

From	Karvy Data Management Services Ltd.
Date	September 17, 2018
Subject	Important clarifications given by CBIC
Category	Circulars
Reference	Circular No. 64/2018 dt. 14.09.18, 62/2018 dt. 12.09.18, 61/2018 dt. 04.09.18, 59/2018 dt. 04.09.18, 58/2018 dt. 04.09.18, 57/2018 dt. 04.09.18
Series	Karvy/GST/85

Based on the various representations made by the taxpayers, Central Board of Indirect Taxes and Customs (CBIC) recently issued series of circulars in order to clarify the issues and to bring uniformity in the implementation of the provisions of GST law. The clarifications provided by CBIC are pertaining to the below mentioned issues:

1. Modification of the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances.
2. Levy of GST on Priority Sector Lending Certificate.
3. E-way bill in case of storing of goods in go-down of transporter.
4. Clarification on refund related issues.
5. Recovery of arrears of wrongly availed CENVAT credit under the existing law and inadmissible transitional credit.
6. Scope of Principal-agent relationship in the context of Schedule I of the CGST Act 2017.

A brief summary of the clarifications issued by CBIC are tabulated below:

Clarification on levy of GST on Priority Sector Lending Certificates (PSLC)

Circular No. 62/36/2018-GST dt. 12.09.18

CBIC has clarified the mechanism for discharge of tax liability on trading of Priority Sector Lending Certificate (PSLC) for the period 01.07.2017 to 27.05.2018 and applicable GST rate on such supply:

- GST on PSLCs for the period 01.07.2017 to 27.05.2018 will be paid by the seller bank on forward charge basis.
- GST rate of 12% will be applicable on the supply.

Modification of the procedure for interception of conveyances for inspection of goods in movement and detention, release and confiscation of such goods and conveyances**Circular No. 64/38/2018-GST dt. 14.09.18**

CBIC has examined the issue regarding the imposition of penalty under Sec. 129 of CGST Act 2017 in case of minor discrepancies in the details mentioned in the e-way bill. CBIC is in view that penalty provisions u/s 129 & 130 of CGST Act are invocable in cases:

→ Where the person in charge of a conveyance carrying any consignment of goods of value exceeding Rs 50,000/- does not carry copy of documents viz., invoice/bill of supply/delivery challan /bill of entry and a valid e-way bill in physical or electronic form for verification.

→ Where information in Part B of FORM GST EWB-01 is not furnished in the e-way bill except in the cases where the goods are transported for a distance of upto 50 kms. within the State or UT to or from the place of business of the transporter to the place of business of the consignor or the consignee.

Clarification given by CBIC: In case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, instead of initiating proceedings u/s 129 of the CGST Act 2017 for the situations mentioned below, penalty to the tune of Rs.1000/- (CGST-Rs.500/- + SGST-Rs.500/- or IGST-Rs.1000/-) should be imposed in Form GST DRC-07 for every consignment.

→ Spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;

→ Error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;

→ Error in the address of the consignee to the extent that the locality and other details of the consignee are correct;

→ Error in one or two digits of the document number mentioned in the e-way bill;

→ Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;

→ Error in one or two digits/characters of the vehicle number

GST Officer shall send a weekly report to the controlling Officer on all such consignments where proceedings u/s 129 of CGST Act 2017 has not been initiated in view of the situations mentioned above.

E-way bill in case of storing of goods in godown of transporter**Circular No. 61/35/2018-GST dt. 04.09.18**

CBIC has examined the issues faced by the consignee/recipient taxpayer regarding storage of their goods in the warehouse of the transporter.

CBIC has also examined the difficulties faced by the transporters in maintaining the records in cases where the transporters takes delivery of the goods initially and temporarily stores them in his warehouse for further transportation of the goods till the consignee/recipient taxpayer's premises.

Clarification given by CBIC:

- The goods in movement including when they are stored in the transporter's godown (even if the godown is located in the recipient taxpayer's city/town) prior to delivery shall always be accompanied by a valid e-way bill.
- Referring to the definition of "place of business" u/s 2(85) of CGST Act 2017, in case the consignee/ recipient taxpayer stores his goods in the godown of the transporter, then the transporter's godown has to be declared as an additional place of business by the recipient taxpayer.
- A mere declaration by the recipient taxpayer to this effect with the concurrence of the transporter in the said declaration will suffice.
- Thus, the transportation under the e-way bill shall be deemed to be concluded once the goods have reached the transporter's godown (recipient taxpayer's additional place of business)
- Hence, e-way bill validity in such cases will not be required to be extended.
- Whenever the goods move from the transporter's godown (i.e, recipient taxpayer's additional place of business) to the recipient taxpayer's any other place of business, a valid e-way bill shall be required as per the E-Way Bill Rules (Central & State GST Act)
- The obligation of the transporter to maintain accounts and records as specified in section 35 of the CGST Act 2017 read with rule 58 of the CGST Rules 2017 shall continue as a warehousekeeper.
- The recipient taxpayer shall also maintain accounts and records as required under rules 56 and 57 of the CGST Rules 2017
- As per rule 56 (7) of the CGST Rules 2017, books of accounts in relation to goods stored at the transporter's godown (i.e., the recipient taxpayer's additional place of business) by the recipient taxpayer may be maintained by him at his principal place of business
- The facility of declaring additional place of business by the recipient taxpayer is in no way putting any additional compliance requirement on the transporters.

