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GOODS & SERVICES TAX / IDT UPDATE

1. FAQs on applicability of GST on 'pre-packaged and labelled' goods

In order to remove ambiguity on the applicability of GST on pre-packaged and labelled' goods, applicable w.e.f. 18.07.2022, CBIC has come out with the following Frequently Asked Questions (FAQs):

S. No.	Question	Clarification
1.	What change has been made with respect to packaged and labelled commodity with effect from the 18th July, 2022?	Prior to 18th July, 2022, GST applied on specified goods when they were put up in a unit container and were bearing a registered brand name or were bearing brand name in respect of which an actionable claim or enforceable right in a court of law is available. With effect from 18th July 2022, this provision undergoes a change and GST has been made applicable on supply of such "pre-packaged and labelled" commodities attracting the provisions of Legal Metrology Act, as detailed in subsequent questions. For example, items like pulses, cereals like rice, wheat, and flour (aata), etc., earlier attracted GST at the rate of 5% when branded and packed in unit container (as mentioned above). With effect from 18.7.2022, these items would attract GST when "pre-packaged and labelled". Additionally, certain other items such as Curd, Lassi, puffed rice etc. when "prepackaged and labelled" would attract GST at the rate of 5% with effect from the 18th July, 2022. Essentially, this is a change in modalities of imposition of GST on branded specified goods to "pre-packaged and labelled" specified goods. [Please refer to notification No. 6/2022-Central Tax (Rate) and corresponding notification under respective SGST Act and IGST Act].

2.	What is the scope of 'pre-packaged and labelled' for the purpose of GST levy on food items like pulses, cereals, and flours?	For the purposes of GST, the expression 'pre-packaged and labelled' means a 'pre-packaged commodity' as defined in clause (l) of section 2 of the Legal Metrology Act, 2009, where the package in which the commodity is pre-packed, or a label securely affixed thereto is required to bear the declarations under the provisions of the Legal Metrology Act and the rules made thereunder. Clause (l) of section 2 of the Legal Metrology Act reads as below: (l) "pre-packaged commodity" means a commodity which without the purchaser being present is placed in a package of whatever nature, whether sealed or not, so that the product contained therein has a pre-determined quantity. Thus, supply of such specified commodity having the following two attributes would attract GST: (i) It is pre-packaged; and (ii) It is required to bear the declarations under the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the rules made thereunder However, if such specified commodities are supplied in a package that do not require declaration(s)/compliance(s) under the Legal Metrology Act, 2009 (1 of 2010), and the rules made thereunder, the same would not be treated as pre-packaged and labelled for the purposes of GST levy. In the context of food items (such as pulses, cereals like rice, wheat, flour etc), the supply of specified pre-packaged food articles would fall within the purview of the definition of 'pre-packaged commodity' under the Legal Metrology Act, 2009, and the rules made thereunder, if such pre-packaged and labelled packages contained a quantity upto 25 kilogram [or 25 litre] in terms of rule 3(a) of Legal Metrology (Packaged Commodities) Rules, 2011,	

		subject to other exclusions provided in the Act and the Rules made thereunder.	
3.	What is the scope of this coverage taking into account various exclusion(s) provided under the Legal Metrology Act and the rules made thereunder?	For such commodities (food items- pulses, cereals, flour, etc.), rule 3 (a) of Chapter-II of Legal Metrology (Packaged Commodities) Rules, 2011, prescribes that package of commodities containing quantity of more than 25 kg or 25 litre do not require a declaration to be made under rule 6 thereof. Accordingly, GST would apply on such specified goods where the pre-packaged commodity is supplied in packages containing quantity of less than or equal to 25 kilograms. Illustration: Supply of pre-packed atta meant for retail sale to ultimate consumer of 25 Kg shall be liable to GST. However, supply of such a 30 Kg pack thereof shall be exempt from levy of GST. Thus, it is clarified that a single package of these items [cereals, pulses, flour etc.] containing a quantity of more than 25 Kg/25 litres would not fall in the category of pre-packaged and labelled commodity for the purposes of GST and would therefore not attract GST.	
4.	Whether GST would apply to a package that contains multiple retail packages. For example, a package containing 10 retail packs of flour of 10 Kg each?	Yes, if several packages intended for retail sale to ultimate consumer, say 10 packages of 10 Kg each, are sold in a larger pack, then GST would apply to such supply. Such package may be sold by a manufacturer through distributor. These individual packs of 10 Kg each are meant for eventual sale to retail consumer. However, a package of say rice containing 50 Kg (in one individual package) would not be considered a pre-packaged and labelled commodity for the purposes of GST levy, even if rule 24 of Legal Metrology (Packaged Commodities) Rules, 2011, mandates certain declarations to be made on such wholesale package.	

