



CRITICAL ISSUES IN GST REFUNDS

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Day & Date: Saturday, 19th January, 2019

Organised by : Western India Regional Council of ICAI (WIRC)

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Background & Concept of Refunds under GST

- “Refund” means, any amount returned by the Government that was either paid in excess or was not eligible to tax.
- The provisions relating to refund have been provided under **Chapter XI** of the CGST Act, 2017 (Section 54 to 58) read with **Chapter X** of CGST Rules, 2017 (Rule 89 to 97A).
- **Cash flow** and **working capital requirements** of manufacturers and exporters could be adversely affected if there is lack of smooth refund process in GST.
- Further, it is imperative to mention that grant of Refund requires examination of the following aspects:
 - refunds must follow a process of **inquiry** and **adjudication**
 - identifying who has **‘paid’** the tax and who has **‘paid for’** the tax
 - the **rightful person** entitled to restitution is identified
 - there is a **limitation** as to how far back one can go to make a claim for excesses



KEY FEATURES OF REFUNDS UNDER GST

- Under GST, the process of claiming a refund is **standardized** to avoid confusion.
- The process is **online** and time limits have also been set for the same.
- **Multi-month** refund can be applied at once
- Broadly speaking, refund of UNUTILISED ITC is available only for Zero Rated Supplies (Export/SEZ supply) or in Inverted Duty Structure.
- Introduction of concept of Provisional grant of refund – 90% refund immediately.
- Claim to be processed in 60 days.
- Refund amount directly credited to Applicant's Bank account.
- New Refund Schemes introduced under GST:
 - a) Refund of wrongly paid taxes
 - b) Refund under Inverted Duty Structure
 - c) Refund for International tourists



Relevant Section/ Rules (CGST)

* Sections

- * 54. Refund of tax (14 sub-sections)
- * 55. Refund in certain cases
- * 56. Interest on delayed refunds
- * 57. Consumer Welfare Fund
- * 58. Utilisation of Fund

* Other Relevant Sections

- * 27. Casual Taxable Person/NRTP
- * 33. Tax to be indicated in tax invoice
- * 39. Furnishing of returns
- * 49. Payment of tax, interest, penalty etc.
- * 77. Tax wrongfully collected and paid

▪ Rules

- 89. Application for refund of tax, interest, penalty, fees or any other amount
- 90. Acknowledgement
- 91. Grant of provisional refund
- 92. Order sanctioning refund
- 93. Credit of the amount of rejected refund claim
- 94. Order sanctioning interest on delayed refunds
- 95. Refund of tax to certain persons
- 96. Refund of integrated tax paid on goods or services exported out of India
- 96A. Refund of integrated tax paid on export of goods or services under bond or Letter of Undertaking
- 97. Consumer Welfare Fund
- 97A. Manual filing and processing



Comparison of Refund Provisions with Erstwhile Law

Sr. No.	Issue	Erstwhile Regime	GST Regime
1.	Import of Goods	<ul style="list-style-type: none">• CVD + SAD• CVD- Availed as ITC by Mfr/ SP• SAD- Refund (Conditionally)	<ul style="list-style-type: none">• BCD + IGST (where IGST replaced CVD + SAD)• IGST- Full refund allowed (viz. CVD + SAD)
2.	Exports	<ul style="list-style-type: none">• Refund can be claimed taxes paid on inputs used for manufacturing goods or providing services by application under various acts.	<ul style="list-style-type: none">• Standardized procedure under one application. Thus not resulting into blockage of working capital, wastage of time and ensures smooth flow of input credit.
3.	Time limit for filing application	<ul style="list-style-type: none">• Before the expiry of 1 year from the relevant date	<ul style="list-style-type: none">• within a period of maximum of 2 years from the relevant date
4.	Minimum amount of refund	<ul style="list-style-type: none">• No Refund if amount is less than Rs. 100/-	<ul style="list-style-type: none">• No Refund if amount is less than Rs. 1000/-



Incentives for Export

* Terminologies under EXIM Policy as defined under FTP(2015-20) :-

➤ “Manufacturer Exporter” :-

A person who exports goods manufactured by him or intends to export such goods.

➤ “Merchant Exporter” :-

A person engaged in trading activity and exporting or intending to export goods.

➤ “Manufacture Merchant Exporter” :-

Due to manufacturing capacity constraints, a manufacturer, to fulfill its export orders, may buy goods from another manufacturer in the DTA.