Recovery of arrears of wrongly availed CENVAT credit under the existing law and inadmissible transitional credit**Circular No. 58/32/2018-GST dt. 04.09.18**

- The Board vide Circular No. 42/16/2018-GST dt. 13.04.2018 had clarified that the recovery of arrears arising under the existing law shall be made as CGTS liability to be paid through the utilization of the amount available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01)
- Presently, the functionality to record this liability in the electronic liability register is not available on the common portal.
- Therefore, it is clarified that as an alternative method, taxpayers may reverse the wrongly availed CENVAT credit under the existing law and inadmissible transitional credit through Table 4(B) (2) of FORM GSTR-3B.
- The applicable interest and penalty shall apply on all such reversals which shall be paid through entry in column 9 of Table 6.1 of FORM GSTR-3B

Scope of Principal-agent relationship in the context of Schedule I of the CGST Act 2017**Circular No. 57/31/2018-GST dt. 04.09.18**

In order to clarify the representations regarding the scope and ambit of the principal-agent relationship under GST, below mentioned points have been considered by CBIC:

- (a) definition of term "agent" as per sec. 2(5) of CGST Act 2017 and sec. 182 of the Indian Contract Act 1872.
- (b) Entry in para 3 of Schedule I of CGST Act 2017 "supply or receipt of goods on behalf of the principal without consideration"

Clarification given by CBIC:

- Firstly, the supply of services between the principal and the agent and vice versa is outside the ambit of the said entry, and would therefore require "consideration" to consider it as supply.
- For the supply of goods, the key ingredient for determining the agent-principal relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not.
- Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said entry
- However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the CGST Act 2017
- Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by the said entry.
- The crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.

Clarification on refund related issues

Circular No. 59/33/2018-GST dt. 04.09.18

Subject	Clarification given by CBIC
Submission of invoices for processing of claims of refund	→ It has been clarified that refund claim shall be accompanied by a print-out of FORM GSTR-2A of the claimant for the relevant period for which the refund is claimed.
	→ In case of situations where FORM GSTR-2A does not contain the details of all the invoices relating to the input tax credit availed, the proper officer may call for the hard copies of such invoices if he deems it necessary for the examination of the claim for refund.
	→ The proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are present in FORM GSTR-2A of the relevant period submitted by the claimant.
	→ The claimant shall also submit the details of the invoices on the basis of which input tax credit had been availed during the relevant period for which the refund is being claimed, in the format enclosed as Annexure-A manually along with the application for refund claim in FORM GST RFD-01A and the ARN.
System validations in calculating refund amount	<p>→ After calculating the eligible GST refund amount under rule 89(4) or rule 89(5) of CGST Rules 2017, the order of debiting the equivalent amount from the electronic credit ledger of the claimant is:</p> <p>(a) Integrated tax, to the extent of balance available;</p> <p>(b) CGST and SGST/UTGST equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, CGST), the differential amount is to be debited from the other electronic credit ledger (i.e., SGST/UTGST, in this case)</p>
	→ The above procedure is not presently available on the common portal. Till the time such facility is made available on the common portal, the taxpayers are advised to follow the order as explained above for all refund applications filed after the date of issue of this Circular.
	→ For the applications already filed and pending with the tax authorities, where this order is not adhered to by the claimant, no adverse view may be taken by the tax authorities.

