

आयुक्त परिचय सं - 2324015
दिनांक - 07/08/2023



Office of the Commissioner,
State Tax, Uttar Pradesh
(GST Section)

Letter No. GST/2023-24/ 67 /State Tax
Lucknow: Dated: 07, August, 2023

To,

All Zonal Additional Commissioner Grade -1,
Additional Commissioner Grade -2 (S.I.B.)
Joint Commissioner (Executive/Corporate Circle/ S.I.B)
State Tax, Uttar Pradesh.

Subject: Clarification on refund related issues.

References have been received from the field formations seeking clarification on various issues relating to GST refunds. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law in this regard across the field formations, the Commissioner, in exercise of its powers conferred by section 168 of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as "UPGST Act"), hereby clarifies the issues detailed hereunder:

1. Refund of accumulated input tax credit under Section 54(3) on the basis of that available as per FORM GSTR 2B: -

1.1 In terms of Para 5 of Circular No. 0001 dated 08.04.2020, refund of accumulated input tax credit (ITC) is restricted to the input tax credit as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Para 5 of the said circular is reproduced below:

“5. Guidelines for refunds of Input Tax Credit under Section 54(3):

5.1 In terms of para 36 of Circular No. GST/2019-20/1920068/740 Commercial Tax, dated 25.11.2019 the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the UPGST Rules, 2017 vide Notification No.-KA.NI.-2-1555/XI-2-9(42)/17 U.P. GST Rules 2017-Order-(74)-2019 Dated 11 December,2019, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant.

5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Accordingly, para 36 of the circular No. GST/2019-20/1920068/740 Commercial Tax, dated 25.11.2019 stands modified to that extent.”

1.2 However, in view of the insertion of clause (aa) in sub-section (2) of section 16 of the UPGST Act, 2017 w.e.f. 1st January, 2022 vide Notification No.-02/XI-2-22-9(47)/17-T.C.176-U.P. Act-1-2017-Order-(224)-2022 dated 06 January, 2022, and the amendment in Rule 36(4) of the Uttar Pradesh Goods and Services Tax Rules, 2017 (hereinafter referred to as "UPGST Rules") w.e.f. 1st January, 2022 vide Notification No.-63/XI-2-22-9(42)/17-T.C. 60-U.P. GST Rules-2017-Order-(229)-2022 dated 24 March, 2022 doubts are being raised as to whether the refund of the accumulated input tax credit under section 54(3) of UPGST Act shall be admissible on the basis of the input tax credit as reflected in **FORM GSTR-2A** or on the basis of that available as per **FORM GSTR-2B** of the applicant.

1.3 The matter has been examined and it has been decided that since availment of input tax credit has been linked with **FORM GSTR-2B** w.e.f. 01.01.2022, availability of refund of the accumulated input tax credit under section 54(3) of UPGST Act for a tax period shall be restricted to input tax credit as per those invoices, the details of which are reflected in **FORM GSTR-2B** of the applicant for the said tax period or for any of the previous tax periods and on which the input tax credit is available to the applicant. Accordingly, para 36 of Circular No. GST/2019-20/1920068/740 Commercial Tax, dated 25.11.2019, which was earlier modified vide Para 5 of Circular No. 0001 dated 08.04.2020, stands modified to this extent. Consequently, Circular No. 0005 dated 18.06.2020, which provides for restriction on refund of accumulated input tax credit on those invoices, the details of which are uploaded by the supplier in **FORM GSTR-1** and are reflected in the **FORM GSTR-2A** of the applicant, also stands modified accordingly.

1.4 It is further clarified that as the said amendments in section 16(2) (aa) of UPGST Act and Rule 36(4) of UPGST Rules have been brought into effect from 01.01.2022, therefore, the said restriction on availability of refund of accumulated input tax credit for a tax period on the basis of the credit available as per FORM GSTR-2B for the said tax period or for any of the previous tax periods, shall be applicable for the refund claims for the tax period of January 2022 onwards. However, in cases where refund claims for a tax period from January 2022 onwards has already been disposed of by the proper officer before the issuance of this circular, in accordance with the extant guidelines in force, the same shall not be reopened because of the clarification being issued by this circular.