5.	At what stage would GST apply on such supplies, i.e., whether GST would apply on specified goods sold by manufacturer/producer to wholesale dealer who subsequently sells it to a retailer?	GST would apply whenever a supply of such goods is made by any person, i.e. manufacturer supplying to distributor, or distributor/dealer supplying to retailer, or retailer supplying to individual consumer. Further, the manufacturer/wholesaler/retailer would be entitled to input tax credit on GST charged by his supplier in accordance with the Input Tax Credit provisions in GST. A supplier availing threshold exemption or composition scheme would be entitled to exemption or composition rate, as the case may be, in usual manner.	
6.	Whether tax is payable if such goods are purchased in packages of up to 25 kg/25liters by a retailer, but the retailer sells it in loose quantities in his shop for any reason?	GST applies when such goods are sold in pre-packaged and labelled packs. Therefore, GST would apply when prepackaged and labelled package is sold by a distributor/ manufacturer to such retailer. However, if for any reason, retailer supplies the item in loose quantity from such package, such supply by retailer is not a supply of packaged commodity for the purpose of GST levy.	
7.	Whether tax is payable if such packaged commodities are supplied for consumption by industrial consumers or institutional consumers?	Supply of packaged commodity for consumption by industrial consumer or institutional consumer is excluded from the purview of the Legal Metrology Act by virtue of rule 3 (c) of Chapter-II of Legal Metrology (Packaged Commodities) Rules, 2011. Therefore, if supplied in such manner as to attract exclusion provided under the said rule 3(c), it will not be considered as pre-packaged and labelled for the purposes of GST levy.	
8.	'X' is a rice miller who sells packages containing 20 kg rice but not making the required declaration under legal metrology Act and the Rules made thereunder (although the said Act and the rules requires him/her to make a declaration), would it still be considered as pre-	Yes, such packages would be considered as pre-packaged and labelled commodity for the purposes of GST as it requires making a declaration under the Legal Metrology (Packaged Commodities) Rules, 2011 (rule 6 thereof). Hence, miller 'X' would be required to pay GST on supply of such package(s).	

	packaged and labelled and therefore be liable to GST?	
9.	Any other relevant issue?	The Legal Metrology Act and the rules made thereunder prescribe criterion(s) for exclusion (as stated above) and provide certain exemptions under rule 26 of Legal Metrology (Packaged Commodities) Rules, 2011. It is reiterated therefore that, if supplied in such manner as to attract exclusion, or such exemption, the item shall not be treated as pre-packaged commodities for the purposes of GST levy.

2. Substitution of sub-section (3) of section 50 of CGST Act, 2021

Section 110 of the Finance Act, 2022 has been notified with retrospective effect from 01.07.2017 thereby substituting sub-section (3) of section 50 and doing away with sections 42(10) and 43(10) and states as under:

"Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.

Notification No. 09/2022–CT dt. 5th July, 2022

3. Due date of rectification of incorrect particulars furnished by an e-commerce operator in GSTR-8 amended

Section 111 of the Finance Act, 2022 has been notified to amend the proviso to section 52(6), thereby changing the due date of rectification of any omission or incorrect particulars furnished in GSTR-8 to 30th of November following the end of financial year or the actual date of furnishing of annual statement, whichever is earlier.

Notification No. 09/2022–CT dt 5th July, 2022

4. Exemption to taxpayers having AATO upto Rs. 2 crores from filing Form GSTR-9/9A for the FY 2021-22

The taxpayers having AATO upto Rs. 2 crores have been exempted from filing Form GSTR 9/9A for the FY 2021-22.

Notification No. 10/2022 –CT dt. 05.07.2022

5. Extension of due date for filing Form GST CMP-08 for Q1 for FY 2022-23 from 18th July 2022 to 31st July 2022

Notification No. 21/2019 – CT dated 23.04.2019, which specifies the due date of filing of Form CMP-08 as 18th of the month succeeding the respective quarter, has been amended to extend the due date for filing of Form CMP-08 for 1st Quarter of FY 2022-23 from 18th July 2022 to 31st July 2022.

