

Office of the
Commissioner of State Tax.
Maharashtra State, 8th Floor, GST
Bhavan, Mazgaon, Mumbai-400 010.

TRADE CIRCULAR

No. JC (HQ)-1/GST/2018/CBIC Circular(s)/ADM-8 Mumbai dated 31st Dec. 2018

Trade Circular (GST) No. 38 T of 2018.

To,

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Subject : Clarifications on refund related issues

Ref.

- (1) Trade Circular No. 49T of 2017 dated 28th Nov. 2017.
- (2) Internal Circular No. 24A of 2017 dated 11th Dec. 2017.
- (3) Internal Circular No. 27A of 2017 dated 30th Dec. 2017.
- (4) Trade Circular 1T of 2018 dated 1st Jan. 2018.
- (5) Trade Circular No. 8T of 2018 dated 21st Feb. 2018.
- (6) Trade Circular No. 17T of 2018 dated 2nd June 2018.
- (7) Internal Circular No. 19A of 2018 dated 18th July 2018
- (8) Trade Circular No. 22T of 2018 dated 1st September 2018.
- (9) Trade Circular No. 33T of 2018 dated 14th November 2018
- (10) Trade Circular No. 35T of 2018 dated 15th November 2018
- (11) CBIC Circular No. 45/19/2018-GST dated 30th May 2018
and other Circulars issued from time to time with regards
to the processing of GST Refund.

Sir/Gentlemen/Madam,

1. The Central Board of Indirect Taxes and Customs (CBIC) *vide* Circular No. 17/17/2017 – GST dated 15th November 2017, No. 24/24/2017 – GST dated 21st December 2017 and No. 37/11/2018 – GST dated 15th March, 2018 read with the Trade/Internal Circulars cited at Ref. (1) to (10) above (issued by MGSTD) has laid down the procedure for manual filing and processing of different types of refund claims under GST and clarified the exports related refund issues.
2. Representations have been received seeking clarification on certain refund related issues. In order to clarify these issues and with a view to ensure uniformity in the implementation of the provisions of the law across the field formations, the Commissioner of State Tax, Maharashtra State, in exercise of its powers conferred by section 168(1) of the Maharashtra

Goods and Services Tax Act, 2017 (hereinafter referred to as the “MGST Act”) hereby clarifies the issues raised as below:

3. Claim for refund filed by an Input Service Distributor, a person paying tax under section 10 or a non-resident taxable person:

3.1. Doubts have been raised in case of claims for refund filed by an Input Service Distributor (ISD for short), a person paying tax under section 10 of the MGST Act (composition taxpayer for short) or a non-resident taxable person in light of para 2.0 of Circular No. 24/24/2017-GST dated 21.12.2017 which mandates that the refund claim for a tax period may be filed only after filing the details in **FORM GSTR-1** for the said tax period. Please also see Para-2 of the Trade Circular 8T of 2018 dated the 21st February 2018 and that it is also to be ensured that a valid return in **FORM GSTR-3B** has been filed for the last tax period before the one in which the refund application is being filed.

3.2. In this regard, attention is invited to sub-section (1) of section 37 of the MGST Act read with rule 59 of the Maharashtra Goods and Services Tax Rules, 2017 (hereinafter referred to as the “MGST Rules”) which mandates that every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish the details of outward supplies of goods or services or both effected during a tax period in **FORM GSTR-1**. Further, as per sub-section (2) of section 39 of the MGST Act read with rule 62 of the MGST Rules, a composition taxpayer is required to furnish the return in **FORM GSTR-4**; as per sub-section (4) of section 39 of the MGST Act read with rule 65 of the MGST Rules, an ISD is required to furnish the return in **FORM GSTR-6** and as per sub-section (5) of section 39 of the MGST Act read with rule 63 of the MGST Rules, a non-resident taxable person is required to furnish the return in **FORM GSTR-5**.

3.3. Thus, it is clarified that in case of a claim for refund of balance in the electronic cash ledger filed by an ISD or a composition taxpayer; and the claim for refund of balance in the electronic cash and/or

credit ledger by a non-resident taxable person, the filing of the details in **FORM GSTR-1** and the return in **FORM GSTR-3B** is not mandatory. Instead, the return in **FORM GSTR-4** filed by a composition taxpayer, the details in **FORM GSTR-6** filed by an ISD and the return in **FORM GSTR-5** filed by a non-resident taxable person shall be sufficient for claiming the said refund.

