

GST NEWSLETTER FEBRUARY 2020

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ARTICLES

Treatment of GST paid/claimed under the wrong head:

The advent of the GST regime brought into existence a unique system of Indirect Tax – one which involved the payment of taxes under 3 different head i.e. CGST, SGST, IGST. The reasoning behind such a decision was astute and practical since GST law in India came into existence through subsuming various state level laws and with the promise that the states would not lose any revenue. This resulted in the creation of Central GST belonging to the Central Government and State GST belonging to the State Government for Intra-state supplies and Inter GST to be collected by the Central Government and shared with the State Governments for Inter-state supplies. This solution however, brought in a new problem that was rarely seen in the pre-GST regime; paying tax under the wrong head. Many tax payers have faced the issue and have ended up making payments more than the liability.

Anticipating the quantum of mistakes that taxpayers may make, the government had made provisions to provide relief to such taxpayers in Section 77 of CGST / KGST Act, 2019 and Section 19 of IGST Act, 2019. The gist of the above provisions is:

1. A registered person who has paid CGST/SGST instead of IGST may claim a refund of the CGST/SGST as per Section 77 of CGST / KGST Act, 2019.
2. A registered person who paid IGST instead of CGST/SGST may claim a refund of the IGST as per Section 19 of IGST Act, 2019.
3. The correct GST amount shall be payable by the taxpayer either on finding that such a wrong payment has been made or when the jurisdictional officer holds that such a payment is incorrect.
4. No interest will be payable in case of this rectification as taxes were already paid albeit under different heads.

However, in Circular number 26/26/2017-GST dated 29th December, 2017 it has been stated with illustration that any liabilities which are wrongly reported may be changed in the subsequent month's GST 3B returns. This rectification is however, subject to proviso to Section 37(3) of the CGST Act, 2017 wherein, changes to GSTR 3B of a financial year are not allowed to be made after the due date to file returns of September of the subsequent financial year i.e. 6 months from the end of the financial year.

Hence, from the above it can be concluded that in case of payment of GST under the wrong head then the taxpayer has three options before them:

- b) Rectify the GSTR 3B in the subsequent month by increasing the liability under the correct GST heads and reducing the liability of the wrong GST head. This is suitable for taxpayers who make both Inter-state and Intra-state supplies and is liable to pay IGST, CGST & SGST in a single return.
- c) Rectify the GSTR 3B in the subsequent month by increasing the liability under the correct GST heads and claiming refund of the GST paid under the wrong head. This is suitable for taxpayers who usually make only intra-state or inter-state supplies and thus, may not have the outward GST liability to reduce the wrongly paid tax amount.

- a) Pay the GST liability under the correct head in DRC-03 and claim refund of the GST paid under the wrong head in RFD-01. This is suitable for taxpayers who do not have any outward supply in the month in which the mistake is noticed or the mistake has been noticed after the due date of September month of the subsequent financial year and no corrections can be made in GSTR 3B.

However, it must be noted that the above three options are not always suitable and depend on the circumstances and period under which the wrong payment has been discovered.

Rectification in GSTR 3B is the simplest means to rectify the wrong payment made. However, in circumstances where it's not possible to rectify through GSTR 3B then the only solution lies in rectification through Forms DRC-03 and RFD-01. Though Form DRC-03 filing is fairly simple, filing for refund in RFD-01 is a cumbersome and long-drawn process.

As per Section 54(1) of the CGST Act, 2017 an application for refund may be made before the *expiry of 2 years from the relevant date*. As per Explanation 2 to Section 54 of the CGST Act, 2017, relevant date for the purpose of refund of tax paid under the wrong head is the date of payment of tax. It's uncertain in the provisions, whether the date of payment of tax refers to the date of the original payment of tax made under wrong heads or the date of the payment of tax under the correct head. It may be noted that when the refund application is generated, there is no requirement to choose the period to which the refund application pertain to.

Case laws:

1. Facts of the case: M/S Commercial Steel Engineering Corporation versus the State of Bihar – Patna High Court

The petitioner has approached the Patna High Court against proceedings initiated against them by the Assistant Commissioner of State Taxes under Section 73 of the Bihar GST Act, 2017. The proceedings alleged that the transitional credit being Bihar VAT availed by the petitioner is ineligible for availment and thus the entire amount is to be repaid by the appellant along with interest and penalty. However, the petitioner has stated that though the transitional credit was availed by them in Form TRAN-1, the same was not utilized by them for the purpose of setting-off against their output liability and the ITC is lying in their Electronic Credit Ledger un-utilized.

