

**GOVERNMENT OF TAMIL NADU
COMMERCIAL TAXES DEPARTMENT
OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM, CHENNAI- 600 005**

**PRESENT: THIRU. DHEERAJ KUMAR I.A.S.,
PRINCIPAL SECRETARY/ COMMISSIONER OF STATE TAX**

**Circular No: 11/2022 – TNGST
(PP6/GST/145/2022)**

Dated: 02.09.2022

Sub: Prescribing manner of re-credit in electronic credit ledger using FORM GST PMT-03A – regarding

Ref: Circular No. 174/06/2022-GST, dated 06.07.2022 issued by Ministry of Finance, Department of Revenue, Government of India, CBIC, New Delhi

In the reference cited, the CBIC, Department of Revenue, Ministry of Finance, Government of India, New Delhi, has issued Circular No. 174/06/2022-GST, dated 06.07.2022 on the recommendations of the GST Council. Hence, following *pari materia* circular is issued:-

Difficulties were 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. In order to resolve this issue, GSTN has recently developed a new functionality of FORM GST PMT-03A which allows proper officer to re-credit the amount in the electronic credit ledger of the taxpayer. Further, sub-rule (4B) in rule 86 of the Tamil Nadu Goods and Services Tax Rules, 2017 (hereinafter referred to as "TNGST Rules") has been inserted vide Notification No SRO A-12 (a)/2022 issued in G.O (Ms) No.106, Commercial Tax & Registration Department, dated 08.07.2022 to provide for re-credit in the electronic credit ledger where the taxpayer deposits the erroneous refund sanctioned to him.

2. In order to ensure uniformity in the implementation of the above provisions of the law across field formations, the Commissioner, in exercise of powers conferred by section 168 of the Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as "TNGST Act"), hereby clarifies the following:

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

3.1 Reference is invited to sub-rule (4B) of rule 86 of the TNGST Rules, which is reproduced as under:

(4B) Where a registered person deposits the amount of erroneous refund sanctioned to him –

- a. *under sub-section (3) of section 54 of the Act, or*
- b. *under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96, along with interest and penalty, wherever applicable, through FORM GST DRC-03, in cash, on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03A.*

3.2 From the above, it can be stated that in respect of the following categories of refund sanctioned erroneously, re-credit of amount in the electronic credit ledger can be done through FORM GST PMT-03A, on deposit of such erroneous refund along with interest and penalty, wherever applicable, by the taxpayer:

- 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.

4. Procedure for re-credit of amount in electronic credit ledger:

4.1 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. While making the payment through FORM GST DRC-03, the taxpayer shall clearly mention the reason for making payment in the text box as the deposit of erroneous refund of unutilised ITC, or the deposit of erroneous refund of IGST obtained in contravention of sub-rule (10) of rule 96 of the TNGST Rules.

4.2 Till the time an automated functionality for handling such cases is developed on the portal, the taxpayer shall make a written request, in format enclosed as Annexure-A, to jurisdictional proper officer to re-

credit the amount equivalent to the amount of refund thus paid back through FORM GST DRC-03, to electronic credit ledger.

4.3 The proper officer, on being satisfied that the full amount of erroneous refund along with applicable interest, as per the provisions of section 50 of the TNGST Act, 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.

**Sd/-Dheeraj Kumar
Principal Secretary/
Commissioner of State Tax**

To

All the Joint Commissioners (ST) (Territorial) in the state including LTU

Copy to:

1. All Additional Commissioners, O/o the CCT, Ezhilagam, Chennai – 600 005.
2. The Joint Commissioner (CS) to host in the departmental website
3. The Director, Commercial Tax Staff Training Institute, Chennai-35.
4. All the Joint Commissioners (ST) (Intelligence) in the state
5. All the Deputy Commissioners (ST) in the State including intelligence
6. All the Heads of assessment circles

Stock file

//Forwarded // by Order//

12/19/2022
Dheeraj
12/19/22
Deputy Commissioner (P&P)

Annexure-A

From,

GSTIN - _____

Legal Name- _____

Trade Name- _____

To,

Jurisdictional Proper officer,

Address _____

Subject: Request for re-credit of amount in Electronic Credit Ledger

I/We have been granted refund under the following category (please tick the relevant category):

- a. Refund of IGST, obtained in contravention of sub-rule (10) of rule 96 of the TNGST Rules, 2017.
- 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.

