



PIONEER ONE

JUST A MINUTE (JAM)

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## CLARIFICATION ISSUED BY CBIC – GST

### **Clarification relating to the applicability of E-Invoicing**

#### **Introduction**

As per Rule 48(4) of CGST Rules, 2017, registered persons are required to upload the details of invoices in Form GST INV-01 on the Invoice Registration Portal (IRP) and generate an Invoice Reference Number (IRN).

This process is called E-Invoicing and applies to all registered persons with an aggregate turnover exceeding Rs. 10 crores.

#### **Exemption from E-Invoicing provisions**

The following entities are exempt from E-Invoicing vide Notification No. 13/2020-Central Tax dated 21st March, 2020

1. SEZ Units
2. Insurance
3. Banking (including NBFC)
4. Goods Transportation Agency (in relation to transportation of goods by road)
5. Passenger Transportation Services
6. Multiplex cinema admissions

In addition to the above entity-wise exemption, E-invoicing is also not applicable to exempt or Nil-rated supplies.

***Many taxpayers had requested clarification from CBIC regarding the applicability of E-invoicing and whether the exemption mentioned above is applicable to the entity as a whole or is restricted to particular supplies carried out by the entity.***

CBIC has hereby clarified (vide circular no 186/18/2022-GST dated 27/12/2022) that the said exemption from the generation of e-invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity.

**For eg,**

A goods transportation agency (GTA) in addition to providing services of transportation of goods by road (Exempt from mandatory e-invoicing) also provides other services such as warehousing, packaging etc (not exempt from mandatory e-invoicing provisions).

The said GTA is exempted from mandatory issuance of e-invoice in terms of Notification No. 13/2020-Central Tax dated 21st March, 2020 and such exemption as per the clarification applies to the entity as a whole and hence such GTA is exempt from the mandatory e-invoicing provisions even if it provides services such as warehousing, packaging etc.

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

As per section 54(ii)(3) of the CGST Act, 2017 unutilized ITC can be claimed as a refund on account of inverted duty structure (i.e. the rate of GST on outward supply is lesser than the rate of GST on inward supply).

Circular no 135/05/2020-GST dated 31.03.2020 **restricted refund** in cases where the input and output supplies are the same but attract different tax rates at different points in time.

However, vide circular no 173/05/2022-GST dated 6.07.2022, CBIC has clarified that a refund would be allowed even in cases where the input and output supplies are the same and the outward supply attracts a lower rate of tax because of some concessional notification issued by the government providing for a lower rate of tax for some specified supplies subject to fulfilment of other conditions.

**For a better understanding, consider this example,**

**Situation 1: (Input and output supply are different)**

Rate of GST of

- Non-woven fabric (Raw material/Input) – 12%
- Fabric bag (finished goods/Output) – 5%

This is a classic case of inverted duty structure, wherein the rate of GST on outputs is less than the rate of GST on inputs leading to the accumulation of ITC. This unutilized ITC can be claimed as a refund under section 54(ii)(3).

**Situation 2: (Input and output supply are same)**

Rate of GST of

- Non-woven fabric (Input) – 12% (as on 31.12.2022)
- Non-woven fabric (Output) – 5% (as on 01.02.2023)

As per Circular no 135/05/2020-GST dated 31.03.2020, the accumulated ITC on account of the above-mentioned inverted duty structure cannot be claimed as a refund since the input and output supply are essentially the same but attracting different tax rates at different points in time.

**Situation 3: (Input and output supply are same)**

Rate of GST of

- Non-woven fabric (Input) – 12%
- Non-woven fabric (Output) – 5% (as per concession notification issued by the government, subject to conditions to be satisfied by the supplier)

Even though a dealer is essentially supplying the same goods which attract different rates of GST, he will be allowed to claim a refund of the accumulated ITC since the lower rate of GST on output is as per a concessional notification issued by the government upon satisfaction of specified conditions.

*Note: The GST rates used in the above situations are not accurate and are only used for the purpose of explaining the concept.*

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