Provisions of law:

As per Section 73(1) of the CGST Act, 2017 Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized for any reason, other than the reason of fraud or any willful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, **or who has wrongly availed or utilized input tax credit**, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

Ruling:

It was held by the honorable court that an availment of a credit is a positive act and unless carried out for reducing any tax liability by its reflection in the return filed for any financial year, it cannot be a case of either availment or utilization. Further, it was held that if the credit claimed by way of TRAN 1 was wrong then the Form TRAN 1 should have been rejected. The provisions underlying Section 73 is self-eloquent and it is only if such availment is for reducing a tax liability that it vests jurisdiction in the assessing authority to recover such tax together with levy of interest and penalty under section 50 but until such time that the statutory authority is able to demonstrate that any tax was recoverable from the petitioner, a reflection in the electronic credit ledger cannot be treated as an 'availment. Hence, the proceedings under Section 73 of the BGST Act, 2017 has been squashed.

2. Facts of the case: Tax Bar Association Versus Union of India & others – Rajasthan High Court

The petitioner has approached the Rajasthan High Court arising the issue about non-functionality of the respondent's portal i.e. www.gst.gov.in, as a consequence of which, various assesseees are unable to upload their returns both GSTR-9 and GSTR-9C. The petitioner also has shown the High Court that the portal has failed to work as on 31st January, 2020 the last date of filing under various times throughout the day.

Provisions of law:

As per Notification No.06/2020 – Central Tax dated 3rd February, 2020 the due dates for filing of Annual Return and Reconciliation statement for the FY 2017-18 has been extended to 5th February, 2020 and 7th February, 2020 in a staggered manner.

Ruling:

The honorable High Court held that since the grievances of the petitioners are genuine and that even if the assesseees are ready and willing to comply with the statutory duty, so far as filing of returns are concerned, the website appears to be having technical bottlenecks, which appears to limit the opportunity of the assesseees from uploading the forms. Hence, it's directed that the petitioners may continue to upload their returns till 12th February, 2020 without any late fees.

NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF JANUARY 2020

- **Five Central Tax Notification.**
- **One Integrated Tax (Rate) Notification.**
- **One Central Tax Circulars.**

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Seeks to appoint Revisional Authority under CGST Act, 2017	05/2020-Central Tax ,dt. 13-01-2020
2.	Seeks to extend the one-time amnesty scheme to file all FORM GSTR-1 from July 2017 to November, 2019 till 17th January, 2020.	04/2020-Central Tax ,dt. 10-01-2020
3.	Seeks to amend the notification No. 62/2019-CT dt. 26.11.2019 to amend the transition plan for the UTs of J&K and Ladakh	03/2020-Central Tax ,dt. 01-01-2020
4.	Seeks to make amendment (2020) to CGST Rules.	02/2020-Central Tax ,dt. 01-01-2020
5.	Seeks to bring into force certain provisions of the Finance (No. 2) Act, 2019 to amend the CGST Act, 2017.	01/2020-Central Tax ,dt. 01-01-2020
6.	Seeks to bring into force certain provisions of the Finance (No. 2) Act, 2019 to amend the IGST Act, 2017	01/2020-Integrated Tax,dt. 01-01-2020
7.	Standard Operating Procedure (SOP) to be followed by exporters - reg.	131/1/2020 -Circular no, dt. 23-01-2020

DUE DATES OF GST FOR THE MONTH OF FEBRUARY 2020

FEBRUARY							2020
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	
						1	
2	3	4	5	6	7 *GSTR-9/9A/9C	8	
9	10 *GSTR-7 & GSTR-8	11 *GSTR-1	12	13	14	15	
16	17	18	19	20 *GSTR-3B/5/5A	21	22	
23	24	25	26	27	28	29	

*Monthly return for taxpayers with Annual Turnover more than Rs.1.50 Crores or Taxpayer who has opted Monthly return option.

Disclaimer:

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