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TRADE NOTICE NO. 80/2017-18-GST

Dated: 23.03.2018

Sub:-Guidance note on CGST transitional credit- Reg.

Guidance note on CGST transitional credit verification issued by CBEC, New Delhi is brought to the notice of all the members of Trade/Industry/Trade Associations/Chambers of Commerce and Industry/RAC and all others concerned.

1.1 Two fundamental principles would be kept in sight while the transition credit is verified. Firstly, only such CENVAT credit can be taken as credit of CGST in the electronic credit ledger by filing TRAN1 for which explicit legal authority exists in section 140 of CGST Act. How much credit should be transitioned is a matter of policy and has been appropriately legislated. There can be no transition of any kind of credit by reading policy intention into the law.

Secondly, same CENVAT credit cannot be availed as transitional credit twice. This can happen in situations such as, availing CENVAT credit as transitional credit through TRAN 1 and also through return in FORM GSTR 3B or availing same credit twice through two different tables of Form TRAN 1.

1.3 One more factor which would be verified is the growth of CENVAT credit in the period September, 2016 to June, 2017. During this period steep increase in credit claim has been noticed for some taxpayers. Accordingly, it has been decided to collect information from this small category of taxpayers, and verify the correctness of credit availed by them by checking the tax payment by their suppliers.

2. Description of Entries in TRAN-1 Table

In the Form TRAN 1 there are only **six entries** which decide all the **CGST** credit which is posted in the electronic credit ledger. These entries are briefly described below.

S. No.	Table No. in TRAN-1	Provision in CGST Act	Indicative list of nature of Credit
1.	Col. 6 in table 5(a)	140(1), 140(4)(a) and 140(9)	This table captures detail of the CENVAT credit carried forward in the return (ER-1/2/3 or ST-3) relating to

				the period ending with 30.06.2017, subject to conditions specified in section 140(1) of CGST Act, by the manufacturers/ service providers.
2.		Column 11 of table 6(a)	140(2)	<p>This table captures details of un-availed credit of capital goods in the pre-GST era. Capital Goods credit was allowed to be availed in two installments of 50% each. This table is meant to be used by the taxpayers who have availed a portion of CENVAT credit on capital goods through ER or ST return and now intend to avail remaining credit in respect of capital goods which has not been availed through the ER or ST return.</p> <p>3. Table Column 140(3), 7(a) (6) in Entry 7A in Table 7(a)</p>
3.	Table 7(a)	Column (6) in Entry 7A in Table 7(a)	140(3), 140(4)(b), 140(6) and 140(7)	<p>This table pertains to credit claim by new taxpayers or taxpayers who were either not registered or were not part of CENVAT Credit chain earlier. Here, Credit can be claimed in TRAN-1 in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day based on invoice/ document evidencing payment of duty (including CTD), subject to fulfilment of other conditions specified in section 140(3), 140(4)(b), 140(6) and 140(7) as the case may be.</p>
		Column (6) in Entry 7B in Table 7(a)	Proviso to Section 140 (3) and Rule 117(4) of CGST Rules	<p>This table pertains to credit claim by new taxpayers (e.g. traders) who were not manufacturers or service providers. Deemed credit @ 60% of Central Tax applicable where CGST is 9% or more, and 40% where CGST is less than 9% can be availed. The provision applies where the assessee is not in possession</p>

				of an invoice or any other documents evidencing payment of duty in respect of inputs only. [In this case the Electronic Credit Ledger gets populated through TRAN-2 and not through TRAN 1].
4.	Column (8) in Table 7(b)	140(5), 140(7)		This table captures transitional credit taken on such inputs or input services which were received after 1st of July, 2017 but taxes on which were paid under the existing law (Goods/ Services in Transit). It does not apply to capital goods. This table also captures credit distributed by the Input Service Distributor.
5.	Column 9 in Table 8	140(8)		This table pertains to Centrally Registered unit , the Cenvat credit carried forward in their last return is captured in table 5(a) and a part or full of such credit can be distributed through table 8. The credit distributed through column 9 gets credited in the electronic credit ledger of the receivers and a corresponding debit entry is made in the ledger of the Centrally registered unit.
6.	Column (7) in Table 11	Section 142 (11)(c) read with Rule 118 of CGST Rules		Transition of credit in respect of supplies which attracted both VAT and Service Tax in pre-GST era and where VAT and Service Tax both were paid, before 1st July 2017 , on any supply but the supply is made after 1st July, 2017 . The taxable person is entitled to take as CGST credit, the service tax paid under the existing law to the extent of supplies made after 1st July, 2017 as he would be liable to pay CGST in respect of such supplies. (VAT credit cannot be taken as Service tax credit and vice versa).

