Lawgics

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Rule 39 read with Section 20 of CGST Act, 2017

Rule 39

Procedure for distribution of input tax credit by Input Service Distributor

(1) An Input Service Distributor shall distribute input tax credit in the manner and subject to the following conditions, namely, -

(a) the input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in FORM GSTR-6 in accordance with the provisions of Chapter VIII of these rules;

(b) the Input Service Distributor shall, in accordance with the provisions of clause (d), separately distribute the amount of ineligible input tax credit (ineligible under the provisions of sub-section (5) of section 17 or otherwise) and the amount of eligible input tax credit;

(c) the input tax credit on account of central tax, State tax, Union territory tax and integrated tax shall be distributed separately in accordance with the provisions of clause (d);

(d) the input tax credit that is required to be distributed in accordance with the provisions of clause (d) and (e) of sub-section (2) of section 20 to one of the recipients 'R1', whether registered or not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipient(s) who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, "C1", to be calculated by applying the following formula –

$$C1 = (t1 \div T) \times C$$

where,

"C" is the amount of credit to be distributed,

"t1" is the turnover, as referred to in section 20, of person R1 during the relevant period, and

"T" is the aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable in accordance with the provisions of section 20;

(e) the input tax credit on account of integrated tax shall be distributed as input tax credit of integrated tax to every recipient;

(f) the input tax credit on account of central tax and State tax or Union territory tax shall-

i. in respect of a recipient located in the same State or Union territory in which the Input Service Distributor is located, be distributed as input tax credit of central tax and State tax or Union territory tax respectively;

ii. in respect of a recipient located in a State or Union territory other than that of the Input Service Distributor, be distributed as integrated tax and the amount to be so distributed shall be equal to the aggregate of the amount of input tax credit of central tax and State tax or Union territory tax that qualifies for distribution to such recipient in accordance with clause (d);

(g) the Input Service Distributor shall issue an Input Service Distributor invoice, as prescribed in sub-rule (1) of rule 54, clearly indicating in such invoice that it is issued only for distribution of input tax credit;

(h) the Input Service Distributor shall issue an Input Service Distributor credit note, as prescribed in sub-rule (1) of rule 54, for reduction of credit in case the input tax credit already distributed gets reduced for any reason;

(i) any additional amount of input tax credit on account of issuance of a debit note to an Input Service Distributor by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (f) and the amount attributable to any recipient shall be calculated in the manner provided in clause (d) and such credit shall be distributed in the month in which the debit note is included in the return in **FORM GSTR-6**;

	(j) any input tax credit required to be reduced on account of issuance of a credit note to the Input Service Distributor by the supplier shall be apportioned to each recipient in the same ratio in which the input tax credit contained in the original invoice was distributed in terms of clause (d), and the amount so apportioned shall be- i. reduced from the amount to be distributed in the month in which the credit note is included in the return in FORM GSTR-6; or ii. added to the output tax liability of the recipient where the amount so apportioned is in the negative by virtue of the amount of credit under distribution being less than the amount to be adjusted. (2) If the amount of input tax credit distributed by an Input Service Distributor is reduced later on for any other reason for any of the recipients, including that it was distributed to a wrong recipient by the Input Service Distributor, the process specified in clause (j) of sub-rule (1) shall apply, mutatis mutandis, for reduction of credit. (3) Subject to sub-rule (2), the Input Service Distributor shall, on the basis of the Input Service Distributor credit note specified in clause (h) of sub-rule (1), issue an Input Service Distributor invoice to the recipient entitled to such credit and include the Input Service Distributor credit note and the Input Service Distributor invoice in the return in FORM GSTR-6 for the month in which such credit note and invoice was issued.
Rule 39	**Procedure for distribution of credit**

Input Service Distributor is defined as an office of the supplier of goods and services and it appears that it can distribute the credit to all the offices of the entity which are covered under Single PAN. It therefore appears that, it's enough for any supplier to take only one ISD registration in respect of all its units located across the India.

