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Secretary General, AEPC

AEPC/HO/SG/R&PA/2022
July 7, 2022

Dear Members,

Sub: **Clarification on various issues pertaining to GST- req.**

In order to clarify certain issues of the trade with respect to refund claimed by the recipients of supplies regarded as deemed export; interpretation of section 17(5) of the CGST Act; perquisites provided by employer to the employees as per contractual agreement; and utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities and to ensure uniformity in the implementation of the provisions of law across the field formations, GST Policy Wing, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs vide Circular No 172/04/2022-GST dated 06.07.2022 (Copy attached) has clarified the various issues as under:-

S.No	Issue	Clarification
Refund claimed by the recipients of supplies regarded as deemed export		
1	Whether the Input Tax Credit (ITC) availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports would be subjected to provisions of Section 17 of the CGST Act, 2017.	The refund in respect of deemed export supplies is the refund of tax paid on such supplies. However, the recipients of deemed export supplies were facing difficulties on the portal to claim refund of tax paid due to requirement of the portal to debit the amount so claimed from their electronic credit ledger. Considering this difficulty, the tax paid on such supplies, has been made available as ITC to the recipients Circular No. 172/04/2022-GST Page 2 of 6 vide Circular No. 147/03/2021-GST dated 12.03.2021 only for enabling them to claim such refunds on the portal. 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 of the CGST Act, 2017.
2	Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the "Net ITC" for computation of refund of unutilised ITC under rule 89(4) & rule 89 (5) of the CGST Rules, 2017.	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, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the "Net ITC" for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated

		structure under rule 89(5) of the CGST Rules, 2017.
Clarification on various issues of section 17(5) of the CGST Act		
3	Whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?	<p>1. Vide the Central Goods and Service Tax (Amendment Act) 2018, clause (b) of sub-section (5) of section 17 of the CGST Act was substituted with effect from 01.02.2019. After the said substitution, the proviso after subclause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act provides as under:</p> <p style="padding-left: 40px;">“Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.”</p> <p>2. The said amendment in sub-section (5) of section 17 of the CGST Act was Circular No. 172/04/2022-GST Page 3 of 6 made based on the recommendations of GST Council in its 28th meeting. The intent of the said amendment in subsection (5) of section 17, as recommended by the GST Council in its 28th meeting, was made known to the trade and industry through the Press Note on Recommendations made during the 28th meeting of the GST Council, dated 21.07.2018. It had been clarified “that scope of input tax credit is being widened, and it would now be made available in respect of Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force.”</p> <p>3. Accordingly, it is clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act.</p>
4	Whether the provisions of sub-clause (i) of clause (b) of subsection (5) of section 17 of the CGST Act bar availment of ITC on input services by way of “leasing of motor vehicles, vessels or aircraft” or ITC on input services by way of any type of leasing is barred under the said provisions?	Sub-clause (i) of clause (b) of subsection (5) of section 17 of the CGST Act provides that ITC shall not be available in respect of following supply of goods or services or both— “(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance: Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply

		of such goods or services or both is used by a registered person for making an Circular No. 172/04/2022-GST Page 4 of 6 outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply” 2. It is clarified that “leasing” referred in sub-clause (i) of clause (b) of sub-section (5) of section 17 refers to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items. Accordingly, availment of ITC is not barred under sub-clause (i) of clause (b) of sub-section (5) of section 17 of the CGST Act in case of leasing, other than leasing of motor vehicles, vessels and aircrafts.
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Perquisites provided by employer to the employees as per contractual agreement

5	Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?	<p>1. Schedule III to the CGST Act provides that “services by employee to the employer in the course of or in relation to his employment” will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.</p> <p>2. Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.</p>
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Utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities

6	Whether the amount available in the electronic credit ledger can be used for making payment of any tax under the GST Laws?	<p>1. In terms of sub – section (4) of section 49 of CGST Act, the amount available in the electronic credit ledger may be used for making any payment towards output tax under the CGST Act or the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST Act”), subject to the provisions relating to the order of utilisation of input tax credit as laid down in section 49B of the CGST Act read with rule 88A of the CGST Rules.</p> <p>2. Sub-rule (2) of rule 86 of the CGST Rules provides for debiting of the electronic credit ledger to the extent of discharge of any liability in accordance with the provisions of</p>
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		<p>section 49 or section 49A or section 49B of the CGST Act.</p> <p>3. Further, output tax in relation to a taxable person (i.e. a person who is registered or liable to be registered under section 22 or section 24 of the CGST Act) is defined in clause (82) of section 2 of the CGST Act as the <u>tax chargeable on taxable supply of goods or services or both but excludes tax payable on reverse charge mechanism.</u></p> <p>4. Accordingly, it is clarified that any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person.</p> <p>5. It is further reiterated that as output tax does not include tax payable under reverse charge mechanism, implying thereby that the electronic credit ledger cannot be used for making payment of Circular No. 172/04/2022-GST Page 6 of 6 any tax which is payable under reverse charge mechanism.</p>
7	Whether the amount available in the electronic credit ledger can be used for making payment of any liability other than tax under the GST Laws?	As per sub-section (4) of section 49, the electronic credit ledger can be used for making payment of output tax only under the CGST Act or the IGST Act. It cannot be used for making payment of any interest, penalty, fees or any other amount payable under the said acts. Similarly, electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.
8	Whether the amount available in the electronic cash ledger can be used for making payment of any liability under the GST Laws?	As per sub – section (3) of section 49 of the CGST Act, the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the GST Laws.

The Board is also in a process of issuing a Trade Notice with respect to the above clarifications.

This is issued for the information of the trade.

With warm regards,

Yours sincerely,

Dr. L.B. Singhal
Secretary General