Circular No. 33/07/2018-GST

F. No. 267/67/2017-CX.8
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

New Delhi, dated the 23rd Feb., 2018

To

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioner of Central Tax (All),

The Principal Director Generals/ Director Generals (All).

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Madam/Sir,

Sub: Directions under Section 168 of the CGST Act regarding non-transition of CENVAT credit under section 140 of CGST Act or non-utilization thereof in certain cases-reg.

In exercise of the powers conferred under section 168 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "Act"), for the purposes of uniformity in implementation of the Act, the Central Board of Excise and Customs hereby directs the following.

2. Non-utilization of Disputed Credit carried forward

2.1 Where in relation to a certain CENVAT credit pertaining to which a show cause notice was issued under rule 14 of the CENVAT Credit Rules, 2004, which has been adjudicated and where in the last adjudication order or the last order-in-appeal, as it existed on 1st July, 2017, it was held that such CENVAT credit is not admissible, then such CENVAT credit (herein and after referred to as "disputed credit"), credited to the electronic credit ledger in terms of sub-section (1), (2), (3), (4), (5) (6) or (8) of section 140 of the Act, shall not be utilized by a registered taxable person to discharge his tax liability under this Act or under the IGST Act, 2017, till the order-in-original or the last order-in-appeal, as the case may be, holding that disputed credit as inadmissible is in existence.

2.2 During the period, when the last order-in-original or the last order-in-appeal, as the case may be, holding that disputed credit as inadmissible is in operation, if the said disputed credit is utilised, it shall be recovered from the tax payer, with interest and penalty as per the provisions of the Act.

3. Non-transition of Blocked Credit

3.1 In terms of clause (i) of sub-section (1) of section 140 of the Act, a registered person shall not take in his electronic credit ledger, amount of CENVAT credit as is carried forward in the return relating to the period ending with the day immediately preceding the appointed day which is not eligible under the Act in terms of sub-section (5) of section 17 (hereinafter referred to as 'blocked credit'), such as, telecommunication towers and pipelines laid outside the factory premises.

3.2 If the said blocked credit is carried forward and credited to the electronic credit ledger in contravention of section 140 of the Act, it shall not be utilized by a registered taxable person to discharge his tax liability under this Act or under the IGST Act, 2017, and shall be recovered from the tax payer with interest and penalty as per the provisions of the Act.

4. In all cases where the disputed credit as defined in terms of para 2.1 or blocked credit under para 3.1 is higher than Rs. ten lakhs, the taxpayers shall submit an undertaking to the jurisdictional officer of the Central Government that such credit shall not be utilized or has not been availed as transitional credit, as the case may be. In other cases of transitional credit of an amount lesser than Rs. ten lakhs, the directions as above shall apply but the need to submit the undertaking shall not apply.

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5. Trade may be suitably informed and difficulty if any in implementation of the circular may be brought to the notice of the Board.

(ROHAN)
Under Secretary to the Govt. of India