Ananta Ltd. may have head office in Mumbai and establishments in Delhi, Chennai and Kolkata. Although certain services are received at Delhi, an invoice may be issued in the name and address of Mumbai Head Office. Let's say a supplier P in Delhi makes an intra-State supply (CGST+SGST) and supplier Q of Gujarat makes an inter-state supply (IGST) to Delhi establishment, however, invoices are raised in the name of corporate office at Mumbai. The head office at Maharashtra if obtains registration as ISD, it will be allowed to take credit on the basis of invoices issued by P and Q and immediately distribute such credit to Delhi establishment, by issuing ISD invoice to Delhi. Delhi can thereafter be able to claim credit on the basis of ISD invoices issued by head office. Although, concept of ISD allows distribution of credit, such distribution is required to be made in certain manner as per Rule 39.

The ITC available for distribution for the month shall be distributed in same month by issuing ISD invoice and the details shall be furnished in GSTR-6 to be filed on monthly basis between 10th to 13th succeeding the relevant month. Unless, ISD files its return, other units will not be able to get the ITC.

ITC in respect of CGST, SGST, IGST shall be distributed separately.

Credit Available with ISD	Recipient unit is located in same state as that of ISD	Recipient unit is located in different state than that of ISD
Central Tax	CGST	IGST
State Tax	SGST	IGST
UT Tax	UTGST	IGST
Integrated Tax	IGST	IGST

The Corporate office of a company is at Bangalore, with its business locations of selling and servicing of goods at Mumbai and Kolkata. Software license and maintenance is used at all the locations, but invoice for these services (indicating CGST and SGST) are received at Corporate Office. The same has to be distributed to both the locations. For that reason, the Bangalore Corporate office has to act as ISD to distribute the credit. If the corporate office, an ISD situated in Bangalore receives invoices indicating Rs. 4 lakhs of Central tax, Rs.4 lakhs of State tax, it can distribute central tax and State tax as credit of integrated tax amongst its locations at, Mumbai and Kolkata through an ISD invoice containing the amount of credit distributed.

The credit has to be distributed only to the unit to which the supply is directly attributable to. If input services are attributable to more than one recipient of credit, the distribution shall be in the pro-rata basis of turnover in the State/Union Territory. However, if a particular input service pertains exclusively to only one unit and the bill is raised in the name of ISD, the ISD can distribute the credit only to that unit and not to other units. If the input services are common for all units, then it will be distributed according to the ratio of turnover of all the units.

For the purposes of distributing the input tax credit, an ISD has to issue an ISD invoice, as prescribed in rule 54(1) of the CGST Rules, 2017, clearly indicating in such invoice that it is issued only for distribution of input tax credit.

An ISD shall separately distribute both the amount of ineligible and eligible input tax credit.

