

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

TRADE CIRCULAR No. 16/2019 (*Circular No. 96/15/2019-GST*)

DATED: 28.03.2019

Subject: Clarification in respect of transfer of input tax credit in case of death of sole proprietor.

Doubts have been raised whether sub-section (3) of section 18 of the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as 'WBGST Act') provides for transfer of input tax credit which remains unutilized to the transferee in case of death of the sole proprietor. As per sub-rule (1) of rule 41 of the West Bengal Goods and Services Tax Rules, 2017 (hereinafter referred to as 'WBGST Rules'), the registered person (transferor of business) can file **FORM GST ITC-02** electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee. Further, clarification has also been sought regarding procedure of filing of **FORM GST ITC-02** in case of death of the sole proprietor. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of the law, the Commissioner, in exercise of his powers conferred by section 168 (1) of the WBGST Act, hereby clarifies the issues raised as below.

2. Clause (a) of sub-section (1) of section 29 of the WBGST Act provides that reason of transfer of business includes "death of the proprietor". Similarly, for uniformity and for the purpose of sub-section (3) of section 18, sub-section (3) of section 22, sub-section (1) of section 85 of the WBGST Act and sub-rule (1) of rule 41 of the WBGST Rules, it is clarified that transfer or change in the ownership of business will include transfer or change in the ownership of business due to death of the sole proprietor.

3. In case of death of sole proprietor if the business is continued by any person being transferee or successor, the input tax credit which remains un-utilized in the electronic credit ledger is allowed to be transferred to the transferee as per provisions and in the manner stated below –

- a. **Registration liability of the transferee / successor:** As per provisions of sub-section (3) of section 22 of the WBGST Act, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or

succession, where a business is transferred to another person for any reason including death of the proprietor. While filing application in **FORM GST REG-01** electronically in the common portal the applicant is required to mention the reason to obtain registration as “death of the proprietor”.

- b. **Cancellation of registration on account of death of the proprietor:** Clause (a) of sub-section (1) of section 29 of the WBGST Act, allows the legal heirs in case of death of sole proprietor of a business, to file application for cancellation of registration in **FORM GST REG-16** electronically on common portal on account of transfer of business for any reason including death of the proprietor. In **FORM GST REG-16**, reason for cancellation is required to be mentioned as “death of sole proprietor”. The GSTIN of transferee to whom the business has been transferred is also required to be mentioned to link the GSTIN of the transferor with the GSTIN of transferee.
- c. **Transfer of input tax credit and liability:** In case of death of sole proprietor, if the business is continued by any person being transferee or successor of business, it shall be construed as transfer of business. Sub-section (3) of section 18 of the WBGST Act, allows the registered person to transfer the unutilized input tax credit lying in his electronic credit ledger to the transferee in the manner prescribed in rule 41 of the WBGST Rules, where there is specific provision for transfer of liabilities. As per sub-section (1) of section 85 of the WBGST Act, the transferor and the transferee / successor shall jointly and severally be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business “in whole or in part, by sale, gift, lease, leave and license, hire *or in any other manner whatsoever*”. Furthermore, sub-section (1) of section 93 of the WBGST Act provides that where a person, liable to pay tax, interest or penalty under the WBGST Act, dies, then the person who continues business after his death, shall be liable to pay tax, interest or penalty due from such person under this Act. It is therefore clarified that the transferee / successor shall be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business due to death of sole proprietor.
- d. **Manner of transfer of credit:** As per sub-rule (1) of rule 41 of the WBGST Rules, a registered person shall file **FORM GST ITC-02** electronically on the common portal with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee, in the event of sale, merger, de-merger, amalgamation, lease

or *transfer or change in the ownership of business for any reason*. In case of transfer of business on account of death of sole proprietor, the transferee / successor shall file **FORM GST ITC-02** in respect of the registration which is required to be cancelled on account of death of the sole proprietor. **FORM GST ITC-02** is required to be filed by the transferee/successor before filing the application for cancellation of such registration. Upon acceptance by the transferee / successor, the un-utilized input tax credit specified in **FORM GST ITC-02** shall be credited to his electronic credit ledger.

4. Difficulty if any, in the implementation of this Circular may be brought to the notice of the Commissioner.

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

Memo. – 132 CT/PRO
3C/PRO/2019

Date: 28.03.2019

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