2. The details of refund sanction order are as under:

a. In case of refund of IGST, obtained in contravention of sub-rule (10) of rule 96 of the TNGST Rules, 2017:

1. Shipping Bill/ Bill of Export No. & Date _____
2. Amount of IGST paid on export of goods _____
3. Details of Exemption/Concessional Rate Notification used for procuring inputs _____
4. Amount of refund sanctioned _____
5. Date of credit of refund in Bank Account _____

b. In other cases of refund:

1. Category of refund & relevant period of refund _____
2. GST RFD-01/01A ARN & Date _____
3. GST RFD-06 Order No. & Date _____
4. Amount of refund claimed _____
5. Amount of refund sanctioned _____
6. Date of credit of refund in Bank Account _____

3. I/We have deposited the erroneous refund amount of Rs. _____ along with interest of Rs. _____ and penalty of Rs. _____ (wherever applicable) vide FORM GST DRC -03 Ref/ARN _____ dated _____ voluntarily on my own ascertainment/ against a notice/order/letter No. _____ dated _____ issued by (details of the tax authority). It is now requested to re-credit an amount equivalent to the amount of erroneous refund, so deposited, in the Electronic Credit Ledger.

4. I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Date:

Signature of Authorized Signatory

Name

Designation / Status

**GOVERNMENT OF TAMIL NADU
COMMERCIAL TAXES DEPARTMENT
OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM, CHENNAI- 600 005**

**PRESENT: THIRU. DHEERAJ KUMAR I.A.S.,
PRINCIPAL SECRETARY/ COMMISSIONER OF STATE TAX**

**Circular No: 10/2022 – TNGST
(PP6/GST/145/2022)**

Dated: 02.09.2022

Sub: Clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification – reg.

Ref: Circular No.173/05/2022-GST, dated 06.07.2022 issued by Ministry of Finance, Department of Revenue, Government of India, CBIC, New Delhi

In the reference cited, the CBIC, Department of Revenue, Ministry of Finance, Government of India, New Delhi, has issued Circular No. 173/05/2022-GST, dated 06.07.2022 on the recommendations of the GST Council. Hence, following *pari materia* circular is issued:-

Various representations have been received by GST Council seeking clarification with regard to applicability of para 3.2 of the Circular No. 135/05/2020-GST dated 31.03.2020 [CircularNo.9/2020-TNGST (PP6/35622/2019) dated 20.06.2020] in cases where the supplier is required to supply goods at a lower rate under Concessional Notification issued by the Government. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law in this regard across the field formations, the Commissioner, in exercise of powers conferred by section 168 of the Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as "TNGST Act"), hereby clarifies the issue as under:

2. Vide para 3.2 of Circular No. 9/2020-TNGST (PP6/35622/2019) dated 20.06.2020, 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. Para 3.2 of Circular No. 9/2020-TNGST (PP6/35622/2019) dated 20.06.2020 is reproduced, as under:

"Refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the TNGST Act is available where the credit

has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the TNGST Act. It is hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the TNGST Act would not be applicable in cases where the input and the output supplies are the same."

3. The matter has been examined. The intent of para 3.2 of Circular No. 9/2020- TNGST (PP6/35622/2019) dated 20.06.2020 was not to cover those cases where the supplier is making supply of goods under a concessional notification and the rate of tax of output supply is less than the rate of tax on input supply (of the same goods) at the same point of time due to supply of goods by the supplier under such concessional notification.

4. Therefore, it is clarified that in such cases, refund of accumulated input tax credit on account of inverted structure as per clause (ii) of sub-section (3) of section 54 of the TNGST 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. Accordingly, para 3.2 of the Circular No. 9/2020- TNGST (PP6/35622/2019) dated 20.06.2020 stands substituted as under:

"3.2 It may be noted that refund of accumulated ITC in terms of clause (ii) of first proviso to sub-section (3) of section 54 of the TNGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the TNGST Act, 2017.

3.3 There may however, be cases where though inputs and output goods are same but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs. In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund under the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the TNGST

Act, 2017 other than the cases where output supply is either Nil rated or fully exempted, and also provided that supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC under the said clause."

**Sd/-Dheeraj Kumar
Principal Secretary/
Commissioner of State Tax**

To

All the Joint Commissioners (ST) (Territorial) in the state including LTU

Copy to:

1. All Additional Commissioners, O/o the CCT, Ezhilagam, Chennai – 600 005.
2. The Joint Commissioner (CS) to host in the departmental website
3. The Director, Commercial Tax Staff Training Institute, Chennai- 35.
4. All the Joint Commissioners (ST) (Intelligence) in the state
5. All the Deputy Commissioners (ST) in the State including intelligence
6. All the Heads of assessment circles

Stock file

//Forwarded // by Order//

12/09/22

12/09/22
Deputy Commissioner (P&P)

**GOVERNMENT OF TAMIL NADU
COMMERCIAL TAXES DEPARTMENT
OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM, CHENNAI- 600 005**

**PRESENT: THIRU. DHEERAJ KUMAR I.A.S.
PRINCIPAL SECRETARY/ COMMISSIONER OF STATE TAX**

**Circular No: 13/2022 – TNGST
(PP6/GST/145/2022)**

Dated: 02.09.2022

Sub: Withdrawal of Circular No. 78/2019-TNGST
(Rc.No.26/2019/A1/P&P) dated 05.07.2019 – Reg.