	In case ITC is required to be reduced against a credit note or for any other reason after distribution, it shall be reduced and distributed to each recipient in the same ratio in which ITC in original was distributed before. For example: - M/s. Jupiter Impex gets services worth Rs. 1,00,000 on which GST of Rs. 18,000 was paid. M/s. Jupiter Impex distributed this credit to 2 units, A and B in the ratio of 1:2. A and B claimed the ITC in the GSTR 3B. Now Mr. XYZ has received a credit note worth Rs. 23,600 which includes GST of Rs. 3,600. This GST of Rs. 3600 has to be reversed by A & B in the ratio of 1:2 A will reverse ITC of Rs. 1,200 (3600 * 1 / 3) B will reverse ITC of Rs. 2,400 (3600 * 2 / 3) This will be incorporated in the GSTR-3B by both A and B in the reversal of the input tax credit section. Further, in cases where, the apportioned ITC for reduction exceeds the distributed ITC, the same is added to the output tax liability of the recipient. Such details of reduction are also furnished in GSTR-6.
Rule 54(1)	**Tax invoice in special cases** An Input Service Distributor invoice or, as the case may be, an Input Service Distributor credit note issued by an Input Service Distributor shall contain the following details: - (a) name, address and Goods and Services Tax Identification Number of the Input Service Distributor; (b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters - hyphen or dash and slash symbolised as- "- ", "/" respectively, and any combination thereof, unique for a financial year; (c) date of its issue; (d) name, address and Goods and Services Tax Identification Number of the recipient to whom the credit is distributed; (e) amount of the credit distributed; and (f) signature or digital signature of the Input Service Distributor or his authorised representative: Provided that where the Input Service Distributor is an office of a banking company or a financial institution, including a non-banking financial company, a tax invoice shall include any document in lieu thereof, by whatever name called, whether or not serially numbered but containing the information as mentioned above.
Rule 54(1)	ISD Invoice or ISD Credit Note shall contain: 1. Name, Address and GSTIN of ISD 2. ISD Invoice No. 3. Date 4. Name, Address and GSTIN of Recipient 5. Amount of ITC distributed 6. Signature of ISD/ authorised representative
Rule 54(1A)	(a) A registered person, having the same PAN and State code as an Input Service Distributor, may issue an invoice or, as the case may be, a credit or debit note to transfer the credit of common input services to the Input Service Distributor, which shall contain the following details: - (i) name, address and Goods and Services Tax Identification Number of the registered person having the same PAN and same State code as the Input Service Distributor; (ii) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year; (iii) date of its issue; (iv) Goods and Services Tax Identification Number of supplier of common service and original invoice number whose credit is sought to be transferred to the Input Service Distributor; (v) name, address and Goods and Services Tax Identification Number of the Input Service Distributor; (vi) taxable value, rate and amount of the credit to be transferred; and (vii) Signature or digital signature of the registered person or his authorised representative. (b) The taxable value in the invoice issued under clause (a) shall be the same as the value of the common services.
Rule 54(1A)	The law requires RCM payment to be made by non-ISD registration, but there was no clarity regarding how such RCM credit would be distributed to other units. For eliminating this ambiguity, the government vide Notification No. 03/2018-CT dated 23.01.2018, inserted sub-rule (1A) to Rule 54 of CGST Rules, 2017. Though the prime intention behind this amendment was to accommodate transfer of common credit of RCM, there is no specific mention of the same. The Rule can be leniently interpreted to transfer any common credit by a Unit

	of the company to its ISD registration, provided both are registered in the same state. Generally, ISD registration is taken on the Head Office and often, the vendors providing common services also provide services that are not common and pertains to any specific unit of the company. It is a very recurrent error that the vendor provides service to a specific unit but quotes the ISD GSTIN and vice-versa. In order to simplify this, the amendment implied in Rule 54(1A) can be taken benefit in following manner: 1. Identify vendors providing common services. 2. Ensure the vendor quotes only the Head Office's GSTIN in all invoices irrespective of whether service provided is common or not. 3. As all ISD credits are now received completely by Head Office, transfer them to the ISD registration vide invoice under Rule 54(1A). 4. Analyse the total credits and identify the below - - Credits exclusively attributable to specific units - For common credits, the units to whom it should be distributed - Eligible and Ineligible credits 5. Distribute the exclusive credit to the specific units and the common credits should be distributed pro rata basis the unit's turnover. 6. Raise invoice per Rule 54(1) and ensure eligible & ineligible credits are distributed separately.

Section 21 of CGST Act, 2017

21. Manner of recovery of credit distributed in excess.

Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of amount to be recovered.

Our Interpretation

Section 21	**Excess Credit to be recovered from the recipient** Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest. In such case, Excess credit + interest shall be recovered from Recipient in accordance with the provision of section 73 or 74 of CGST Act. ❖ The Recipient who has received excess credit may deposit the same along with Interest through DRC-03 on Voluntarily basis. ❖ If Recipient does not come forward voluntarily, necessary proceeding may be initiated against such recipient and demand be created in DRC-07 by the Tax Authority.