3. CHECKS FOR VERIFICATION OF ENTRIES IN TRAN-1 TABLE:

Following checks would be done in respect of the entries provided in various tables of TRAN 1. The list of checks is not exhaustive but is indicative only.

4. Checks for Table 5(a):

4.1.1 Check 1: Whether the credit has been taken against closing balance of CENVAT credit in ER-1/2/3 or ST-3. Credit can be taken only where the last return was filed and credit taken in Table 5(a) should not be more than closing balance of credit in ER-1/2/3 or ST-3 minus the education / secondary education cess / KKC/ SBC.

4.1.2 For those taxpayers having growth higher than 25% and credit availed higher than Rs. 25 Lakhs, procedure as at para 11.2 shall be followed.

4.2: Check 2: Credit of taxes not covered in the definition of eligible duties in section 140 cannot be availed. Example: KrishiKalyanCess, Education Cess, etc. Instances have also come to notice where credit of VAT and PLA balance has been availed as transitional credit. This is not allowed in law.

4.3: Check 3: It would be checked that returns have been filed for last 6 months. An assessee filing TRAN1 and taking credit in table 5(a) should have -

- a) Filed ER-1 or ER-2 regularly between Jan, 2017 and June, 2017 or
- b) Filed ER-3 for period ending March, 2017 and June, 2017 or
- c) Filed ST-3 for period ending March, 2017 and June, 2017.

This check is in respect of units who have merged into one registration or a single unit has been split into many (Centralised registration cases / LUT units) in GST. Compliance by any of the merging unit which was filing the returns in the pre-GST would entitle the new unit to avail credit in relation to that merging unit.

5. Checks for Table 6(a):

5.1 Check 4: In table 6 only credit on capital goods not availed in any return is to be taken. If second installment of any capital goods credit is taken through return in table 5(a) and again the details are filled in table 6, it would lead to double credit getting taken. For example, the second installment of capital goods credit where first installment credit was availed in 2016-17 and second installment can be availed in the financial year 2017-18, provided the second installment was not availed in any of the returns filed in the first quarter of 2017-18 under Central Excise or Service Tax. If no credit was availed earlier, credit of entire amount cannot be availed through this Table.

5.2 Check 5: For some of the invoices involving large credit, if the invoice date is very old, confirmation from assessee would be taken that the capital goods are in existence in the place of business.

6. Checks for Table 7(a), Entry 7A:

6.1 Check 6: In cases where the credit is being shown by an assessee who was registered in Central Excise or Service on account of inputs relating to exempted goods, the check would be whether the assessee has followed the provisions of rule 6 in the period prior to GST.

Case I: Only exempted goods/services were being manufactured or provided: Rule 6(2) of CENVAT credit rules did not allow any credit in the CENVAT register if only exempted goods were being manufactured. No credit can flow from return in

Rule 6(2) of CENVAT credit rules did not allow any credit in the CENVAT register if only exempted goods were being manufactured. No credit can flow from return in relation to inputs in such cases. The entry in table 5(a) therefore should be NIL. The apportionment of credit on inputs and complete reversal thereof under rule 6 took place at the time of removal of goods. Therefore, in such cases only credit of inputs and inputs contained in semi-finished which existed in stock on the day of the transition and for which conditions prescribed in cl (i) to (v) of section 140(3) are satisfied would be available. Where the stock shown is very high, verification using VAT return or any other collateral document where stocks are declared would be done.

Case II: Exempted and non-exempted goods/services were being manufactured or provided: Rule 6(3) of the CENVAT credit rules provided the procedure for apportionment of credit relating to taxable goods/services and reversal of credit relating to exempted goods/services. Credit in table 5(a) would flow from the return in such cases. It would be checked that the return reflects credit after application of rule 6(3). The reversal in terms of rule 6(3) was required to be done at the time of removal of finished goods. Therefore some credit in Table 7A can arise for such inputs which were in stock and which not attributed till the date of the transition to either exempted goods or non-exempted goods. To avail credit on such inputs, other conditions prescribed in cl (i) to (v) of section 140(3) are required to be satisfied. Where the stock shown is very high, verification using VAT return or any other collateral document, where stocks were declared, would be done.

6.2: Check 7: In cases where a new taxpayer has availed credit using Credit Transfer Document, it would be checked that CTD issued by the manufacturer exists and CTD has been issued in terms of rule 15(2) of CCR, 2017 read with notification no. 21/2017-CE (NT) dated 30.06.2017 (Capital Goods having value more than Rs. 25,000, goods to be identifiable by a distinct number etc.). Eg. : Dealers of new car.