* Exemption for Ocean Freight :-

- Sunset Clause introduced vide Notf. No. 2/2018(CT-Rate) and 14/2018.
- Services by way of transportation of goods by an aircraft or vessel from customs station of clearance in India to a place outside India had been exempted for the benefit of exporters till **30.09.2019**.



Incentives for Export

* Merchandise Exports from India Scheme (MEIS) :-

- It is a reward computed on the FOB value of exports realized in free foreign exchange and the percentage of this reward is specified in Appendix 3B of the Foreign Trade Policy 2015-20.
- As per this scheme, **the scrips cannot be used to make payments of GST but can be used for payment of Customs Duty.**
- Duty credit scrips are classified as “goods” under “HSN 4907” and they are exempted from the whole of GST by an amendment to Notification 2/2017-CT (R) dated 28th June 2018 by notification 35/2017CT (R) dated on 13 October 2017.

* Service Exports from India Scheme (SEIS) :-

- A reward eligible for notified service providers computed based on the ‘net’ free foreign exchange realized and the percentage of this reward is specified in Appendix 3D of the Foreign Trade Policy 2015-20.

❖ *DGFT tweet on 12/01/19 – Exporters are hereby informed that it is mandatory to record information about transfer of MEIS/SEIS scrips issued **on or after 14/01/19** on DGFT website. (Trade Notice No. 42/2015-2020 dtd 11/01/19)*



Incentives for Export

* Advance Authorization (AA) :-

- When GST was introduced, the benefits under the AA scheme was restricted to BCD, Safeguard Duty, Transitional Product Specific safeguard duty and Anti-dumping duty in respect of goods liable to IGST and for the specified items. As a result, **the benefit was not available for the payment of GST.**

* Duty Free Import Authorization under Export Promotion Capital Goods (EPCG) :-

- When GST was introduced, **only BCD was exempted on imports** made under EPCG authorisation and Importer/Exporter **had to pay IGST on imports and take ITC of the same.**

Current Scenario:
Domestic supplies to holders of AA and EPCG would be treated as **“Deemed Exports”** under section 147 of CGST/SGST Act and refund of tax paid on supplies will be made to suppliers.



Basic Legal Provisions Relating to Refund

* What is Export of “GOODS”?

- As per Section 2(5) of IGST Act, “Export of Goods” with its grammatical variations and cognate expressions, **means taking goods out of India to a place outside India.**

* What is Export of “SERVICES”?

Section 2 (6) of IGST Act defines “export of services” to mean the supply of any service when–

- the **supplier of service is located in India;**
- the recipient of service **is located outside India;**
- the **place of supply of service is outside India;**
- the **payment** for such service has been received by the supplier of service **in convertible foreign exchange;** and
- the supplier of service and the recipient of service are **not merely establishments of a distinct person** in accordance with Explanation 1 in section 8 of IGST Act.

* Aspects to be noted:

- *Export of GOODS doesn't require fulfillment of any such conditions like export of services which requires fulfillment of certain conditions for a supply to qualify as 'export of services'.*
- *In the case of export of goods, **the movement of goods alone is a relevant factor** and not the location of the exporter/ importer.*
- *Under the GST law, the requirement is that the supplier is located in India (which **includes Jammu and Kashmir**) as GST has been made applicable in the State of J&K also*



Treatment of Exports to Nepal and Bhutan

* Export of 'Goods':

Once goods move out of India, that is to Nepal and Bhutan, it is termed as Export of goods.

* Export of 'Services':

Supply of services shall be termed as Export of services only when payment is received in **convertible foreign currency**.

Difficulties faced - amounts not received in convertible foreign currency – thus not an Export of service.



- Export of services got exemption having place of supply in Nepal or Bhutan, against payment in Indian Rupees. {Notf. No. 42/17- IGST (Rate) dtd 27.10.17}
- Even ITC Reversal considering this service as exempt would not be required. {Notf. 55/17 – CGST dtd 15.11.17}



Basic Legal Provisions Relating to Refund

* What is “Zero Rated Supply” ?

As per section 16 of IGST Act, “zero rated supply” means any of the following supplies of goods or services or both, namely: –

- **Export** of goods or services or both; or
- Supply of goods, services, or both to a **Special Economic Zone** developer or a Special Economic Zone unit.