Ref: Circular No. 176/08/2022-GST, dated 06.07.2022
issued by Ministry of Finance, Department of
Revenue, Government of India, CBIC, New Delhi

In the reference cited, the CBIC, Department of Revenue, Ministry of Finance, Government of India, New Delhi, has issued Circular No. 176/08/2022-GST, dated 06.07.2022 on the recommendations of the GST Council. Hence, following *pari materia* circular is issued:-

Attention is invited to Circular No. 78/2019-TNGST (Rc.No.26/2019/A1/P&P) dated 05.07.2019 wherein certain clarifications were given in relation to rule 95A, inserted in the Tamil Nadu Goods and Services Tax Rules, 2017 w.e.f. 01.07.2019, for refund of taxes paid on inward supply of indigenous goods by retail outlets established at departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange.

2. The said rule 95A has been omitted, retrospectively w.e.f. 01.07.2019, vide Notification No SRO A-12 (a)/2022 issued in GO. (Ms) No. 106 Commercial Taxes & Registration Department dated 08.07.2022. Accordingly, the Commissioner, in exercise of powers conferred by section 168 of the Tamil Nadu Goods and Services Tax Act, 2017, hereby withdraws, *ab-initio*, Circular No 78/2019-TNGST (Rc.No.26/2019/A1/P&P) dated 5th July, 2019.

**Sd/-Dheeraj Kumar
Principal Secretary/
Commissioner of State Tax**

To

All the Joint Commissioners (ST) (Territorial) in the state including LTU

Copy to:

1. All Additional Commissioners, O/o the CCT, Ezhilagam, Chennai – 600 005.
2. The Joint Commissioner (CS) to host in the departmental website
3. The Director, Commercial Tax Staff Training Institute, Chennai-35.
4. All the Joint Commissioners (ST) (Intelligence) in the state
5. All the Deputy Commissioners (ST) in the State including intelligence
6. All the Heads of assessment circles

Stock file

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2/11/22
12/9/22
Deputy Commissioner (P&P)

12/9/22

**GOVERNMENT OF TAMIL NADU
COMMERCIAL TAXES DEPARTMENT
OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM, CHENNAI- 600 005**

**PRESENT: THIRU. DHEERAJ KUMAR I.A.S ,
PRINCIPAL SECRETARY/ COMMISSIONER OF STATE TAX**

**Circular No: 9/2022 – TNGST
(PP6/GST/145/2022)**

Dated : 02.09.2022

Sub: Clarification on various issue pertaining to GST-
regarding

Ref: Circular No. 172/04/2022-GST, dated 06.07.2022
issued by Ministry of Finance, Department of
Revenue, Government of India, CBIC, New Delhi

In the reference cited, the CBIC, Department of Revenue, Ministry of Finance, Government of India, New Delhi, has issued Circular No. 172/04/2022-GST, dated 06.07.2022 on the recommendations of the GST Council. Hence, following *pari materia* circular is issued:-

Various representations have been received by GST Council seeking clarification on certain issues with respect to –

- i. refund claimed by the recipients of supplies regarded as deemed export;
- ii. interpretation of section 17(5) of the TNGST Act, 2017;
- iii. perquisites provided by employer to the employees as per contractual agreement; and
- iv. utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Commissioner, in exercise of powers conferred by section 168 of the Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as "TNGST Act"), hereby clarify the 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 TNGST 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 vide Circular No. 5/2021-TNGST (PP6/GST-15003/28/2021) dated 20.07.2021 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 TNGST 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 TNGST 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 TNGST 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 TNGST 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 TNGST Rules, 2017.

Clarification on various issues of section 17(5) of the TNGST Act

3.	Whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the TNGST Act, 2017, is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?	<p>Vide the Tamil Nadu Goods and Service Tax (Amendment Act) 2018, clause (b) of sub-section (5) of section 17 of the TNGST Act, 2017 was substituted with effect from 01.02.2019. After the said substitution, the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the TNGST Act, 2017 provides as under:</p> <p><i>"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."</i></p> <p>The said amendment in sub-section (5) of section 17 of the TNGST Act, 2017 was made based on the recommendations of GST Council in its 28th meeting. The intent of the said amendment in sub-section (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 <i>"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."</i></p> <p>Accordingly, it is clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the TNGST Act is applicable to the</p>
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		whole of clause (b) of sub-section (5) of section 17 of the TNGST Act, 2017.
4.	Whether the provisions of sub-clause (i) of clause (b) of sub-section (5) of section 17 of the TNGST Act, 2017, 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?	<p>1. Sub-clause (i) of clause (b) of sub-section (5) of section 17 of the TNGST Act, 2017, provides that ITC shall not be available in respect of following supply of goods or services or both—</p> <p><i>"(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:</i></p> <p><i>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 outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply"</i></p> <p>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 TNGST Act, 2017 in case</p>

of leasing, other than leasing of motor vehicles, vessels and aircrafts.