7. Checks for Table 7(a), Entry 7B:

7.1 Check 8: It would be checked that the Credit on stock declared on which credit can be claimed in terms of rule 117(4) of the CGST Rules, 2017 are reasonable. Where the stock declared in very high, stock declared in VAT return or any other collateral document, where stocks were declared, would be cross-checked. Credit of this stock would be available on sale being made and TRAN 2 return being filed. It is reiterated that electronic credit ledger would get populated through TRAN-2 and not through TRAN-1.

7.2 Check 9: It would be checked that assessee has not declared this stock in any other table or has not availed this credit from any other table, say table 5(a). Where the person availing credit through TRAN 2, for which stock is declared in this table, is a trader, no credit can exist in any other table which pertains to credit to taxpayers who were registered earlier [e.g. Table 5(a)].

8. Checks for Table 7(b):

8.1 Check 10: It would be checked that the duty paying document exist and the confirmation would be taken from the taxpayer that the duty or the tax paying document were recorded in the books of account of such person as per the conditions prescribed in law. Where goods under movement are shown in exorbitant quantity, transport verification may be considered. It would be checked that the condition for availing ISD credit as prescribed in law are satisfied.

9. Checks for Table 8:

9.1 Check 11: Centralised registered units have distributed their credit through table 8. The units receiving the credit were not required to file TRAN1 to receive this credit. The receiving units have got credit on the basis of credit distributed by the

Centrally registered unit. It would be checked that the receiving units have not filed TRAN 1 to avail this credit as this would lead to double credit to receiving unit. Also the confirmation would be obtained from the Centrally registered unit that resultant credit in the ledger of the distributing Centrally registered unit was reduced by the amount of credit distributed through Table 8.

10. Check for Table 11:

10.1 Check 12: It would be checked that the service tax claimed as credit was indeed paid under the existing law and supplies were indeed made after 1st July, 2017. Credit of VAT cannot be taken as CGST credit and vice-versa.

11. General check:

11.1 Check 13: It would be checked that credit which can be taken legally through TRAN 1 is not taken through return in FORM GSTR-3B. This can lead to double credit being taken. If there is no double credit and only procedural irregularity that credit was taken through GSTR 3B which should have been taken through TRAN 1, before the closing date of filing of TRAN 1, i.e. by 27/12/2017, the taxpayers would be directed to submit a statement of reconciliation of credits and credit regularised where otherwise admissible as per the law.

11.2 Check 14: Taxpayers who have availed transitional credit greater than Rs. 25 lakh and where the closing balance of CENVAT credit during the period of **1st of October, 2016 to 30th of June, 2017** has grown by 25% or more would be directed to prepare a statement of purchases during this period in the format as below. This verification return would be required to be filed by a date to be notified. IT facility for filing this growth return would be shortly provided. The taxpayers are informed that such a return would be required to be filed in the following format on a date to be notified.

Name of the registered person.			
Registration Number in Central Excise or Service Tax who has claimed TRAN Credit.			
Period of return: 01/10/16 to 30/06/17			
Name of the supplier under Central Excise or Service Tax	Registration number of the supplier under Central Excise or Service Tax	No. of invoices on which credit was taken	Central Excise duty or Service tax shown as having been paid in their invoices

The taxpayers whose credit growth would be verified as above are advised to confirm from the suppliers of goods and services on whose invoice credit has been taken, that the said supplier had declared the goods and services in their respective returns and had paid tax thereon.

12. Jurisdiction: CGST officer of the Central Government shall have the jurisdiction for verification of Transitional Credit of CGST irrespective of whether the taxpayer is allotted to the Central Government or the State Government for the purposes of GST. This is because, TRAN Credit verification process can only be done by the tax authority which had legal jurisdiction under the erstwhile law and also has the requisite past record of the taxpayer.

13. Self-assessment and correction: Taxpayers are informed to take corrective action on the excess TRAN Credit taken in terms of the law.

14 Decisions of the GST Council: Following important decisions were taken in relation to CGST transitional credit:

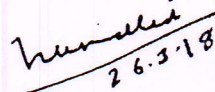
14.1 It is clarified that-

i) Taxpayer shall not avail of credit in cases under dispute (disputed credit) under the transition provisions.

ii) Taxpayers shall not avail of any credit which has been blocked under sub-section (5) of section 17 of the CGST Act.

14.2 Accordingly a circular no. 33/07/2018-GST dated 23.02.2018 on the above issue has been issued.

15. All the Trade Associations, Chamber of Commerce, industries and members of Regional Advisory Committee are requested to bring the contents of the Trade Notice to the knowledge of their constituent members and other concerned persons immediately.


26.3.18
(Neerav Kumar Mallick)
Commissioner