* A person making Zero Rated Supply shall be eligible to claim refund as under:

a) Claim Refund of unutilised ITC when goods/ services are supplied under bond or LUT;

OR

b) Claim refund of IGST paid on supplies of goods/ services as per section 54 of CGST Act.



Letter of Undertaking (LUT)

- ❑ Form GST RFD 11
- ❑ Valid for a **financial year** and not calendar year.
- ❑ LUT shall be deemed to have been accepted as soon as **ARN** is generated online.
- ❑ **No document** needs to be **physically** submitted to the jurisdictional office for acceptance of LUT.
- ❑ Facility now available to **ALL** exporters in terms of Notf. No. 37/17- CT dtd **04/10/2017**.
*Exception:- cases where applicant have been prosecuted for any offence under the CGST or IGST Act or any of the existing laws in force in a case where the amount of **tax evaded exceeds Rs. 250 lakh.***
- ❑ **Obligation under LUT or Bond** [Rule 96A (1)]
 - * In LUT or Bond the registered person binds himself to pay the tax due along with the interest within a period of—
 - * **3 months + 15 days** , from the date of issue of the invoice for export, if the **GOODS** are not exported out of India; or
 - * **1 year + 15 days** , from the date of issue of the invoice for export, if the payment of such **SERVICES** are not received by the exporter in convertible foreign exchange.

Place Of Supply in case of Export

* Zero Rated Supply = Export + SEZ

* To treat a supply as Zero-rated supply, the Place of supply should be outside India.

SrNo.	Situation	Place of Supply
A.	GOODS exported out of India (Sec 11 of IGST Act)	Imported into India – Location of importer Exported from India – Location outside India
B.	SERVICES	
1	Default Rule (Other than specific situations mentioned below)	Location of the recipient of services
2	Services in respect of goods made available 'BY' the recipient 'TO' the supplier or his representative.	Location where the services are actually performed
	Services which require the physical presence of the recipient or the person acting on his behalf with the supplier of service or his representative	
2.1	Services are provided on goods but from a remote location by way of electronic means	Location where goods are situated at the time of supply of services
2.2	Above provisions is not applicable in respect of goods which are temporarily imported into India for repairs or any other treatment or process and are exported after repairs or any other treatment or process .	

Sr. No.	Situation	Place of Supply
3	Services supplied directly in relation to an immovable property	Place where the immovable property is located or intended to be located
4	Admission to, or organisation of an event	Place where the event is actually held
4.1	Above Services provided in more than one country including India	India
4.2	Above Services provided in more than one state	Proportionate Basis
5	Services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders	Location of the supplier of services
5.1	Intermediary services	
5.2	Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month	
6	Transportation of goods, other than by way of mail or courier	Place of destination of such goods
7	Passenger transportation services	Place where the passenger embarks on the conveyance for a continuous journey
8	Services provided on board a conveyance	First scheduled point of departure of that conveyance for the journey
9	Online information and database access or retrieval services (OIDAR)	Location of the recipient of service



WHAT CAN BE APPLIED FOR REFUND – Sec 54 (1)





Special Eligibility Criteria


Sec. 54 (2) – Following people entitled to a Refund can also file refund application:

1. A specialized agency of the United Nations Organization or
2. Any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947,
3. Consulate or Embassy of foreign countries or
4. Any other person or class of persons as notified under section 55.

In terms of Notification No. 55/2017 the refunds may be **filed manually** and the processing of refund with respect to any notice, reply or order, among others, can also be issued / filed manually. Prior to this, only online applications were allowed.



CTP/NRTP ELIGIBILITY & MINIMUM REFUND AMOUNT LIMITATION [Sec 54 (13) and Sec 54 (14)]

- * Sec 54 (13) - Casual Taxable Person/ Non Resident Taxable Person is eligible for the refund of any amount deposited in excess of tax liability which will be refunded after all the necessary returns have been furnished for the Registration period.
- * Sec 54 (14) – **No refund** shall be paid to the applicant **if the refund amount < Rs. 1,000/-**
- *  **Whether Rs. 1000/- limit to be considered under each Act or cumulatively ?**



Mode of claim and time limit

Type	Mode	Time limit (Before expiry)
Any person, in general claiming refund of any tax	Application	2 years from the relevant date
Registered person can claim refund of balance in cash ledger after payment of taxes	Monthly return	2 years from the relevant date
Agency of UNO, MFI, UNO organisation, consulate or embassy	Application	6 months from the quarter of receipt of such supply (Extended to 18 months vide Notification No. 20/2018)
Registered person can claim unutilised ITC in case of zero rated supplies without payment of tax	Application	2 years from the relevant date
Registered person can claim unutilised ITC resulting from rate of tax on inputs more than rate of tax on output supplies with certain exceptions	Application	2 years from the relevant date