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?	<ol style="list-style-type: none"> 1. Schedule III to the TNGST Act, 2017 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. 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.
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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?	<ol style="list-style-type: none"> 1. In terms of sub – section (4) of section 49 of TNGST Act, 2017 the amount available in the electronic credit ledger may be used for making any payment towards output tax under the TNGST Act or the Integrated Goods and Services Tax Act,
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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 TNGST Act read with rule 88A of the TNGST Rules, 2017.

2. Sub-rule (2) of rule 86 of the TNGST Rules, 2017 provides for debiting of the electronic credit ledger to the extent of discharge of any liability in accordance with the provisions of section 49 or section 49A or section 49B of the TNGST Act.
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 TNGST Act 2017) is defined in clause (82) of section 2 of the TNGST Act as the tax chargeable on taxable supply of goods or services or both but excludes tax payable on reverse charge mechanism.
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.
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 any tax which is payable under reverse charge mechanism.

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 TNGST Act or the IGST Act, 2017. 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 TNGST Act, 2017, 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.

**Sd/- Dheeraj Kumar
Principal Secretary/
Commissioner of State Tax**

To

All the Joint Commissioners (ST) (Territorial) in the state including LTU

Copy to:

1. All Additional Commissioners, O/o the CCT, Ezhilagam, Chennai - 600 005.
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Stock file

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Chief ST
12/09/22
Deputy Commissioner (P&P)

17/9/2022

**GOVERNMENT OF TAMIL NADU
COMMERCIAL TAXES DEPARTMENT
OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM, CHENNAI- 600 005**

**PRESENT: THIRU. DHEERAJ KUMAR I.A.S.,
PRINCIPAL SECRETARY/ COMMISSIONER OF STATE TAX**

**Circular No: 12/2022 – TNGST
(PP6/GST- 145/2022)**

Dated: 02.09.2022

Sub: Manner of filing refund of unutilized ITC on account of export of electricity-reg.

Ref: Circular No. 175/07/2022-GST, dated 06.07.2022 issued by Ministry of Finance, Department of Revenue, Government of India, CBIC, New Delhi

In the reference cited, the CBIC, Department of Revenue, Ministry of Finance, Government of India, New Delhi, has issued Circular No. 175/07/2022-GST, dated 06.07.2022 on the recommendations of the GST Council. Hence, following *pari materia* circular is issued:-

Reference has been received by GST Council from Ministry of Power regarding the problem being faced by power generating units in filing of refund of unutilised Input Tax Credit (ITC) on account of export of electricity. It has been represented that though electricity is classified as "goods" in GST, there is no requirement for filing of Shipping Bill/ Bill of Export in respect of export of electricity. However, the extant provisions under Rule 89 of TNGST Rules, 2017 provided for requirement of furnishing the details of shipping bill/ bill of export in respect of such refund of unutilised ITC in respect of export of goods. Accordingly, a clause (ba) has been inserted in sub-rule (2) of rule 89 and a Statement 3B has been inserted in FORM GST RFD-01 of the TNGST Rules, 2017 vide Notification No SRO A-12 (a)/2022 issued in GO (Ms) No.106 Commercial Taxes & Registration Department dated 08.07.2022. In order to clarify various issues and procedure for filing of refund claim pertaining to export of electricity, the Commissioner, in exercise of powers conferred by section 168 of the TNGST Act, 2017, hereby prescribes the following procedure for filing and processing of refund of unutilised ITC on account of export of electricity:

2. Filing of refund claim:

2.1 Till the time necessary changes are carried out on the portal, the applicant would be required to file the application for refund under "Any Other" category electronically in FORM GST RFD-01, on the portal. In remark column of the application, the taxpayer would enter "Export of electricity- without payment of tax (accumulated ITC)". At this stage, the applicant is not required to make any debit from the electronic credit ledger.

2.2 The applicant would be required to furnish/upload the details contained in Statement 3B (and not in statement 3) of FORM GST RFD-01 (in pdf format), containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement.

