

# GST Recommendations



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Sl. No.	Area of Challenge	Nature of Issue	Proposed Change
<b>Refund under GST</b>			
1	Sanction of refund claim by assigned jurisdictional authority	<p>Presently as per the procedure prescribed under Circular No. 17/17/2017 – GST dated 15.11.2017 issued by CBIC, the jurisdictional authority shall sanction the refund claim only for respective GST head over which they have jurisdiction (for e.g. SGST by State jurisdictional officer &amp; CGST/IGST by central authority).</p> <p>Hence, the concerned jurisdictional officer is required to forward the refund order to a nodal officer for sanctioning the refund claim of remaining GST heads. This whole process leads to unnecessary delays and duplication in refund processing</p>	It is recommended that Jurisdictional officer should sanction and disburse the entire refund claim post verification as basic condition for refund / document verification remains the same irrespective of nature of GST taxes involved
2	Refund of taxes paid inadvertently under wrong head	<p>As per Section 77 of the CGST Act, wherever a person deposit CGST and SGST on any transaction considering it to be an intra-State supply which is subsequently found out to be an inter-State supply or vice versa. Such wrongfully deposited GST amount is provided to the assessee by way of refund. Further, such person is required to separately deposit IGST and/or CGST &amp; SGST as applicable.</p> <p>Reclaim of such wrongfully deposited amount through refund route is a cumbersome process leading to unnecessary blockage of working capital.</p>	The taxes paid under incorrect head due to such mistake in determining place of supply should be allowed to be adjusted on GSTN portal as set off in GST returns only.
3	Refund of IGST on export of goods or services in case of exports with payment of tax	<p>Rule 96(10) of the CGST Rules, as amended retrospectively by notification No. 39/2018-Central Tax dated 04.09.2018 provides that registered persons including importers, who are directly purchasing/importing supplies on which the benefit of reduced tax incidence or no tax incidence under certain specified notifications has been availed, shall not be eligible for refund of IGST paid on export of goods or services.</p> <p>Section 16(3) of the IGST Act read with Section 54 of the CGST Act nowhere provides such restriction. Further, neither the overall Scheme of Foreign Trade Policy and/or concept of 'Make in India' by the Government provides for such restriction.</p>	<p>It is to be noted that said restriction is merely creating additional burden for the assessee, especially in service industry instead of providing any real benefit for the Government. There is no revenue loss for the Government even if the aforesaid restriction is removed.</p> <p>Hence, it is suggested to strike down the provision under Rule 96(10) of the CGST Rules and align them to Section 16(3) of the IGST Act and Section 54 of the CGST Act.</p>

4	Refund of GST by Indian branch office	<p>Currently, transactions between an Indian branch office and Head Office outside India does not qualify as 'export of services' under clause (v) of Section 2(6) of the IGST Act.</p> <p>Furthermore, with effect from July 27, 2018, Notification 9/ 2017 – Integrated Tax (Rate) was amended (vide Notification 15/ 2018- Integrated Tax (Rate) and entry no. 10F was introduced to exempt services supplied by an establishment of a person in India to any establishment of that person outside India, treated as distinct persons subject to the condition that the place of supply of the service is outside India in accordance with Section 13 of the IGST Act.</p> <p>In various cases, such Indian branch offices procures various services and recover the same from Head office located outside India in foreign currency. But by virtue of the above notification, as output services/ chargeback to Head Office is exempted, the entire GST amount paid on procurements is to be reversed. Thus, any GST paid on procurements becomes cost for the businesses</p>	It is our recommendation that GST paid on eligible procurements should be granted to branch offices by way of refund
<b>GST Compliance</b>			
5	Compliance burden in case of manufacturing is done by Job Worker	Under GST law, no option has been provided to allow job-worker to avail the input credit of the inputs procured and discharge the GST liability on sales thereby increasing the onus of compliance on principal manufacturer. The principal manufacturer needs to obtain registration of the premises of job-worker in case where the dispatches are made directly from the job-worker's premises even where job-worker is already registered under GST.	It is recommended that an option to be provided wherein Job worker can also undertake compliances on behalf of the principal manufacturer.
6	Time limit to receive back capital goods from job worker	It is not practically feasible to receive back capital goods from job worker within 3 years. Furthermore, basis the CGST amendment Act such time limit can further be increased by the Commissioner by another 2 years	Considering the fact that certain manufacturing processes require much more time than what has been envisaged, it is requested that the original time of one year and three years may be revised to five years for capital goods.