*This limit will **not apply** where tax/ interest or any other amount has been **paid under protest** or otherwise.*

What is the Relevant Date for Claiming Refund? – Sec 54 (14)(2)

In Case of	Relevant Date
Export by Sea/ Air	The date on which the ship or the aircraft in which such goods are loaded, leaves India
Export by Land	The date on which such goods pass the frontier
Export by Post	The date of dispatch of goods by the Post Office concerned to a place outside India
Deemed Export	The date on which the return relating to such deemed exports is furnished
Export of Service	The date of– (i) Receipt of payment - in convertible foreign exchange, where the supply of services had been completed prior to the receipt of such payment; or (ii) Issue of invoice - where payment for the services had been received in advance prior to the date of issue of the invoice

What is the Relevant Date for Claiming Refund?

In Case of	Relevant Date
Order/Judgement	The date of communication of such judgment, decree, order or direction
Refund of unutilised input tax credit	(End of Financial year) The Due date for furnishing return u/s 39 for the period in which such claim for refund arises
Provisional payment of Tax	The date of adjustment of tax after the final assessment
Person other than supplier or UIN holder	The date of receipt of goods/ services by such person or UIN holder
Claim of refund on account of Excess Payment of Tax	The date of actual payment of tax in challan
Claim of refund by Casual/ Non Resident Taxable Person	The date of last return
Other Cases	The date of Payment of Tax



Order Sanctioning Refund- Sec 54 (5), (7) and (8)

❖ On receipt of application, Proper Officer on being satisfied, may make an Order within 60 days and credit the refund amount to **Consumer Welfare Fund**.

❖ However, in following cases the refund will be sanctioned to the CLAIMANT, instead of being credited to CWF :

- Refund of tax paid on ~~zero-rated supplies~~ export of goods or services or both
- Refund of tax on inputs or input services used in making ~~zero-rated supplies~~ exports
- Refund of unutilised ITC accumulated on account of inverted duty structure
- The tax/ interest/ other amounts paid by the applicant, if he had not passed on the incidence of tax to any other person
- Refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued or where a refund voucher has been issued.
- Refund of tax in pursuance of sec 77
- The tax or interest borne by notified class of applicants (done by Central/ State Govt on the recommendation of the council).



Provisional Refund Order - Sec 54 (6)

- * In case of refund on account **of zero rated supplies** of goods and or services, Proper Officer may issue refund of – **90%** of Total Amount claimed (excluding ITC amount not yet finalised).
- * This 90% refund will be provided on provisional basis and will be subject to conditions, limitations and safeguards.
- * Remaining **10%** may be refunded after due verification of the documents furnished by the applicant.
- * Condition as per Rule 91:- Applicant, during any period of **5 years** preceding the refund period, has **NOT** been prosecuted for any offence under GST/ any other erstwhile law for **> Rs. 250 lakhs**.
- * **RFD-04** (Provisional Refund Order) to be issued within **7 days**.
- * **RFD-05** (Payment Advice) to be credited to the applicant's bank account.



Withholding of Refund – Sec 54 (10)

- ❑ In case of claim of refund of **accumulated ITC**, the refund due will be either **withheld or deducted** in cases where –
 - * A person **defaults in furnishing any return**;
 - * A person is required to pay any tax, interest or penalty ordered, which is not stayed by Court or Appellate Authority within the last date for filing an appeal under this act.

- ❑ In case of claim of refund against **payment of IGST**, the refund shall be **withheld** where, -
 - * a request has been received from the Jurisdictional Commissioner to withhold the payment of refund; or the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.
 - * the Proper Officer of integrated tax at the Customs station shall intimate the applicant and the Jurisdictional Commissioner, and a copy of such intimation shall be transmitted to the common portal
 - * the Proper Officer shall pass an order in Part B of FORM GST **RFD-07**
 - * Where the applicant becomes entitled to refund of the amount withheld, the concerned Jurisdictional officer shall proceed to refund the amount after passing an order in FORM GST **RFD-06**.



