

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

**TRADE CIRCULAR No. 22/2021**

*(Corresponding Central Circular No. 162/18/2021-GST)*

**DATED: 03.11.2021**

**Subject: Clarification in respect of refund of tax specified in section 77(1) of the WBGST Act and section 19(1) of the IGST Act.**

Representations have been received seeking clarification on the issues in respect of refund of tax wrongfully paid as specified in section 77(1) of the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as “WBGST Act”) and section 19(1) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST Act”). In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Commissioner, in exercise of its powers conferred by section 168 of the WBGST Act, hereby clarifies the issues detailed hereunder:

**2.1** Section 77 of the WBGST Act, 2017 reads as follows:

*“77. Tax wrongfully collected and paid to Central Government or State Government. — (1) A registered person who has paid the central tax and State tax on a transaction considered by him to be an intra-State supply, but which is **subsequently held** to be an inter-State supply, shall be refunded the amount of taxes so paid **in such manner and subject to such conditions as may be prescribed.**”*

*(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is **subsequently held** to be an intra-State supply, shall not be required to pay any interest on the amount of State tax payable.”*

Section 19 of the IGST Act, 2017 reads as follows:

*“19. Tax wrongfully collected and paid to Central Government or State Government----- (1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is **subsequently held** to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid **in such manner and subject to such conditions as may be prescribed.**”*

*(2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State*

*supply, but which is **subsequently held** to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.”*

### **3. Interpretation of the term “subsequently held”**

**3.1** Doubts have been raised regarding the interpretation of the term “**subsequently held**” in the aforementioned sections, and whether refund claim under the said sections is available only if supply made by a taxpayer as inter-State or intra-State, is subsequently held by tax officers as intra-State and inter-State respectively, either on scrutiny/ assessment/ audit/ investigation, or as a result of any adjudication, appellate or any other proceeding or whether the refund under the said sections is also available when the inter-State or intra-State supply made by a taxpayer, is subsequently found by taxpayer himself as intra-State and inter-State respectively.

**3.2** In this regard, it is clarified that the term “subsequently held” in section 77 of WBGST Act, 2017 or under section 19 of IGST Act, 2017 covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.

### **4. The relevant date for claiming refund under section 77 of the WBGST Act/ Section 19 of the IGST Act, 2017**

**4.1** Section 77 of the WBGST Act and Section 19 of the IGST Act, 2017 provide that in case a supply earlier considered by a taxpayer as intra-State or inter-State, is subsequently held as inter-State or intra-State respectively, the amount of central and state tax paid or integrated tax paid, as the case may be, on such supply shall be refunded in such manner and subject to such conditions as may be prescribed. In order to prescribe the manner and conditions for refund under section 77 of the WBGST Act and section 19 of the IGST Act, sub-rule (1A) has been inserted after sub-rule (1) of rule 89 of the West Bengal Goods and Services Tax Rules, 2017 (hereinafter referred to as “WBGST Rules”) vide notification No. No. 1231-F.T. dated 21.10.2021. The said sub-rule (1A) of rule 89 of WBGST Rules, 2017 reads as follows:

*“(1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:*

*Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force.”*

**4.2** The aforementioned amendment in the rule 89 of WBGST Rules, 2017 clarifies that the refund under section 77 of WBGST Act/ Section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head, i.e. integrated tax paid in respect of subsequently held inter-State supply, or central and state tax in respect of subsequently held intra-State supply, as the case may be. However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of notification No. 1231-F.T. dated 21.10.2021, the refund application under section 77 of the WBGST Act/ section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification. i.e. from 24.09.2021.

**4.3** Application of sub-rule (1A) of rule 89 read with section 77 of the WBGST Act / section 19 of the IGST Act is explained through following illustrations.

*A taxpayer “A” has issued the invoice dated 10.03.2018 charging WBGST and CGST on a transaction and accordingly paid the applicable tax (WBGST and CGST) in the return for March, 2018 tax period. The following scenarios are explained hereunder:*

<b>Sl.no.</b>	<b>Scenario</b>	<b>Last date for filing the refund claim</b>
1	Having realized on his own that the said transaction is an inter-State supply, “A” paid IGST in respect of the said transaction on <b>10.05.2021</b> .	Since “A” has paid the tax in the correct head before issuance of notification No. 35/2021-Central Tax, dated 24.09.2021, the last date for filing refund application in <b>FORM GST RFD-01</b> would be <b>23.09.23</b> (two years from date of notification)
2	Having realized on his own that the said transaction is an inter-State supply, “A” paid IGST in respect of the said transaction on <b>10.11.2021 i.e. after issuance of notification No. 35/2021-Central Tax</b> dated 24.09.2021	Since “A” has paid the correct tax on 10.11.2021, in terms of rule 89 (1A) of the WBGST Rules, the last date for filing refund application in <b>FORM GST RFD-01</b> would be <b>09.11.2023</b> (two years from the date of payment of tax under the correct head, i.e. integrated tax)
3	Proper officer or adjudication authority or appellate authority of “A” has held the transaction as an inter-State supply and accordingly, “A” has paid the IGST in respect of the said transaction on <b>10.05.2019</b>	Since “A” has paid the tax in the correct head before issuance of notification No. 35/2021-Central Tax, dated 24.09.2021, the last date for filing refund application in <b>FORM GST RFD-01</b> would be <b>23.09.23</b> (two

		<i>years from date of notification)</i>
4	Proper officer or adjudication authority or appellate authority of “A” has held the transaction as an inter-State supply and accordingly, “A” has paid the IGST in respect of the said transaction on <b>10.11.2022 i.e. after issuance of notification No. 35/2021-Central Tax</b> dated 24.09.2021	Since “A” has paid the correct tax on 10.11.2022, in terms of rule 89 (1A) of the WBGST Rules, the last date for filing refund application in <b>FORM GST RFD-01</b> would be <b>09.11.2024</b> <i>(two years from the date of payment of tax under the correct head, i.e. integrated tax)</i>

The examples above are only indicative one and not an exhaustive list. Rule 89 (1A) of the WBGST Rules would be applicable for section 19 of the IGST Act also, where the taxpayer has initially paid IGST on a specific transaction which later on is held as intra-State supply and the taxpayer accordingly pays WBGST and SGST on the said transaction. It is also clarified that any refund applications filed, whether pending or disposed off, before issuance of notification No. 35/2021-Central Tax, dated 24.09.2021, would also be dealt in accordance with the provisions of rule 89 (1A) of the WBGST Rules, 2017.

**4.4** Refund under section 77 of the WBGST Act / section 19 of the IGST Act would not be available where the taxpayer has made tax adjustment through issuance of credit note under section 34 of the WBGST Act in respect of the said transaction.

**5.** Difficulty, if any, in implementation of this Trader Circular may please be brought to the notice of the Commissioner.

Sd/-

(Khalid Aizaz Anwar)  
Commissioner, State Tax,  
West Bengal

Memo. -189 CT/PRO  
3C/PRO/2021

Date: 03.11.2021

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/-

(A.Z. Khan)  
Special Commissioner,  
State Tax,  
West Bengal