7	Endorsement of receipt of services/goods for authorised operations	<p>As per Rule 89 of CGST Rules, in case of zero rated supply of services/goods to a Special Economic Zone unit or developer, the supplier is entitled to claim the refund of GST paid on such zero-rated supply or refund of unutilized Input Tax Credit.</p> <p>However, for said purposes suppliers are required to get their invoices endorsed from the specified officer in SEZ to substantiate that the supplies made by them to SEZ unit/ developer are used for authorized operations.</p> <p>In this regard, it is pertinent to note that GST law nowhere defines the term 'authorized operations' carried out by SEZ and/or prescribes procedure to obtain endorsement on invoices raised to such SEZ unit/ developer. The Development Commissioner of Noida SEZ has issued Public Notice no. 02/2018 clarifying procedure of endorsement by SEZ authorities for DTA procurements. As per said notice, details relating to DTA procurements are required to be uploaded on 'SEZ online' portal for obtaining authorized officer approval and endorsement by specified officer for the purpose of GST refund</p>	<p>It is recommended that no endorsement from specified officer should be mandated for refund purposes.</p> <p>Alternatively, it is recommended that a common procedure/ manner should be prescribed for obtaining one-time endorsement from specified officer on vendor basis rather than on invoice basis.</p>
8	Tax adjustment against GST credit note	<p>Business operates in dynamic environment and there are multiple scenarios wherein the sales invoice needs to be amended or modified. These scenarios might or might not be due to three reasons currently specified in section 34(1)/(3). There could be other reasons as well like bad debts, correction in already raised invoices etc.</p> <p>To correct this error, the Companies are invariably required to issue a credit note for cancelling the first invoice and re-raise the invoice with correct details in their accounting records. However, such a scenario is not envisaged in any of the three reasons currently specified in section 34(1) for credit note issuance.</p> <p>Additionally, in regular business scenario, multiple/ consolidated debit/ credit note may have to be raised for supplies made in multiple financial years. Thus, restricting this benefit to only supplies in a financial year may still continue to be compliance burden to taxpayers.</p>	<p>It is to be noted that although Section 34(1)/(3) only provides 3 specified reasons for issuance of credit/debit notes. But in GST return format tax adjustments against credit/debit notes for other reasons such as correction in invoices, change in POS etc is also provided. From the same it is clear that government intention is not to restrict any tax adjustments in such cases.</p> <p>Hence, it is suggested that ambit of Section 34(1)/(3) should be expanded to include aforesaid reasons including bad debts for tax adjustments purposes. Further, it is also suggested that reference to a financial year may be deleted. Additionally, related GST rules and formats on GST portal needs to be amended accordingly.</p>

9	GST Returns – ITC bifurcation in Annual return	In terms of Table 6 of GSTR-9, assessee is required to bifurcate ITC into inputs, input services and capital goods. Currently, there is no requirement to report such bifurcation in GSTR-3B. Hence, said data is not readily available with the businesses	It is recommended that requirement for bifurcation of ITC into inputs, input services and capital goods should be dispensed with.
<b>Input Tax Credit</b>			
10	Input Service Distributor	<p>An ISD may receive certain input services which are common and liable to IGST on reverse charge basis. However, the GST cannot be paid by the ISD and should be paid through normal registration only.</p> <p>Further, Rule 39(1)(a) of CGST Rules, 2017 requires that ITC availed in a particular month should be distributed in the same month and the details of the same shall be furnished in GSTR-6 return. This provision causes unnecessary hardship to a registered person in case he is unable to distribute the credit in the same month due to genuine reasons.</p>	It is recommended that the ITC pertaining to a particular month should be allowed to be distributed any time before filing of Annual Return for the relevant financial year to which such ITC pertains.
11	Time Limit to avail input credit	<p>The time limit to avail ITC on invoices relating to a particular financial year i.e. FY 2017-18 has been restricted to the due date of return filing for the month of September 2018 or filing of audit report whichever is earlier.</p> <p>Furthermore, supplier can also make any correction/ amendment or take tax adjustment through credit notes against original invoices for FY 2017-18 by aforesaid timeline only.</p> <p>Since, for FY 2017-18 ITC reconciliation is being undertaken for the first time and there are numerous reasons for mismatches like non reporting of invoices, mismatch in invoice no., date, taxable value, rate of taxes, place of supply etc requiring vendors to make the correction in their outward return. Non reconciliation of the credit along with incorrect reporting by suppliers may lead to ITC denial for recipient with no fault on their part.</p>	<p>It is suggested to increase the time limit to avail ITC on invoices relating to FY 2017-18 and for making any amendment and/or availing any tax adjustment against credit notes pertaining to original invoices for FY 2017-18 till 31<sup>st</sup> December 2018.</p> <p>Further, suitable amendment should also be made in Section 16(4) and proviso to Section 39(9) should be amended for other financial year as well.</p>