2.3 The applicant will also be required to upload the copy of statement of scheduled energy for electricity exported by the Generation Plants (in format attached as Annexure-I) issued as part of Regional Energy Account by Regional Power Committee Secretariat ("RPC") under regulation 2 (1)(nnn) of the CERC (Indian Electricity Grid Code) Regulations, 2010, for the period for which refund has been claimed and the copy of the relevant agreement(s) detailing the tariff per unit for the electricity exported. The applicant will also give details of calculation of the refund amount in Statement -3A of FORM GST RFD-01 by uploading the same in pdf format along with refund application in FORM GST RFD-01.

3. Relevant date for filing of refund:

As per sub-section (1) of section 54 of the TNGST Act, 2017, time period of two years from the relevant date has been specified for filing an application of refund. Electrical energy is in nature of "goods" under GST and is exported on a continuous basis through the transmission lines attached to the land. Therefore, it is not possible to determine the specific date on which a specific unit of electricity passes through the frontier. However, a statement of scheduled energy for export of electricity by a Generation Plant is issued by Regional Power Committee RPC Secretariat, as a part of Regional Energy Account (hereinafter referred to as "REA") under Regulation 2(1)(nnn) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010. Accordingly, it is hereby clarified that in case of export of electricity, the relevant date shall be the last date of the month, in which the electricity has been exported as per monthly Regional Energy Account (REA) issued by the Regional Power Committee Secretariat under regulation 2(1)(nnn) of the CERC (Indian Electricity Grid Code) Regulations, 2010.

4. Processing of refund claim by proper officer

4.1 Rule 89(4) provides for the formula for calculation of refund of unutilised ITC on account of zero-rated supplies which is reproduced as under:

$$\text{Refund Amount} = (\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero rated supply of services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}$$

Export of electricity being zero-rated supply, refund of unutilised ITC on account of export of electricity would also be calculated using the same formula.

4.2 The turnover of export of electricity would be calculated by multiplying the energy exported during the period of refund with the tariff per unit of electricity, specified in the agreement. It is clarified that quantum of Scheduled Energy exported, as reflected in the Regional Energy Account (REA) issued by Regional Power Committee (RPC) Secretariat for a particular month, will be deemed to be the quantity of electricity exported during the said month and will be used for calculating the value of zero-rated supply in case of export of electricity. Such monthly Regional Energy Account (REA) issued by Regional Power Committee (RPC) Secretariat, as uploaded on the websites of RPC Secretariat, can be downloaded by GST officers as well as the concerned electricity generator for the purpose of refund under Rule 89(4) of TNGST Rules 2017. The calculation of the value of the exports of electricity during the month, can be done based on the quantity of scheduled electricity exported during the month by the exporter (as detailed in the REA for the month) and the tariff rate per unit (details of which will have to be provided by the concerned exporter based on agreed contracted rates).

4.3 It is also mentioned that usually, the quantum of electricity exported as specified in the statement of scheduled energy exported and on invoice should be same. However, in certain cases, it might happen that the quantum of electricity exported as mentioned on invoice is different from the quantum of electricity exported mentioned on the statement of scheduled energy uploaded with REA on Regional Power Committee website. In such cases, turnover of export of electricity shall be calculated using the lower of the quantum of electricity exported mentioned on the statement of scheduled energy exported and that mentioned on the invoice issued on account of export of electricity.

4.4 Adjusted Total Turnover shall be calculated as per the clause (E) of sub-rule (4) of rule 89 of the TNGST Rules 2017. However, as electricity has been wholly exempted from the levy of GST, therefore, as per the definition of adjusted total turnover provided at clause (E) of the sub-rule (4) of rule 89 of the TNGST Rules 2017, the turnover of electricity

supplied domestically would be excluded while calculating the adjusted total turnover. The proper officer shall invariably verify that no ITC has been availed on the inputs and inputs services utilised in making domestic supply of electricity.

4.5 The proper officer shall calculate the admissible refund amount as per the formula provided under rule 89(4) of TNGST Rules 2017 and as per the clarification furnished above. Further, upon scrutiny of the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the applicant, in writing, if required, to debit the said amount from the electronic credit ledger through FORM GST DRC-03. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GST RFD-06 and the payment order in FORM GST RFD-05.