2. Requirement of the undertaking in FORM RFD 01 inserted vide Circular No. GST/2019-20/1920068/740 Commercial Tax, dated 25.11.2019 (through which Circular No. 125/44/2019-GST dated 18.11.2019 of CBIC was circulated)

2.1 Para 7 of Circular No. 1920068, dated 25.11.2019 provides for an undertaking to be provided by the applicant electronically along with the refund claim in **FORM RFD-01** in accordance with the Rule 89(1) of UPGST Rules. Para 7 of Circular No. 1920068, dated 25.11.2019 is reproduced below:

"7. Since the functionality of furnishing of FORM GSTR-2 and FORM GSTR-3 remains unimplemented, it has been decided by the GST Council to sanction refund of provisionally accepted input tax credit. However, the applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of section 42 of the CGST Act have not been complied with in respect of the amount

refunded. This undertaking should be submitted electronically along with the refund claim.”

2.2 In accordance with the same, the following undertaking was inserted in **FORM GST RFD-01**:

“I hereby undertake to pay back to the Government the amount of refund sanctioned along with interest in case it is found subsequently that the requirements of clause (c) of subsection (2) of section 16 read with sub-section (2) of section 42 of the CGST/SGST Act have not been complied with in respect of the amount refunded.”

2.3 However, Section 42 of UPGST Act has been omitted w.e.f. 1st October, 2022 vide Notification No.-1008/XI-2-22-9(47)/17-T.C.201-U.P. Act-1-2017-Order-(254)-2022 dated 17 November, 2022. Further, an amendment has also been made in Section 41 of the UPGST Act, wherein the concept of provisionally accepted input tax credit has been done away with. Besides, **FORM GSTR-2** and **FORM GSTR-3** have also been omitted from UPGST Rules. In view of this, reference to section 42, **FORM GSTR-2** and **FORM GSTR-3** is being deleted from the said para in the Circular as well as from the said undertaking. Para 7 of Circular No. 1920068, dated 25.11.2019 & the undertaking in **FORM GST RFD-01** may, therefore, after further suitable amendments as per UPGST Act shall be read as follows:

Para 7: “The applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of subsection (2) of section 16 of the UPGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted electronically along with the refund claim.”

Undertaking in FORM GST RFD 01:- “I hereby undertake to pay back to the Government the amount of refund sanctioned along with interest in case it is found subsequently that the requirements of clause (c) of subsection (2) of section 16 of the CGST/SGST Act have not been complied with in respect of the amount refunded.”

2.4. Consequentially, **Annexure-A** to the Circular No. 1920068, dated 25.11.2019 also stands amended to the following extent:

- i. “Undertaking in relation to sections 16(2)(c) and section 42(2)” wherever mentioned in the column “Declaration/Statement/Undertaking/Certificates to be filled online” may be read as “Undertaking in relation to sections 16(2)(c)”.
- ii. “Copy of GSTR-2A of the relevant period” wherever required as supporting documents to be additionally uploaded stands removed/deleted.
- iii. “Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period” wherever required as supporting documents to be additionally uploaded stands removed/deleted.

3. **Manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of UPGST Rules consequent to Explanation inserted in sub-rule (4) of Rule 89 vide Notification No. No.-1009/XI-2-22-9(47)/17-T.C.61-U.P. GST Rules-2017-Order-(255)-2022 dated 17 November, 2022**

3.1 Doubts have been raised as regarding calculation of “adjusted total turnover” under sub-rule (4) of rule 89 of UPGST Rules, in view of insertion of Explanation in sub-rule (4) of rule 89 of UPGST Rules vide Notification No. No.-1009/XI-2-22-9(47)/17-T.C.61-U.P. GST Rules-2017-Order-(255)-2022 dated 17 November, 2022. Clarification is being sought as to whether value of goods exported out of India has to be considered as per Explanation under sub-rule (4) of rule 89 of UPGST Rules for the purpose of calculation of “adjusted total turnover” in the formula under the said sub-rule.