12	GST Credit on non recipient based services	<p>In terms of Section 12 of the IGST Act, general rule of place of supply of service is location of registered person. However, in case of following specified services place of supply has been defined as under:</p> <p>a. <u>Services related to immovable property (eg Hotel accommodation etc)</u> - Location at which such property is located or intended to be located</p> <p>b. <u>Telecommunication services relating to fixed telecommunication lines, leased circuits etc</u> - Location where such lines, circuits etc are installed</p> <p>Such provision is detrimental to the industry as in cases where assessee is not registered in the state of receiving such service i.e. place of immovable property/ leased circuits etc. Local GST charged on such supplies would not be available as credit to the recipient. This would entail tax cascading in the supply chain.</p>	<p>It is suggested that in case of where such services are supplied to a registered person, Place of Supply shall be the location of such registered service recipient. For other cases, existing place of supply provisions shall continue.</p>
13	Denial of carry forward of transitional credit of service tax	<p>Vide CGST Amendment Act, 2018 dated 29.08.2018, Section 140(1) of CGST Act has been retrospectively amended to disallow carry forward of Cenvat credit pertaining to cesses balances as on 30.06.2017 such as KKC, EC &amp; SHEC under GST regime.</p> <p>Further, the term 'eligible duties' as defined under the amended Section 140(1) read with explanation 1 does not include service tax credit.</p> <p>Consequently, transitional credit of service tax along with cess balances as on 30.06.2017 is getting disputed by the authorities. In this case, exclusion of service tax credit appears to be drafting error on part of the government as intention of the government was always to deny credit on cesses.</p>	<p>It is suggested to delete the proposed amendment and allow credit of cesses (KKC, EC, SHEC etc) as these are valid and genuine credits availed by trade and industry in erstwhile regime. It is further suggested that any amendment which can have retrospective adverse implication on taxpayer should be avoided.</p> <p>In an alternative, in case such proposed changes are retained it is suggested as under:</p> <p>a. In view of the litigative nature of such provision considering various assesses are in WRIT. Interest / penalty on reversal or payment of such cesses as carried forward by assesses in FORM TRAN-1 should not be imposed.</p> <p>b. Furthermore, clarification should be issued to the extent that carry forward of service tax credit is allowed by amending Section 140(1) of CGST Act to replace the words "eligible duties" with "eligible duties and taxes as defined under Explanation 2 to section 140". This will bring</p>

			<p>Rule 117 of CGST Rules at par with Section 140 of CGST Act.</p> <p>Simultaneously, it is also suggested to amend the Explanation 1 to remove reference to sub-section (1) of section 140 of CGST Act.</p> <p>c. Additionally, suitable notification should also be issued by the Government providing mechanism to claim refund of closing balance of such eligible CENVAT credit cesses i.e. KKC, EC &amp; SHEC</p>
14	Removal of payment condition for Input Tax Credit availment	<p>As per section 16(2) of CGST Act, one of the condition to avail ITC by recipient is that the Supplier should have remitted the taxes charged from the recipient to the Government.</p> <p>Currently, on reconciling the ITC details as uploaded by the suppliers through GSTR-2A vis-a-vis GSTR-3B of the recipient. In certain cases, it has been observed that sales invoices have not been uploaded by certain supplier's.</p> <p>On the other hand, recipient has paid the invoice value including taxes charged thereon to the supplier in god faith. Hence, such mismatches could lead to denial of credit to the recipient.</p>	<p>The benefit of ITC should not be denied to the recipient merely on account of defaulting supplier who has failed to deposit the taxes to the government as collected from the customers.</p> <p>Hence, it is recommended that Section 16(2) of CGST Act should be amended to exclude such condition for credit purposes for cases where customer have duly paid the tax amount to the suppliers.</p>