4. **Application for refund of integrated tax paid on export of services and supplies made to a Special Economic Zone developer or a Special Economic Zone unit:**

4.1. It has been represented that while filing the return in **FORM GSTR-3B** for a given tax period, certain registered persons committed errors in declaring the export of services on payment of integrated tax or zero rated supplies made to a Special Economic Zone developer or a Special Economic Zone unit on payment of integrated tax. They have shown such supplies in the Table under column 3.1(a) instead of showing them in column 3.1(b) of **FORM GSTR-3B** whilst they have shown the correct details in Table 6A or 6B of **FORM GSTR-1** for the relevant tax period and duly discharged their tax liabilities. Such registered persons are unable to file the refund application in **FORM GST RFD-01A** for refund of integrated tax paid on the export of services or on supplies made to a SEZ developer or a SEZ unit on the GST common portal because of an in-built validation check in the system which restricts the refund amount claimed (integrated tax/cess) to the amount of integrated tax/cess mentioned under column 3.1(b) of **FORM GSTR-3B** (zero rated supplies) filed for the corresponding tax period.

4.2. In this regard, it is clarified that for the tax periods commencing from 01.07.2017 to 31.03.2018, such registered persons shall be allowed to file the refund application in **FORM GST RFD-01A** on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of **FORM GSTR-3B** filed for the corresponding tax period.

5. Refund of unutilized input tax credit of compensation cess availed on inputs in cases where the final product is not subject to the levy of compensation cess:

- 5.1. Doubts have been raised whether an exporter is eligible to claim refund of unutilized input tax credit of compensation cess paid on inputs, where the final product is not leviable to compensation cess. For instance, cess is levied on coal, which is an input for the manufacture of aluminum products, whereas cess is not levied on aluminum products.
- 5.2. In this regard, section 16(2) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act") states that, subject to the provisions of section 17(5) of the MGST Act, credit of input tax may be availed for making zero rated supplies. Further, as per section 8 of the Goods and Services Tax (Compensation to States) Act, 2017, (hereinafter referred to as the "Cess Act"), all goods and services specified in the Schedule to the Cess Act are leviable to cess under the Cess Act; and vide section 11 (2) of the Cess Act, section 16 of the IGST Act is *mutatis mutandis* made applicable to inter-State supplies of all such goods and services. Thus, it implies that all supplies of such goods and services are zero rated under the Cess Act. Moreover, as section 17(5) of the MGST Act does not restrict the availment of input tax credit of compensation cess on coal, it is clarified that a registered person making zero rated supply of aluminum products under bond or LUT may claim refund of unutilized credit including that of compensation cess paid on coal.
- 5.3. Such registered persons may also make zero-rated supply of aluminum products on payment of integrated tax but they cannot utilize the credit of the compensation cess paid on coal for payment of integrated tax in view of the proviso to section 11(2) of the Cess Act, which allows the utilization of the input tax credit of cess, only for the payment of cess on the outward supplies. Accordingly, they cannot claim refund of compensation cess in case of zero-rated supply on payment of integrated tax.

6. Whether bond or Letter of Undertaking (LUT) is required in the case of zero rated supply of exempted or non-GST goods and whether refund can be claimed by the exporter of exempted or non-GST goods?

6.1. As per section 16(2) of the IGST Act, credit of input tax may be availed for making zero rated supplies, notwithstanding that such supply is an exempt supply. Whereas, as per section 2 (47) of the MGST Act, exempt supply includes non-taxable supply. Further, as per section 16(3) of the IGST Act, a registered person making zero rated supply shall be eligible to claim refund when he either makes supply of goods or services or both under bond or letter of undertaking (LUT) or makes such supply on payment of integrated tax.

6.2. However, in case of zero rated supply of exempted or non-GST goods, the requirement for furnishing a bond or LUT cannot be insisted upon. It is thus, clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of integrated tax; LUT/bond is not required. Such registered persons exporting non- GST goods shall comply with the requirements prescribed under the existing law (i.e. Central Excise Act, 1944 or the VAT law of the respective State) or under the Customs Act, 1962, if any.

6.3. Further, the exporter would be eligible for refund of unutilized input tax credit of central tax, state tax, union territory tax, integrated tax and compensation cess in such cases.

7. Difficulty, if any, in implementation of this Circular may be brought to the notice of the office of the Commissioner of State Tax, Maharashtra State.

Yours Faithfully,



(Rajiv Jalota)

**Commissioner of State Tax,
(GST) Maharashtra State, Mumbai.**

Trade Circular (GST) No. 38 T of 2018.

Copy forwarded to the Joint Commissioner of State Tax (Mahavikas) with a request to upload this Trade Circular on the Departments Web-site.

Copy submitted with compliments to,-

- (a) The Deputy Secretary, Finance Department, Mantralaya, Mumbai-21 for information.
- (b) Accounts Officer, Sales Tax Revenue Audit, Mumbai and Nagpur.



(R. D. Bhagat)

**Joint Commissioner of State Tax
(GST), (HQ)-1, Maharashtra State.**