**Sd/-Dheeraj Kumar
Principal Secretary/
Commissioner of State Tax**

To

All the Joint Commissioners (ST) (Territorial) in the state including LTU

Copy to:

1. All Additional Commissioners, O/o the CCT, Ezhilagam, Chennai – 600 005.
2. The Joint Commissioner (CS) to host in the departmental website
3. The Director, Commercial Tax Staff Training Institute, Chennai-35.
4. All the Joint Commissioners (ST) (Intelligence) in the state
5. All the Deputy Commissioners (ST) in the State including intelligence
6. All the Heads of assessment circles

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discuss
12/09/22
Deputy Commissioner (P&P)

**GOVERNMENT OF TAMIL NADU
COMMERCIAL TAXES DEPARTMENT
OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM, CHENNAI- 600 005**

**PRESENT: THIRU. DHEERAJ KUMAR I.A.S.,
PRINCIPAL SECRETARY/ COMMISSIONER OF STATE TAX**

**Circular No: 8 /2022 – TNGST
(PP6/GST-145/2022)**

Dated: 02.09.2022

Sub: 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 –reg.

Ref: Circular No. 170/02/2022-GST, dated 06.07.2022 issued by Ministry of Finance, Department of Revenue, Government of India, CBIC, New Delhi

In the reference cited, the CBIC, Department of Revenue, Ministry of Finance, Government of India, New Delhi, has issued Circular No. 170/02/2022-GST, dated 06.07.2022 on the recommendations of the GST Council. Hence, following *pari materia* circular is issued:-

The process of return filing has been simplified over a period of time. With effect from December 2020, FORM GSTR-3B is getting auto-generated on the portal by way of auto-population of input tax credit (ITC) from FORM GSTR-2B (auto-generated inward supply statement) and auto-population of liabilities from FORM GSTR-1 (Outward supply statement), with an editing facility to the registered person. However, it has been observed that there still are some infirmities in information being furnished by the registered person in relation to inter-State supplies effected to unregistered person, registered person paying tax under section 10 of the Tamil Nadu Goods and Services Tax Act, 2017 (composition taxable persons) and UIN holders. Also, there appears to be lack of clarity regarding reporting of information about reversal of Input Tax Credit (hereinafter referred to as the "ITC") as well as ineligible ITC in Table 4 of FORM GSTR-3B.

2. It is desirable that correct reporting of information is done by the registered person in FORM GSTR-3B and FORM GSTR-1 so as to ensure correct accountal and accurate settlement of funds between the Central

and State Governments. Accordingly, in order to ensure uniformity in return filing, the Commissioner, in exercise of powers conferred under Section 168 of the Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as the "TNGST Act"), hereby clarifies various issues in succeeding paragraphs.

3. Furnishing of information regarding inter-State supplies made to unregistered persons, composition taxable persons and UIN holders:

3.1 It has been noticed that a number of registered persons are not reporting the correct details of inter-State supplies made to unregistered persons, to registered person paying tax under section 10 of the TNGST Act (composition taxable persons) and to UIN holders, as required to be declared in Table 3.2 of FORM GSTR-3B, under the notion that the taxable value of the same along with tax payable has already been reported in Table 3.1 of the said FORM. In certain cases, it has also been noticed that the address of unregistered person are captured incorrectly by the supplier, especially those belonging to banking, insurance, finance, stock broking, telecom, digital payment facilitators, OTT platform services providers and E-commerce operators, leading to wrong declaration of Place of Supply (PoS) in both the invoices issued under section 31 of the TNGST Act, as well as in Table 3.2 of FORM GSTR-3B.

3.2 In this context, it may be noted that the information sought in Table 3.2 of FORM GSTR-3B is required to be furnished, place of supply-wise, even though the details of said supplies are already part of the supplies declared in Table 3.1 of the said FORM. For assisting the registered persons, Table 3.2 of FORM GSTR-3B is being auto-populated on the portal based on the details furnished by them in their FORM GSTR-1.

3.3 Accordingly, it is hereby advised that the registered persons making inter-State supplies –

(i) to the unregistered persons, shall also report the details of such supplies, place of supply-wise, in Table 3.2 of FORM GSTR-3B and Table 7B or Table 5 or Table 9/10 of FORM GSTR-1, as the case may be;

(ii) to the registered persons paying tax under section 10 of the SGST/CGST Act (composition taxable persons) and to UIN holders, shall also report the details of such supplies, place of supply-wise, in Table 3.2 of FORM GSTR-3B and Table 4A or 4C or 9 of FORM GSTR-1, as the case may be, as mandated by the law.

(iii) shall update their customer database properly with correct State name and ensure that correct PoS is declared in the tax invoice and in Table 3.2 of FORM GSTR-3B while filing their return,

so that tax reaches the Consumption State as per the principles of destination-based taxation system.

3.4 It is further advised that any amendment carried out in Table 9 or Table 10 of FORM GSTR-1 or any entry in Table 11 of FORM GSTR-1 relating to such supplies should also be given effect to while reporting the figures in Table 3.2 of FORM GSTR-3B.

