

Central Board of Indirect Taxes and Customs (CBIC) clarifies the applicability of revised formula for refund under inverted duty structure (IDS)

Earlier, the CBIC amended vide notification No.14/2022-Central Tax dated 5 July 2022 the formula prescribed under Rule 89(5) of CGST Rules 2017, to calculate the refund of unutilised input tax credit (ITC) under IDS. Further, the CBIC placed restriction, vide notification No. 09/2022-Central Tax (Rate) dated 13 July 2022 w.e.f. 18 July 2022 on refund of ITC under IDS in case of a supply of certain goods falling under chapters 15 and 27.

In respect to the implementation of above amendments, the CBIC has clarified the issues as below-

Issue	Clarification
What date would be considered for the applicability of the amended formula for filing the refund applications?	<ul style="list-style-type: none">• The modification made in the refund formula is not clarificatory in nature.• The amended formula will be applicable prospectively w.e.f. 5 July 2022.• Accordingly, the amended formula will be applied to the refund applications filed on or after 5 July 2022.• Therefore, the refund applications filed prior to 5 July 2022 will be dealt in accordance with the previous formula.
Whether the restriction, placed on goods covered under chapters 15 and 27, is applicable to the refund applications pending as on 18 July 2022?	<p>In case of specified goods falling under chapters 15 and 27, the restriction on refund of unutilised ITC under IDS would apply prospectively only.</p> <p>As a result, the restriction will only apply to refund applications filed on or after 18 July 2022, and not to the refund applications filed before 18 July 2022.</p>

Our comments

Earlier, the Supreme Court, in case of VKC Footsteps India Private Limited, considering the anomalies pointed out by the assesseees, directed the GST Council to reconsider the refund formula in case of IDS and take a policy decision. In this respect, the GST council in its 47th Council meeting, recommended the amendment in formula for calculation of refund under IDS. The GST Council suggested to consider the ITC utilised on account of inputs and input services for payment of output tax on inverted rated supplies in the same ratio in which ITC has been availed on inputs and input services during the said tax period.

Thereafter, the CBIC issued notification to give effect to the above amendment in the refund formula. Now, the CBIC has clarified the applicability of above formula, basis which, it seems that the benefit of the amended formula would be available only w.r.t the refund applications filed on or after 5 July 2022. However, it would result in loss of increased refund amount on account of the amended formula for the taxpayers who have already filed their refund applications before 5 July 2022. The circular has created a distinction between the taxpayers who have filed their refund application before 5 July 2022 and on or after 5 July 2022, which does not seem to be the intention of the court.