15	Widening the ambit for Input Tax Credit	<p>Some of the inputs/input services on which ITC has been restricted under section 17(5) of CGST Act like works contract, construction services etc are genuine business expenditure which are incurred in the normal course of running the businesses. However, credit restriction imposed on such services has resulted in increasing cost of procurements for the businesses.</p> <p>Similarly, requirement of non availment of credit on loss of goods or its distribution as gift, samples etc is against the intent of the GST law to allow free flow of credit for removing cascading effect. Generally, distribution of goods as free samples/ gifts are undertaken by businesses for promoting sale of their product. Hence, credit of taxes paid on such goods should be available without any restriction.</p>	<p>The restriction on availability of credit on certain services is against the basic intent of GST to provide seamless credit. Furthermore, some of the services falling under the exception are essential for certain Industries considering the Nature of Business. For instance in case of ITeS/ BPO Industry, rent-a-cab and outdoor catering are some of the essential services as this sector require large manpower, also the offices are run 24*7 basis due to which transportation (especially for Female employees at odd hours) and provision of food to the employees are necessary pre-requisites.</p> <p>Credit against services of the aforesaid nature as covered in Section 17(5) (c)/(d)/(h) i.e. works contract, construction services, loss of goods or disposal as gift/ free samples etc procured by the businesses in the course or furtherance of business should be allowed and reference to the same should be deleted from Section 17(5)</p>
<b>GST Exemption</b>			
16	Extension of GST exemption benefit	<p>In terms of GST provisions, services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by such persons are treated as GST exempt.</p> <p>However, the benefit of the exemption is available only to the main contracting party with the Government and not to the other persons involved in entire supply chain i.e. sub-contractors etc. As result, taxes charged by such sub-contractors/other suppliers becomes cost in the supply chain resulting into cascading of taxes.</p>	It is recommended that the GST exemption benefit provided to such training services should be extended across the supply chain.

<b>Interest under GST</b>			
17	Interest applicability from date of availment of Input Tax Credit	As per Second proviso to Section 16(2) of CGST Act, a recipient is liable to pay interest from the date of credit availment for non-payment of invoice value including taxes to vendors within 180 days from the invoice date.	<p>It is recommended to amend Section 16(2) of CGST Act to remove such interest applicability.</p> <p>Alternatively, interest should be levied from 181st day and not from the date of availment of Input Tax Credit.</p>
<b>Reverse charge mechanism (RCM)</b>			
18	IGST liability on Ocean Freight under RCM by Importer of goods	<p>Notification No. 10/2017-Integrated Tax (Rate) dt.28-6-2017 prescribes services in relation to which recipient of service is liable to pay GST under RCM.</p> <p>Further, vide S.No. 10 of the said Notification liability to pay GST on services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India vest on the importer, located in India.</p>	<p>In case of sea import, the service provider (the shipping line) and the service recipient (exporter) both are located in non-taxable territory.</p> <p>Ocean freight incurred for transportation of such imported is included in the value of goods and is subject to IGST as part of custom duty calculation. Further, the same is also subject to IGST as a supply of service on reverse charge basis by the importer. This leads to double taxation and is ultra-vires the Act.</p> <p>It is recommended that the ocean freight shall be exempted from levy of IGST as a supply of service when the same is in relation to transportation of imported goods.</p>

19	"Time of Supply" for supply of goods or services under reverse charge	<p>As per section 12 and 13 of CGST Act, time of supply in case of goods / services covered under reverse charge is as under;</p> <p>1) In case of supply of Goods, earliest of following;</p> <p>(a) the date of the receipt of goods or  (b) the date of payment to supplier or  (c) the date immediately following 30 days from the date of issue of invoice.</p> <p>2) In case of supply of Services, earliest of following;</p> <p>(a) the date of payment to supplier or  (b) the date immediately following 60 days from the date of issue of invoice.</p>	<p>As per the existing provisions, the time period for payment of tax under reverse charge mechanism within 30/60 days from the date of issue of invoice by the supplier is quite short, considering the time taken for submitting the invoice, taking various internal approvals and processing of invoice, which creates unnecessary interest liability if invoice payment is not made within 30 or 60 days.</p> <p>It is recommended that the time limit (time of supply) prescribed in case of supply of goods and services under reverse charge mechanism is increased to atleast 90 - 120 days from 30 / 60 days, as was prescribed in the erstwhile service tax law</p>
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