4. Furnishing of information regarding ITC availed, reversal thereof and ineligible ITC in Table 4 of GSTR-3B

4.1 Table 4(A) of the FORM GSTR-3B is getting auto-populated from various entries of FORM GSTR-2B. However, various reversals of ITC on account of rule 42 and 43 of the TNGST Rules or for any other reasons are required to be made by the registered person, on his own ascertainment, in Table 4(B) of the said FORM. It has been observed that different practices are being followed to report ineligible ITC as well as various reversals of ITC in FORM GSTR-3B.

4.2 It may be noted that the amount of Net ITC Available as per Table 4(C) of FORM GSTR-3B gets credited into the electronic credit ledger (ECL) of the registered person. Therefore, it is important that any reversal of ITC or any ITC which is ineligible under any provision of the TNGST Act should not be part of Net ITC Available in Table 4(C) and accordingly, should not get credited into the ECL of the registered person.

4.3 In this context, it is pertinent to mention that the facility of static month-wise auto-drafted statement in FORM GSTR-2B for all registered persons has been introduced from August, 2020. The statement provides invoice-wise total details of ITC available to the registered person including the details of the ITC on account of import of goods. Further, details of the said statement are auto-populated in Table 4 of return in FORM GSTR-3B which are editable in the hands of registered person. It may be noted that the entire set of data that is available in FORM GSTR-2B is carried to the table 4 in FORM GSTR-3B, except for the details regarding ITC that is not available to the registered person either on account of limitation of time period as delineated in sub-section (4) of section 16 of the TNGST Act or where the recipient of an intra-State supply is located in a different State / UT than that of place of supply. It is pertinent to mention that the ineligible ITC, which was earlier not part of calculation of eligible/available ITC, is now part of calculation of eligible/available ITC in view of auto-population of Table 4(A) of FORM GSTR-3B from various tables of FORM GSTR-2B. Thereafter, the registered person is required to identify ineligible ITC as well as the reversal of ITC to arrive at the Net ITC available, which is to be credited to the ECL. In light of the above, the procedure to be followed

by registered person is being detailed hereunder for correct reporting of information in the return:

- A. Total ITC (eligible as well as ineligible) is being auto-populated from statement in FORM GSTR-2B in different fields of Table 4A of FORM GSTR-3B *(except for the ineligible ITC on account of limitation of time period as delineated in sub-section (4) of section 16 of the TNGST Act or where the recipient of an intra-State supply is located in a different State / UT than that of place of supply)*.
- B. Registered person will report reversal of ITC, which are absolute in nature and are not reclaimable, such as on account of rule 38 (reversal of credit by a banking company or a financial institution), rule 42 (reversal on input and input services on account of supply of exempted goods or services), rule 43 (reversal on capital goods on account of supply of exempted goods or services) of the TNGST Rules and for reporting ineligible ITC under section 17(5) of the TNGST Act in Table 4 (B) (1).
- C. Registered person will report reversal of ITC, which are not permanent in nature and can be reclaimed in future subject to fulfilment of specific conditions, such as on account of rule 37 of TNGST Rules (non-payment of consideration to supplier within 180 days), section 16(2)(b) and section 16(2)(c) of the TNGST Act in Table 4 (B) (2). Such ITC may be reclaimed in Table 4(A)(5) on fulfilment of necessary conditions. Further, all such reclaimed ITC shall also be shown in Table 4(D)(1). Table 4 (B) (2) may also be used by registered person for reversal of any ITC availed in Table 4(A) in previous tax periods because of some inadvertent mistake.
- D. Therefore, the net ITC Available will be calculated in Table 4 (C) which is as per the formula $(4A - [4B (1) + 4B (2)])$ and same will be credited to the ECL of the registered person.
- E. As the details of ineligible ITC under section 17(5) are being provided in Table 4(B), no further details of such ineligible ITC will be required to be provided in Table 4(D)(1).
- F. ITC not available, on account of limitation of time period as delineated in sub-section (4) of section 16 of the TNGST Act or where the recipient of an intra-State supply is located in a different State / UT than that of place of supply, may be reported by the registered person in Table 4D (2). Such details are available in Table 4 of FORM GSTR-2B.

4.4 Accordingly, It is clarified that the reversal of ITC of ineligible credit under section 17(5) or any other provisions of the TNGST Act

and rules thereunder is required to be made under Table 4(B) and not under Table 4(D) of FORM GSTR-3B.

4.5 For ease of understanding, the manner of reversals is being elucidated in the illustrations enclosed as Annexure to this Circular.