Notification No. 11/2022 –Central Tax dt. 05.07.2022

6. Extension of waiver of late fee for delay in filing of Form GSTR-4 for FY 2021-22 from 30th June 2022 to 28th July 2022

Notification No. 73/2017-CT dt 29.12.2017 has been further amended to extend the due date of filing of Form GSTR-4 (Annual Return for registered persons opting for Composition Scheme) for FY 2021-22 from 30th June 2022 to 28th July 2022. Hence, the late fee payable for delay in furnishing of Form GSTR-4 for the Financial Year 2021-22 under section 47 of the CGST Act, 2017 has been waived for the period starting from 01.05.2022 to 28.07.2022.

Notification No. 12/2022 –CT dt. 05.07.2022

7. Extension of time limit of issuance of order under section 73(9) of the CGST Act, 2017

In exercise of the power granted under section 168A of the CGST Act, 2017, the Central Government has made the following changes in relation to the time limit of issuance of order under section 73(9) w.e.f. 01.03.2020:

a) the time limit specified under section 73(10) for issuance of order under section 73(9) for recovery of tax not paid or short paid or of input tax credit tax not paid or short paid or of input tax credit wrongly availed or utilized has been extended to 30th September 2023 for the financial year 2017-18.

b) period from 1st March 2020 to 28th February 2022 shall be excluded for computation of period of limitation under section 73(10) for issuance of order under section 73(9) for recovery of erroneous refund.

c) period from 1st March 2020 to 28th February 2022 shall be excluded for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act.

Notification No. 13/2022-CT dt. 5th July, 2022

8. Amendments in CGST Rules, 2017 vide CGST (Amendment) Rules, 2022

The CGST Rules, 2017 have been amended as under:

(i) Insertion of 2nd proviso in rule 21A(4) (Automatic revocation): There will be automatic revocation of suspended GST registration upon furnishing of pending GST returns, if GST registration was suspended due to non-filing of GST returns for 3 consecutive tax periods by the composition taxpayer or a continuous period of 6 months by registered persons (other than composition taxpayer) subject to the condition that the registration has not been cancelled by the proper officer under rule 22.

(ii) Insertion of clause (d) in the Explanation 1 to rule 43 (Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases) : The value of supply of duty credit scrips as specified in *Notification No. 35/2017- Central Tax (Rate) dated 13th October 2017*, shall be excluded from the calculation of aggregate value of exempt supplies, for the purposes of computation of input tax credit to be reversed under rules 42 and 43.

(iii) Insertion of a new clause (s) in rule 46 (Tax Invoice): A declaration shall be given in the tax invoice, where e-invoice is not required to be issued despite the aggregate turnover being more than the threshold limit applicable for e-invoicing as per below format:

"I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) rule 48, we are not required to prepare an invoice in terms of the provisions of the said rule".

(iv) Insertion of sub-rule (4B) in rule 86 (Electronic Credit Ledger): If the registered person deposits the amount of erroneous refund sanctioned to him u/s 54(3) or under rule 96(3) in contravention to rule 96(10), along with interest and penalty, if any, through Form GST DRC-03 by debiting the electronic cash ledger either on his own or being pointed out by the officer, then the same shall be re-credited to the electronic credit ledger by an order passed by the proper officer in a newly introduced **Form GST PMT-03A**.

Circular No. 174/06/2022-GST dt. 6th July, 2022 has been issued prescribing the manner of re-credit in electronic credit ledger using FORM GST PMT-03A-

Due to difficulty being faced by the taxpayers in taking re-credit of the amount in the electronic credit ledger in cases where any excess or erroneous refund sanctioned to them had been paid back by them either on their own or on being pointed by the tax officer, a new Form PMT-03A has been introduced.

Categories of refunds where re-credit can be done using FORM GST PMT-03A:

a) Refund of IGST obtained in contravention of sub-rule (10) of rule 96.

b) Refund of unutilised ITC on account of export of goods/services without payment of tax.

c) Refund of unutilised ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without payment of tax.

d) Refund of unutilised ITC due to inverted tax structure.

