

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

TRADE CIRCULAR No. 20/2021

(Corresponding Central Circular No. 160/16/2021-GST)

DATED: 30.09.2021

Subject: Clarification in respect of certain GST related issues.

Various representations have been received from taxpayers and other stakeholders seeking clarification in respect of certain issues pertaining to GST laws. The issues have been examined. In order to ensure uniformity in the implementation of the provisions of the law across field formations, the Commissioner, in exercise of its powers conferred by section 168 of the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as “WBGST Act”), hereby clarifies each of these issues as under:

S. No.	Issue	Clarification
1.	<p>Section 16 (4), as amended with effect from 01.01.2021, provides that a registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.</p> <p>Doubts have been raised seeking following clarification:</p> <p>1. Which of the following dates are relevant to</p>	<p>1. With effect from 01.01.2021, section 16(4) of the WBGST Act, 2017 was amended vide the West Bengal Goods and Services Tax (Amendment) Act, 2021, so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit.</p> <p>The amendment made is shown as below:</p> <p><i>“A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.”</i></p>

	<p>determine the ‘financial year’ for the purpose of section 16(4):</p> <p>(a) date of issuance of debit note, or</p> <p>(b) date of issuance of underlying invoice.</p> <p>2. Whether any availment of input tax credit, on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, will be governed by the provisions of the amended section 16(4), or the amended provision will be applicable only in respect of the debit notes issued after 01.01.2021?</p>	<p>As can be seen, the words “invoice relating to such” were omitted w.e.f. 01.01.2021.</p> <p>2. The intent of law as specified in clause (b) of the SOR of the West Bengal Goods and Services Tax (Amendment) Bill, 2021 states so as <i>“to delink the date of issuance of debit note from the date of issuance of the corresponding invoice for purposes of availing input tax credit.”</i></p> <p>3. Accordingly, it is clarified that:</p> <p>a) w.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of the WBGST Act.</p> <p>b) The availment of ITC on debit notes in respect of amended provision shall be applicable from 01.01.2021. Accordingly, for availment of ITC on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, the eligibility for availment of ITC will be governed by the amended provision of section 16(4), whereas any ITC availed prior to 01.01.2021, in respect of debit notes, shall be governed under the provisions of section 16(4), as it existed before the said amendment on 01.01.2021.</p> <p>Illustration 1. A debit note dated 07.07.2021 is issued in respect of the original invoice dated 16.03.2021. As the invoice pertains to F.Y. 2020-21, the relevant financial year for availment of</p>
--	--	---

		<p>ITC in respect of the said invoice in terms of section 16(4) of the WBGST shall be 2020-21. However, as the debit note has been issued in FY 2021-22, the relevant financial year for availment of ITC in respect of the said debit note shall be 2021-22 in terms of amended provision of section 16(4) of the WBGST Act.</p> <p>Illustration 2. A debit note has been issued on 10.11.2020 in respect an invoice dated 15.07.2019. As per amended provision of section 16(4), the relevant financial year for availment of input tax credit on the said debit note, on or after 01.01.2021, will be FY 2020-21 and accordingly, the registered person can avail ITC on the same till due date of furnishing of FORM GSTR-3B for the month of September, 2021 or furnishing of the annual return for FY 2020-21, whichever is earlier.</p>
2.	Whether carrying physical copy of invoice is compulsory during movement of goods in cases where suppliers have issued invoices in the manner prescribed under rule 48 (4) of the WBGST Rules, 2017 (i.e. in cases of e-invoice).	<ol style="list-style-type: none"> 1. Rule 138A (1) of the WBGST Rules, 2017 <i>inter-alia</i>, provides that the person in charge of a conveyance shall carry— (a) the invoice or bill of supply or delivery challan, as the case may be; and (b) a copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner. 2. Further, rule 138A (2) of WBGST Rules, after being amended <i>vide</i> notification No. 843-F.T. dated 15.10.2020, states that “<i>In case, invoice is issued in the manner prescribed under sub-rule (4) of rule 48, the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the</i>

		<p><i>proper officer in lieu of the physical copy of such tax invoice”</i></p> <p>3. A conjoint reading of rules 138A (1) and 138A (2) of WBGST Rules, 2017 clearly indicates that there is no requirement to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier. After amendment, the revised rule 138A(2) states in unambiguous words that whenever e-invoice has been generated, the Quick Reference (QR) code, having an embedded Invoice Reference Number (IRN) in it, may be produced electronically for verification by the proper officer in lieu of the physical copy of such tax invoice.</p> <p>4. Accordingly, it is clarified that there is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the WBGST Rules and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.</p>
3.	Whether the first proviso to section 54(3) of CGST / WBGST Act, prohibiting refund of unutilized ITC is applicable in case of exports of goods which are having NIL rate of export duty.	1. The term ‘ subjected to export duty ’ used in second proviso to section 54(3) of the WBGST Act, 2017 means where the goods are actually leviable to export duty and suffering export duty at the time of export. Therefore, goods in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, cannot be considered to be subjected to any

		<p>export duty under Customs Tariff Act, 1975.</p> <p>2. Accordingly, it is clarified that only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) from availment of refund of accumulated ITC. Goods, which are not subject to any export duty and in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, would not be covered by the restriction imposed under the second proviso to section 54(3) of the WBGST Act for the purpose of availment of refund of accumulated ITC.</p>
--	--	---

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

Sd/-
(Khalid Aizaz Anwar)
Commissioner, State Tax,
West Bengal

Memo. -181 CT/PRO
3C/PRO/2021

Date: 30.09.2021

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/-
(Nabanita Pal)
Additional CST & PRO