thus, clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of integrated tax; LUT/bond is not required. Such registered persons exporting non-GST goods shall comply with the requirements prescribed under the existing law (i.e. Central Excise Act, 1944 or the VAT law of the respective State) or under the Customs Act, 1962, if any.

63 Further, the exporter would be eligible for refund of unutilized input tax credit of central tax, state tax, union territory tax, integrated tax and compensation cess in such cases.

7. What is the scope of the restriction imposed by rule 96(10) of the WBGST Rules, regarding non-availment of the benefit of notification Nos. 1853-F.T. [48/2017-State Tax] dated the 18.10.2017, 1874-F.T. [40/2017-State Tax (Rate)] dated 23.10.2017, 41/2017-Integrated Tax (Rate) dated 23.10.2017, 78/2017-Customs dated 13.10.2017 or 79/2017-Customs dated 13.10.2017?

7.1 Sub-rule (10) of rule 96 of the WBGST Rules seeks to prevent an exporter, who is receiving goods from suppliers availing the benefit of certain specified notifications under which they supply goods without payment of tax or at reduced rate of tax, from exporting goods under payment of integrated tax. This is to ensure that the exporter does not utilise the input tax credit availed on other domestic supplies received for making the payment of integrated tax on export of goods.

7.2 However, the said restriction is not applicable to an exporter who has procured goods from suppliers who have not availed the benefits of the specified notifications for making their outward supplies. Further, the said restriction is also not applicable to an exporter who has procured goods from suppliers who have, in turn, received goods from registered persons availing the benefits of these notifications since the exporter did not directly procure these goods without payment of tax or at reduced rate of tax.

7.3 Thus, the restriction under sub-rule (10) of rule 96 of the WBGST Rules is only applicable to those exporters who are directly receiving goods from those suppliers who are availing the benefit under notification No. 1853-F.T. [48/2017-State Tax] dated the 18thOctober, 2017, notification No. 1874-F.T. [40/2017-State Tax (Rate)] dated the 23rdOctober, 2017, or notification No. 41/2017-Integrated Tax (Rate) dated the 23rdOctober, 2017 or notification No. 78/2017- Customs dated the 13thOctober, 2017 or notification No. 79/2017-Customs dated the 13th October, 2017.

74 Further, there might be a scenario where a manufacturer might have imported capital goods by availing the benefit of Notification No. 78/2017-Customs dated 13.10.2017 or 79/2017-Customs dated 13.10.2017. Thereafter, goods manufactured from such capital goods may be supplied to an exporter. It is hereby clarified that this restriction does not apply to such inward supplies of an exporter.

8. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Commissioner.

9. This circular shall be deemed to have come into force with effect from 30.05.2018.

Sd/-
(Smaraki Mahapatra)
Commissioner,
State Tax, West Bengal

Memo. 393 CT/PRO
3C/PRO/2018

Date: 18.09.2018

Copy forwarded to the Additional CST/ISD for information and for uploading it on the official website of the Directorate for information of all concerned.

Sd/-
(Adesh Kumar)
Special CST & PRO