Procedure for re-credit of amount in electronic credit ledger: The taxpayer shall deposit the amount of erroneous refund along with applicable interest and penalty, wherever applicable, through FORM GST DRC-03 by debit of amount from electronic cash ledger mentioning the reason for making the payment (i.e., deposit of erroneous refund of ITC or IGST) along with a written request in format enclosed as Annexure-A to the Circular. Thereafter, the proper officer, on being satisfied that the full amount of erroneous refund along with applicable interest, as per the provisions of section 50 and penalty, wherever applicable, has been paid by the said registered person in FORM GST DRC-03 by way of debit in electronic cash ledger, he shall re-credit an amount in electronic credit ledger equivalent to the amount of erroneous refund so deposited by the registered person, by passing an order in FORM GST PMT-03A, preferably within a period of 30 days from the date of receipt of request for re-credit of erroneous refund amount so deposited or from the date of payment of full amount of erroneous refund along with applicable interest, and penalty, wherever applicable, whichever is later.

(v) Amendments in rule 87 (Electronic Cash ledger)

a) **Clause (ia) inserted in rule 87(3):** The amount of tax, interest, penalty, fee or any other amount may also be deposited through Unified payment interface (UPI) or Immediate Payment Services (IMPS**)** from any bank, on the GST portal. Sub-rule (3) has been added for this purpose and consequential amendment has been made in sub-rule (5).

b) **Insertion of sub-rule (14) to rule 87:** A facility has been provided on the common portal to transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger to the electronic cash ledger for central tax or integrated tax of a distinct person through Form GST PMT-09.

However, if the registered person has any unpaid liability in electronic liability register, the amount available in electronic cash ledger shall not be allowed to be transferred.

(vi) Insertion of rule 88B - Manner of calculating interest on delayed payment of tax

A new rule 88B has been inserted with retrospective effect from 01.07.2017 to specify that now interest shall be payable on tax payable in respect of such supplies which have been declared by the registered person in the return and the said return is furnished after the due date prescribed under section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74, in respect of the said period. Such interest shall be calculated on the portion of tax, which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date at the rate specified under section 50(1) i.e., 18%.

In all other cases, where interest is payable u/s 50 (1), the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid at the rate specified u/s 50(1).

Where interest is payable on the amount of input tax credit wrongly availed and utilised in accordance with section 50(3), the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount at the rate specified u/s 50(3).

The explanation to the rule lays down that-

(i) input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed;

(ii) the date of utilisation of such input tax credit shall be taken to be-

(a) the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or

(b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases

(vii) Amendments in rule 89 - Application for refund of tax, interest, penalty, fees or any other amount

a) An explanation has been added after the fourth proviso to sub-rule (1) to clarify that ― specified officer shall mean a specified officer or an authorised officer as defined under rule 2 of the Special Economic Zone Rules, 2006.

b) A new clause (ba) has been inserted in sub-rule (2) to specify the documentary evidence which shall accompany the refund application in case of export of electricity. The application shall be accompanied with a statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement, along with the copy of statement of scheduled energy for exported electricity by Generation Plants issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under clause (nnn) of sub-regulation 1 of Regulation 2 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and the copy of agreement detailing the tariff per unit, in case where refund is on account of export of electricity. Consequential amendment has been made in clause (b) of sub-rule (2).

The CBIC has issued ***Circular No. 175/07/2022-GST dt. 6th July, 2022*** to prescribe the procedure for filing and processing of refund of unutilised ITC on account of export of electricity.

c) An explanation has been inserted in sub-rule (4), to clarify that while calculating refund of unutilised ITC in case of zero-rated supply without payment of tax, **value of goods exported out of India** shall be taken as:

(i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or,

(ii) the value declared in tax invoice or bill of supply**;**

whichever is less

d) The formula for calculation of refund in case of inverted tax structure as prescribed under sub-rule (5) has been changed as under:

{(Turnover of inverted rated supply of goods and services*Net ITC)/Adjusted Total Turnover} –{Tax payable on such inverted rated supply of goods and services*(Net ITC/ITC availed on inputs and input services)}

(viii) Omission of rule 95A - Refund of taxes to the retail outlets establishes in departure area of an international airport beyond immigration counters making tax free supply to an ongoing international tourist

This rule has been omitted with retrospective effect from 01.07.2019. Owing to this omission, *Circular No. 106/25/2019-GST dated 29.06.2019* has been withdrawn, wherein certain clarifications were given in relation to rule 95A vide ***Circular No. 176/08/2022-GST dt. 6th July, 2022.***

