

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

TRADE CIRCULAR No. 35/2018 (*Circular No. 48/22/2018-GST*)

DATED: 17.09.2018

Subject: Clarifications of certain issues under GST related to SEZ and refund of unutilized ITC for job workers.

Representations have been received seeking clarification on certain issues under the GST laws. The same have been examined and the clarifications on the same are as below:

Sl. No.	Issue	Clarification
1	Whether services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit should be treated as an inter State supply (under section 7(5)(b) of the IGST Act, 2017) or an intra-State supply (under section 12(3)(c) of the IGST Act, 2017)?	<p>1.1 As per section 7(5) (b) of the Integrated Goods and Services Tax Act, 2017 (IGST Act in short), the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce. Whereas, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State supply.</p> <p>1.2 It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision.</p> <p>1.3 In the instant case, section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies.</p> <p>1.4 It is therefore, clarified that services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.</p>

2	<p>Whether the benefit of zero rated supply can be allowed to all procurements by a SEZ developer or a SEZ unit such as event management services, hotel and accommodation services, consumables etc?</p>	<p>2.1 As per section 16(1) of the IGST Act, “zero rated supplies” means supplies of goods or services or both to a SEZ developer or a SEZ unit. Whereas, section 16(3) of the IGST Act provides for refund to a registered person making zero rated supplies under bond/LUT or on payment of integrated tax, subject to such conditions, safeguards and procedure as may be prescribed. Further, as per the second proviso to rule 89(1) of the West Bengal Goods and Services Tax Rules, 2017 (WBGST Rules in short), in respect of supplies to a SEZ developer or a SEZ unit, the application for refund shall be filed by the:</p> <ul style="list-style-type: none"> (a) supplier of goods after such goods have been admitted in full in the SEZ for authorised operations, as endorsed by the specified officer of the Zone; (b) supplier of services along with such evidences regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone. <p>2.2 A conjoint reading of the above legal provisions reveals that the supplies to a SEZ developer or a SEZ unit shall be zero rated and the supplier shall be eligible for refund of unutilized input tax credit or integrated tax paid, as the case may be, only if such supplies have been received by the SEZ developer or SEZ unit for authorized operations. An endorsement to this effect shall have to be issued by the specified officer of the Zone.</p> <p>2.3 Therefore, subject to the provisions of section 17(5) of the WBGST Act, if event management services, hotel, accommodation services, consumables etc. are received by a SEZ developer or a SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero rated supply shall be available in such cases to the supplier.</p>
3	<p>Whether independent fabric processors (job workers) in the textile sector supplying job work services are</p>	<p>3.1 Notification No. 1129-F.T. [05/2017-State Tax (Rate)], dated 28.06.2017 specifies the goods in respect of which refund of</p>

<p>eligible for refund of unutilized input tax credit on account of inverted duty structure under section 54(3) of the WBGST Act, 2017, even if the goods (fabrics) supplied are covered under notification No. 1129-F.T. [05/2017-<i>State Tax (Rate)</i>], dated 28.06.2017?</p>	<p>unutilized input tax credit (ITC) on account of inverted duty structure under section 54(3) of the WBGST Act shall not be allowed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies of such goods. However, in case of fabric processors, the output supply is the supply of job work services and not of goods (fabrics).</p> <p>3.2 Hence, it is clarified that the fabric processors shall be eligible for refund of unutilized ITC on account of inverted duty structure under section 54(3) of the WBGST Act even if the goods (fabrics) supplied to them are covered under notification No. 1129-F.T. [05/2017-<i>State Tax (Rate)</i>] dated 28.06.2017.</p>
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2. Difficulty if any, in the implementation of this circular may be brought to the notice of the Commissioner.
3. This circular shall be deemed to have come into force with effect from 14.06.2018.

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

Memo.395 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