**Sd/-Dheeraj Kumar
Principal Secretary/
Commissioner of State Tax**

To

All the Joint Commissioners (ST) (Territorial) in the state including LTU

Copy to:

1. All Additional Commissioners, O/o the CCT, Ezhilagam, Chennai - 600 005.
2. The Joint Commissioner (CS) to host in the departmental website
3. The Director, Commercial Tax Staff Training Institute, Chennai-35.
4. All the Joint Commissioners (ST) (Intelligence) in the state
5. All the Deputy Commissioners (ST) in the State including intelligence
6. All the Heads of assessment circles

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*Sd/-
12/09/22*

12/09/22
Deputy Commissioner (P&P)

Annexure

Illustration:

1. A Registered person M/s ABC is a manufacturer (supplier) of goods. He supplies both taxable as well as exempted goods. In a specific month, say April, 2022, he has received input and input services as detailed in Table 1 below. The details of auto-population of Input Tax Credit on all Inward Supplies in various rows of Table 4 (A) of FORM GSTR-3B are shown in column (7) of the Table 1 below:

Table 1

S. No.	Details	IGST	CGST	SGST	Total	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	ITC on Import of goods	1,00,000	-	-	1,00,000	Auto-populated in Table 4(A)(1)
2	ITC on Import of Services	50,000	-	-	50,000	
3	ITC on Inward Supplies under RCM	-	25,000	25,000	50,000	Auto-populated in Table 4(A)(3)
4	ITC on Inward Supplies from ISD	50,000	-	-	50,000	Auto-populated in Table 4(A)(4)
5	ITC on other inward supplies	2,00,000	1,50,000	1,50,000	5,00,000	Auto-populated in Table 4(A)(5)

6	Total	4,00,000	1,75,000	1,75,000	7,50,000
<p>Other relevant facts:</p> <p>Note 1: Of the other inward supplies mentioned in row (5), M/s ABC has received goods on which ITC is barred under section 17(5) of the CGST Act having integrated tax of Rs. 50,000/-</p> <p>Note 2: In terms of rule 42 and 43 of the CGST Rules, M/s ABC is required to reverse ITC of Rs. 75,500/- integrated tax, Rs. 52,000/- central tax and Rs. 52,000/- state tax.</p> <p>Note 3: M/s ABC had not received the supply during April, 2022 in respect of an invoice for an inwards supply auto-populated in row (5) having integrated tax of Rs. 10,000/-.</p> <p>Note 4: M/s ABC has reversed ITC of Rs. 500/- central tax and Rs. 500/- state tax on account of Rule 37 i.e. where consideration was not paid to the supplier within 180 days.</p> <p>Note 5: An amount of ITC of Rs 10,000/ central Tax and Rs 10,000/- state tax, ineligible on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act, has not been auto-populated in Table 4(A) of FORM GSTR-3B from GSTR-2B.</p>					

2. Based on the facts mentioned in Table 1 above, M/s ABC is required to avail ITC after making necessary reversals in Table 4 of FORM GSTR-3B as detailed in Table 2 below:

Table 2

4. Eligible ITC				
Details	IGST	CGST	SGST/ UTGST	Explanation
1	2	3	4	
(A) ITC Available (whether in full or part)	----	----	----	

1. Import of Goods	1,00,000	----	----	
2. Import of Services	50,000	----	----	
3. Inward Supplies liable to Reverse Charge (other than 1 & 2 above)	----	25,000	25,000	
4. Inward Supplies from ISD	50,000	----	----	
5. All other ITC	2,00,000	1,50,000	1,50,000	
(B) ITC Reversed / Reduced	----	----	----	
1. Reversal of ITC as per rule 42 and 43 of TNGST Rules	125,500	52,000	52,000	<p>1. Refer para 4.3 (B) of circular</p> <p>2. Reversal of Rs. 75,500/- integrated tax, Rs. 52,000/- central tax and Rs. 52,000/- state tax under rule 42 and 43 [Note 2]</p> <p>3. Ineligible ITC of Integrated tax of Rs. 50,000/- under</p>

				section 17(5) [Note 1]
2. Others	10,000	500	500	1. Refer para 4.3 (C) of circular 2. Reversal of integrated tax of Rs. 10,000/-, where supply is not received [Note 3] 3. Reversal of ITC of Rs 500/- central tax and Rs 500/- state tax on account of Rule 37 [Note 4]
(C) Net ITC Available (A)-(B)	2,64,500	122500	122500	$C=A1+A2+A3+A4+A5-B1-B2$
(D) Ineligible ITC				
1. As per section 17(5)	-	-	-	1. Refer para 4.3 (E) of circular 2. Reversals under section 17(5) are not required to be shown in this row. The same are to be shown under 4(B)(1)
2. Others		10,000	10,000	1. Refer para 4.3(F) of circular 2. Ineligible ITC on account of limitation of time period as delineated in sub-section (4) of section 16 of the TNGST Act,

				2017 which has not been auto-populated in Table 4(A) of GSTR-3B
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