3.2 In this regard, it is mentioned that consequent to amendment in definition of the “Turnover of zero-rated supply of goods” vide Notification No.-435/XI-2-9(42)/17 U.P. GST Rules-2017-Order-(119)-2020 Dated 11.05.2020, Circular 0013 dated 18.03.2021 was issued which *inter alia* clarified that the same value of zero-rated/ export supply of goods, as calculated as per amended definition of “Turnover of zero-rated supply of goods”, needs to be taken into consideration while calculating “turnover in a state or a union territory”, and accordingly, in “adjusted total turnover” for the purpose of sub-rule (4) of Rule 89.

3.3 On similar lines, it is clarified that consequent to Explanation having been inserted in sub-rule (4) of rule 89 of UPGST Rules vide Notification No. No.-1009/XI-2-22-9(47)/17-T.C.61-U.P. GST Rules-2017-Order-(255)-2022 dated 17 November, 2022 the value of goods exported out of India to be included while calculating “adjusted total turnover” will be same as being determined as per the Explanation inserted in the said sub-rule.

4. Clarification in respect of admissibility of refund where an exporter applies for refund subsequent to compliance of the provisions of sub-rule (1) of rule 96A:

4.1 References have been received citing the instances where exporters have voluntarily made payment of due integrated tax, along with applicable interest, in cases where goods could not be exported or payment for export of services could not be received within time frame as prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A of UPGST Rules. Clarification is being sought as to whether subsequent to export of the said goods or as the case may be, realization of payment in case of export of services, the said exporters are entitled to claim not only refund of unutilized input tax credit on account of export but also refund of the integrated tax and interest so paid in compliance of the provisions of sub-rule (1) of rule 96A of UPGST Rules.

4.2 It is mentioned that in terms of sub-rule (1) of rule 96A of the UPGST Rules, a registered person availing of the option to export without payment of integrated tax is required to furnish a bond or a Letter of Undertaking (LUT), prior to export, binding himself to pay the tax due along with applicable interest within a period of -

(a) fifteen days after the expiry of three months, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or

(b) fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India

4.3 In this context, it has been clarified *inter alia* in para 45 of Circular No. 1920068, dated 25.11.2019 that:

“.....exports have been zero rated under the IGST Act and as long as goods have actually been exported even after a period of three months, payment of Integrated tax first and claiming refund at a subsequent date should not be insisted upon. In

such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services”

4.4 Further, in Para 44 of the aforesaid Circular, it has been emphasized that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made.

4.5 The above clarifications imply that as long as goods are actually exported or as the case may be, payment is realized in case of export of services, even if it is beyond the time frames as prescribed in sub-rule (1) of rule 96A, the benefit of zero-rated supplies cannot be denied to the concerned exporters. Accordingly, it is clarified that in such cases, on actual export of the goods or as the case may be, on realization of payment in case of export of services, the said exporters would be entitled to refund of unutilized input tax credit in terms of sub-section (3) of section 54 of the UPGST Act, if otherwise admissible.

4.6 It is also clarified that in such cases subsequent to export of the goods or realization of payment in case of export of services, as the case may be, the said exporters would be entitled to claim refund of the integrated tax so paid earlier on account of goods not being exported, or as the case be, the payment not being realized for export of services, within the time frame prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A. It is further being clarified that no refund of the interest paid in compliance of sub-rule (1) of rule 96A shall be admissible.

4.7 It may further be noted that the refund application in the said scenario may be made under the category “Excess payment of tax”. However, till the time the refund application cannot be filed under the category “Excess payment of tax” due to non-availability of the facility on the portal to file refund of IGST paid in compliance with the provisions of sub-rule (1) of rule 96A of UPGST Rules as “Excess payment of tax”, the applicant may file the refund application under the category “Any Other” on the portal.

5. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

6. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Undersigned.

By Order,



(Ministhy S.)

Commissioner, State Tax, U.P.

Copy To:

1. Joint Commissioner (I.T.), State Tax HQ, Lucknow for uploading the Circular on the Departmental Website.



Joint Commissioner (GST)

State Tax HQ, Lucknow.