

Circular No. 173/05/2022-GST

New Delhi, Dated the 6th July 2022

Clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification

1. Various representations have been received seeking clarification with regard to applicability of para 3.2 of the Circular No. 135/05/2020-GST dated 31.03.2020 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 Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017

(hereinafter referred to as “CGST Act”), hereby clarifies the issue as under:

2. Vide para 3.2 of 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. Para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020 is reproduced, as under:

“Refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the CGST 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 CGST Act. **It is hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST 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. 135/05/2020-GST dated 31.03.2020 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 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. **Accordingly, para 3.2 of the Circular No. 135/05/2020-GST dated 31.03.2020 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 CGST 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 CGST Act.

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 CGST Act, 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.”