Subject	Clarification given by CBIC
Re-credit of electronic credit ledger in case of rejection of refund claim	→ In case of rejection of refund claim of unutilized input tax credit on account of ineligibility of the said credit under sub-sections (1),(2) or (5) of section 17 of the CGST Act 2017, the proper officer shall order for the rejected amount to be re-credited to the electronic credit ledger of the claimant using FORM GST RFD-01B.
	→ In case of rejection of claim for refund of unutilized input tax credit, on account of any reason other than the eligibility of credit, the rejected amount shall be re-credited to the electronic credit ledger of the claimant using FORM GST RFD-01B only after the receipt of an undertaking from the claimant to the effect that he shall not file an appeal against the said rejection or in case he files an appeal, the same is finally decided against the claimant, as has been laid down in rule 93 of the CGST Rules 2017
	→ For recovery of this amount, a demand notice shall have to be simultaneously issued to the claimant under section 73 or 74 of the CGST Act 2017 and the said amount shall be added to the electronic liability register of the claimant through FORM GST DRC-07.
	→ Alternatively, the claimant can voluntarily pay this amount, along with interest and penalty, if applicable, before service of the demand notice, and intimate the same to the proper officer in FORM GST DRC-03.
Scope of rule 96(10) of the CGST Rules 2017	→ It is clarified that the restriction under rule 96(10) of the CGST Rules, as amended retrospectively by notification No. 39/2018-Central Tax, dated 04.09.2018, applies only to those purchasers/importers who are directly purchasing/importing supplies on which the benefit of certain notifications, as specified in the said sub-rule, has been availed
Disbursal of refund amount after sanctioning by the proper officer	→ In cases where a tax authority, after receiving a sanction order from the counterpart tax authority (Centre or State), has refused to disburse the relevant sanctioned amount calling into question the validity of the sanction order on certain grounds, it is clarified that:
	→ The remedy for correction of an incorrect or erroneous sanction order lies in filing an appeal against such order and not in withholding of the disbursement of the sanctioned amount.
	→ If any discrepancy is noticed by the disbursing authority, the same should be brought to the notice of the counterpart refund sanctioning authority, the concerned counterpart reviewing authority and the nodal officer, but the disbursal of the refund should not be withheld except for the situation under sub-section (11) of section 54 of the CGST Act 2017

Subject	Clarification given by CBIC
Status of refund claim after issuance of deficiency memo	→ Rule 93(1) of the CGST Rules 2017 provides that where any deficiencies have been communicated in FORM GST RFD-03 under rule 90(3) of CGST Rules 2017, the amount debited under rule 89 (3) shall be re-credited to the electronic credit ledger and the refund claim will have to be filed afresh.
	→ It is clarified that a refund application which is re-submitted after the issuance of a deficiency memo shall have to be treated as a fresh application. No show-cause-notices and order in FORM GST RFD-04/06 can be issued in respect of an application against which a deficiency memo has been issued and which has not been resubmitted subsequently.
Treatment of refund applications where the amount claimed is less than rupees one thousand	→ Sub-section (14) of section 54 of the CGST Act 2017 provides that no refund under subsection (5) or sub-section (6) of section 54 shall be paid to an applicant, if the amount is less than one thousand rupees.
	→ It is clarified that the limit of rupees one thousand shall be applied for each tax head separately and not cumulatively. All such refund claims shall be rejected and re-credited to the electronic credit ledger by the officer by issuing an order in FORM GST RFD-01B.
	→ The limit would not apply in cases of refund of excess balance in the electronic cash ledger

Circulars can be viewed from the below mentioned link:

Circular No.	Download Link
64/38/2018-GST dt. 14.09.18	http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_No.64.pdf;jsessionid=5044BBF171ED16F06E1770B56006746C
62/36/2018-GST dt. 12.09.18	http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_No_62of_2018_on_PSLC.pdf;jsessionid=7A225245330850299302B09D78C61B4A
61/35/2018-GST dt. 04.09.18	http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_No.61.pdf;jsessionid=BAAD072CC16C91143B76636BFF02CF76
59/33/2018-GST dt. 04.09.18	http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_No.59.pdf;jsessionid=830B59F4CE2A2C11BF3EA06D436F18E2
58/32/2018-GST dt. 04.09.18	http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_No.58.pdf;jsessionid=EA5C99AB0EBC8A79092743780B98D7C9
57/31/2018-GST dt. 04.09.18	http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_No.57.pdf;jsessionid=6B6BDC2FD1BB1E95109AA431563A4F72

About KARVY DATA MANAGEMENT SERVICES LTD.

Karvy Data Management Services Limited (KDMSL), a GST Suvidha Provider which has developed ASP Solution for easing GST compliance for tax payers. Easy to use interfaces are made available at the disposal of the tax payers to simplify their compliances in terms of dashboards, MIS, returns, payments, refunds and other compliance process. So, 'HELP US HELP YOU' we offer following services for GST - GSP & ASP Services (on cloud or on premises) with ERP Integration and Vendor Management Solution. We also offer managed services for Outsourced GST Compliance which will take care of end to end compliances.

In India, GST Team of KDMSL are located in following cities: Hyderabad, Mumbai, Bangalore, New Delhi, Chennai, Pune and Kolkata. For more information about KDMSL service offerings, visit www.karvygst.com

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