(ix) Amendments in rule 96 - Refund of integrated tax paid on goods or services exported out of India w.e.f. 01.07.2017

a) Reference of Form GSTR-3 has been removed from clause (b) of sub-rule (1). A proviso has been added in sub-rule (1) specifying that if there is any mismatch between the data furnished by the exporter of goods in shipping bill and those furnished in statement of outward supplies in FORM GSTR-1, such application for refund of integrated tax shall be deemed to have been filed on such date when the mismatch in respect of the said shipping bill is rectified by the exporter.

b) A new clause (c) has been inserted in sub-rule (4) to provide that the claim for refund shall be withheld where the Commissioner in the Board or an officer authorised by the Board, on the basis of data analysis and risk parameters, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue**.**

c) New sub-rules (5A) and (5B) have been inserted specifying that where refund is withheld in accordance with the provisions of clause (a) or newly inserted clause (c) or clause (b) of sub-rule (4) proper officer passes an order for withholding of refund due to violation of Customs Act, 1962 under clause (b) of sub-rule (4), such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated FORM GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

Another sub-rule (5C) has been inserted to provide that the application for refund in FORM GST RFD-01 transmitted electronically through the common portal in terms of sub-rules (5A) and (5B) shall be dealt in accordance with the provisions of rule 89.

d) Sub-rules (5), (6) and (7) have been omitted.

Notification No. 14/2022-CT dt. 5th July, 2022

9. Amendments in Form GSTR-3B

a) A new heading 3.1.1 has been inserted seeking the details of supplies notified under section 9(5) of the CGST Act, 2017 and corresponding provisions of SGST/ UTGST Acts. Consequential amendments have been made in other tables of the return form.

b) The reversal of ITC reported under Table 4(1)(B) shall also include ITC to be reversed under rule 38 [restricted ITC for banking company or financial institutions] and section 17(5) [blocked ITC].

c) The heading of Table 4D has been changed from "Ineligible ITC" to "Other Details" and shall be covered under sub-item (1) "ITC reclaimed which was reversed under Table 4(B)(2) in earlier tax period" and under sub-item (2), "Ineligible ITC under section 16(4) and ITC restricted due to place of supply provisions".

Notification No. 14/2022-CT dt. 5th July, 2022

10. Amendments have also been made in Form GSTR-9, Form GSTR-9C and Form GST PMT-06, Form GST PMT-07, Form GST PMT-09, Form GST RFD-01, Form GST-RFD-10B has also been amended retrospectively from 1st July 2019.

Notification No. 14/2022-CT dt. 5th July, 2022

11. A circular has been issued to make mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked input tax credit and reversal thereof in return in FORM GSTR-3B and statement in FORM GSTR-1.

Circular No.170/02/2022-GST dt. 6th July, 2022

12. A circular has been issued clarifying various issues relating to applicability of demand and penalty provisions under the CGST Act, 2017 in respect of transactions involving fake invoices.

Circular No. 171/03/2022-GST dt. 6th July, 2022

13. A Circular has been issued to provide clarifications on various issues with respect to:

a) refund claimed by the recipients of supplies regarded as deemed export

b) interpretation of section 17(5) of the CGST Act

c) perquisites provided by employer to the employees as per contractual agreement

d) utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities.

Circular No. 172/04/2022-GST dt. 6th July, 2022

14. A circular has been issued to provide clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification.

In an earlier *Circular No. 135/05/2020-GST dated 31.03.2020*, it was clarified that refund on account of inverted duty structure would not be admissible in cases where the input and output supply are same. Now, it has been clarified that refund of accumulated input tax credit on account of inverted structure section 54(3)(ii) of the CGST Act, 2017 would be allowed in cases where accumulation of input tax credit is on account of rate of tax on outward supply being less than the rate of tax on inputs (same goods) at the same point of time, as per some concessional notification issued by the Government providing for lower rate of tax for some specified supplies subject to fulfilment of other conditions.

Circular No. 173/05/2022-GST dt. 6th July, 2022

Turnover limit for e-invoicing reduced from ₹ 20 crore to ₹ 10 crore

The Central Government, on the recommendations of the GST Council, has amended Notification No. 13/2020-CT dt. 21.03.2020 to reduce the threshold limit of aggregate turnover for the applicability of e-invoicing provisions from ₹ 20 crore to ₹ 10 crore. The said amendment shall become effective from 1st October 2022.

