

CBIC issues various clarifications pursuant to the 47th GST Council meeting recommendations

To remove ambiguity and legal disputes revolving around various issues, the Goods and Service Tax (GST) council in its recently held 47th meeting, had recommended the issuance of due clarifications on the subject matters.

Pursuant to the said recommendations from the GST council, the Central Board of Indirect Taxes & Customs (CBIC) has now issued circulars clarifying various important aspects in relation thereto.

A. Clarification relating to ineligible input tax credit (ITC):

Issue	Clarification
Applicability of proviso at the end of clause (b) of section 17(5) to allow ITC when its obligatory for an employer to provide goods or services to its employees	Earlier, the 28 th GST Council meeting had recommended to widen the scope of ITC to allow credit in respect of goods or services which are obligatory for an employer to provide to its employees and accordingly amendment was made in the provisions. Hence, it has been clarified that the proviso is applicable to whole clause (b) of the subject provision and ITC shall be allowed accordingly.
Availability of ITC on input services by way of any type of leasing	It is clarified that availment of ITC is not barred in case of leasing, other than leasing of motor vehicles, vessels and aircrafts.

B. Clarification in relation to perquisites provided by employer to employee as per contractual agreement:

Issue	Clarification
Applicability of GST on perquisites provided by employer to employee in terms of contractual agreement	No GST will be applicable on perquisites provided by employer to its employees in terms of contractual agreement in relation to employment.

C. Clarification in relation to refund under inverted duty structure (IDS) where goods are supplied under concessional notification:

Issue	Clarification
Refund under IDS where goods are supplied under concessional rate notification	There may be cases where though inputs and output goods are same, but the output supplies are made under a concessional rate notification. In this scenario, this is clarified that the credit accumulated is admissible for refund, other than the cases where output supply is either nil rated or fully exempted. Besides, supply of such goods or services are not notified by the government for their exclusion from refund of accumulated ITC.

CBIC issues various clarifications pursuant to the 47th GST Council meeting recommendations

D. Clarification in relation to utilisation of electronic credit ledger (ECrL) and electronic cash ledger (ECL) ledger for payment of tax and other liabilities:

Issue	Clarification
Can amount available in ECrL be used to make payments of any tax under GST?	Any payment towards output tax except under the Reverse Charge Mechanism can be made by utilisation of the amount available in ECrL.
Can amount available in ECrL be used to make payments of any liability other than tax under GST?	ECrL cannot be used to make payment of any amount (interest, penalty fees or any other amount including payment of erroneous refund) other than the output tax under Central GST (CGST) Act or Integrated GST (IGST) Act.
Can ECL be used for making payment of any liability under GST?	The amount available in ECL can be utilised to make any payment under GST law towards tax, interest, penalty, fees or any other amount.

E. Clarification in relation to refund claimed by the recipients of deemed export supplies:

Issue	Clarification
Would ITC availed by the recipient for claiming refund of tax paid on deemed exports would subject to provisions of Section 17 of the CGST Act?	The ITC of tax paid on deemed export supplies allowed to the recipients for claiming refund of such tax paid is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, the ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17.
Would ITC availed by the recipient for claiming refund is to be included in the “Net ITC” for computation of refund of unutilised ITC?	Such ITC is not to be included in the “Net ITC” for computation of refund of unutilised ITC on account of zero-rated supplies.

CBIC issues various clarifications pursuant to the 47th GST Council meeting recommendations

F. Clarification in relation to re-credit in ECrL using Form GST PMT-03A:

Issue	Clarification
Categories of refund	Re-credit of amount in ECrL can be done for following categories of refunds: <ul style="list-style-type: none">• Refund of IGST in contravention of provisions• Refund of unutilised ITC:<ul style="list-style-type: none">○ On account of export of goods/services without payment of tax○ Refund of unutilised ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without payment of tax○ Refund of unutilised ITC due to inverted tax structure (ITS)
Procedure of re-credit	<ol style="list-style-type: none">1. The taxpayer shall deposit the amount of erroneous refund along with applicable interest and penalty through Form GST DRC-03 by debit of amount from ECL and shall clearly mention the reason of payment2. The taxpayer shall make a written request, to the jurisdictional proper officer to re-credit the amount to ECrL3. Upon satisfaction, the proper officer shall re-credit the amount in ECrL, by passing an order in Form GST PMT-03A, preferably within a period of 30 days as prescribed

G. Clarification in relation to procedure of filing refund of unutilised ITC on account of export of electricity:

Refund application shall be filed under category of “Any Other” in Form GST RFD-01 wherein “Export of electricity- without payment of tax (accumulated ITC)” shall be specified, along with prescribed documents. The relevant date shall be the last date of the month, in which the electricity has been exported as per monthly Regional Energy Account. The processing of refund claim by the proper officer shall be done in the manner prescribed.

CBIC issues various clarifications pursuant to the 47th GST Council meeting recommendations

H. Clarification in relation to applicability of demand and penalty provisions in respect of transactions involving fake invoices:

Issue	Clarification
Applicability of provisions of demand and recovery on supplier in case when tax invoice has been issued without any underlying supply by one registered person to another registered person	In this case, a supplier issues only a tax invoice to a recipient without any supply, therefore such activity does not satisfy the condition of “supply”. Hence, there is no tax liability on a supplier in respect of such tax invoice. Thus, no demand and recovery along with penal action is required under the provisions of section 73 or 74. However, such supplier is liable for penal action under Section 122 for issuing invoice without actual supply of goods and/or services.
Applicability of provisions of demand and recovery in case when recipient further issues invoice to his buyers and utilises ITC availed based on tax invoice issued by registered person without any underlying supply	The availment and utilisation of fraudulent ITC without receiving the goods and/or services is in contravention of the provisions. In such case, a recipient shall be liable for demand and recovery along with penal action, under section 74, along with applicable interest under section 50. Further, if penal action for fraudulent availment or utilisation of ITC is taken against recipient, then no penalty for the same act can be imposed on him under any other provisions of the CGST Act.
Applicability of demand and recovery provisions where fraudulent ITC was utilised by issuing fake invoice further to registered person	In this case, the ITC availed by recipient in his ECrL is ineligible. Further, there is no tax liability on such person who issues a further tax invoice without underlying the supply of goods and/or services because it is not a supply. Therefore, in this case, no demand and recovery of wrongly/fraudulently availed ITC or tax liability of outward transaction is required under Section 73 or 74. However, penal actions can be taken against such person under Section 122 for issuing invoices without any actual supply of goods and/or services as well as availing/ utilizing ITC without actual receipt of goods and/or services.

I. Further, various clarifications in relation to furnishing of information in specified GST returns have been issued.