Notification No. 17/2022-CT dt. 01.08.2022

Procedure relating to sanction, post-audit and review of refund claims

The Board has issued Instruction No. 03/2022 – GST dt. 14.06.2022 for sanction, post-audit and review of refund claims to ensure uniformity in procedure and enabling effective monitoring of sanction of refund claims.

1. Sanction of refund

As clarified in Circular No. 17/17/2017-GST dt. 15.11.2017 and Circular No 125/44/2019-GST dt. 18.11.2019, the proper officers shall follow the principle of natural justice i.e., issue a detailed speaking order providing a basis for sanction/ rejection of refund alongwith refund sanction order in Form RFD-06. The details which should *inter-alia* be specified in the speaking order of all categories of refund claims have been provided in the Guidelines. Further, additional details to be provided in case of refund of accumulated ITC (on account of zero-rated supplies/ inverted rated structure) and refund of IGST paid on account of zero-rated supplies, supplies regarded as deemed export, excess balance in cash ledger and other refunds, have also been enumerated in the Guidelines.

The proper officer may upload the speaking order in pdf format on the ACES-GST portal along with refund sanction order in Form GST RFD-06 so that the same is made available to the refund applicant as well as Post-audit/ Reviewing Authority online.

2. Post-Audit and Review

As per current practice, all refund orders are required to be reviewed for examination of legality and propriety and for taking a view whether an appeal to the appellate authority under section 107(2) of the CGST Act, 2017 is required to be filed against the said refund order.

Considering the large number of refund claims filed in GST, post-audit may henceforth be conducted only for refund claims amounting to **Rs. 1 lakh or more**, till further instructions.

All the refund orders passed should be immediately transmitted online to the review module after issuance of refund order in form GST RFD-06. The review and post-audit officers shall have access to all documents/statements on ACES-GST portal pertaining to the said refund claims. A Post-Audit Cell may be created in Commissionerate Headquarters under a Deputy/Assistant Commissioner along with one/two Superintendents and Inspectors as required.

The post-audit should be concluded within 3 months from the date of issue of order in Form RFD-06. The review of refund order shall be completed at least 30 days before the expiry of the time period allowed for filing appeal under section 107(2) of the said Act.

Post-audit shall be conducted in offline mode till the time an online facility is made available on ACES-GST portal. The refund orders having refund claims of Rs. 1 Lakh or more and the relevant documents may be provided to the post-audit cell by the concerned division through e-office within 7 days of issuance of refund sanction order in Form RFD-06. The report of the Post-Audit Cell shall be furnished to the Review Cell through e-office within the said period of 3 months.

Further, refund claims shall not be subject to pre-audit as already clarified through Circular No. 17/17/2017-GST dt. 15.11.2017.

The detailed Guideline can be accessed at ***Instruction No. 03/2022 – GST dt. 14.06.2022***

Clarification on the legal position of voluntary payment of taxes during the course of inspection, search or investigation

Under CGST Act, 2017, the taxpayers have an option to make voluntary payment of tax through Form DRC-03. Such voluntary payment of tax before issuance of show cause notice is permitted under section 73(5) and section 74(5) of the CGST Act, 2017. This helps the taxpayers in discharging their admitted liability, self-ascertained or as ascertained by the tax officer, without having to bear the burden of interest under section 50 of CGST Act, 2017 for delayed payment of tax and may also save him from higher penalty imposable on him subsequent to issuance of show cause notice under section 73 or section 74, as the case may be.

Recovery of taxes not paid or short paid, can be made under the provisions of section 79 of CGST Act, 2017 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. Therefore, there may not arise any situation where "recovery" of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either before or during the course of such proceedings or subsequently. The tax officer should however, inform the taxpayers regarding the provisions of voluntary tax payments through DRC-03.

The Pr. Chief Commissioners/ Chief Commissioners, CGST Zones and Pr. Director General, DGGI are advised that in case, any complaint is received from a taxpayer regarding use of force or coercion by any of their officers for getting the amount deposited during search or inspection or investigation, the same may be enquired at the earliest and in case of any wrongdoing on the part of any tax officer, strict disciplinary action as per law may be taken against the defaulting officers.

Instruction No. 01/2022-23 [GST-Investigation] dt. 25.05.2022