Withholding of Refund – Sec 54 (11) &(12)

- * The deduction from refund amount due may of - tax, interest, penalty, fee, or any other amount remaining unpaid under GST Act or erstwhile law.
- * In cases where the refund is a consequence of an order, and such refund order is in appeal or any proceeding, and the Commissioner is of the opinion that grant of refund would affect the revenue adversely on account of fraud, the Commissioner may withhold such refund till such time as may be determined after giving the applicant an opportunity of being heard.
- * 6% rate of interest for refund withheld, if as a result of appeal or further proceedings, the applicant becomes entitled to refund.



Order Sanctioning Refund- Rule 92

Rule No	Scenarios	Procedures
92(1)	When entire refund is payable	➤ FORM GST RFD-06 u/s 54(5) sanctioning the amount of refund or if on a provisional basis u/s 54(6) .
Proviso to 92(1)	In cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any erstwhile law	➤ Order of details of the adjustment in Part A of FORM GST RFD-07.
92(2)	Where the proper officer or the Commissioner is of the opinion that the amount of refund is liable to be withheld under ➤ the provisions of sub-section (10) [when the applicant is required to pay tax, interest or penalty which has not been stayed by any court] or, ➤ sub-section (11) of section 54 [when any matter of appeal is pending and refund shall affect the revenue .	➤ Order in Part B of FORM GST RFD-07 informing him the reasons for withholding of such refund .

Rule No	Scenarios	Procedures
92(3)	Where the proper officer is satisfied that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant	<ul style="list-style-type: none"> ➤ Notice in FORM GST RFD-08 ; ➤ Applicant shall furnish a reply in FORM GST RFD-09 within 15 days ➤ After Reply, PO shall make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim ➤ No rejection without giving the applicant an opportunity of being heard.
92(4)	Refund credited to the account of applicant	➤ Issue a payment advice in FORM GST RFD-05 for refund and the same shall be electronically credited to any of the bank accounts of the applicant
92(5)	Refund credited to Consumer Welfare Fund	➤ Where Refund is not payable u/s 54(8), he shall make an order in FORM GST RFD-06 and issue an advice in FORM GST RFD-05, for the amount of refund to be credited to the Consumer Welfare Fund .



Acknowledgement and Deficiency Memo

* Where application relates to a claim for refund from the Electronic Cash Ledger –

An acknowledgement in **FORM GST RFD-02** to be issued immediately on receipt of application.

* Other than Electronic Cash Ledger –

Scrutinize completeness of Application within 15 days of filing and issue acknowledgment of the same in **FORM GST RFD-02**

* Deficiencies, if any, to be notified in **FORM GST RFD-03** and Fresh refund application to be filed.

Time period of **60 days for passing an order** by proper officer shall be counted from such date of filing application.

Interest on Delay Refunds

In Case	Rate P.A.
Refund is withheld*	6 %
Interest on Delayed Refund [#]	6 %
Interest on Delayed Refund ^{\$}	9 %
Other Cases	18%

* Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

Where tax is not refunded within 60 days from the date of order of refund.

\$ Where refund is due after the final decree or order and refund has not been paid within 60 Days.



Penalty and Prosecution for fraudulently obtaining Refund u/s 122 and 132

➤ Penalty

Penalty will be higher of the following:

- Rs. 10,000/- or
- an amount equivalent to the tax evaded

➤ Prosecution

As per sec 32 of CGST Act, 2017 prescribes the punishment for evading tax, fraudulently availing input tax credit or **fraudulently obtaining refund**.

The punishment for the above offence will be as under:

<i>Quantum of tax evasion (Amount in rupees)</i>	<i>Term of imprisonment</i>
Exceeding ` 100 lakhs up to ` 200 lakhs	Up to 1 year and fine
Exceeding ` 200 lakhs up to ` 500 lakhs	Up to 3 years and fine
Exceeding ` 500 lakhs	Up to 5 years and fine



Types of Refund- Refund of Excess Balance in Cash Ledger

❑ *Circumstances under which refund of balance in cash ledger may be required to be refunded :-*

- Excess deposit in cash ledger which is not adjustable against present liabilities.
- Advance payment of tax into government account against which no supplies are made.
- The amount of tax deducted or collected is more than the net liability of the registered person after setting off input tax credit.

❑ *Form of Application :- Part B of GSTR 3 (preview see below)*

14. Refund claim from Electronic cash ledger						
Description	Tax	Interest	Penalty	Fee	Other	Debit Entry Nos.
1	2	3	4	5	6	7
(a) Integrated Tax						
(b) Central Tax						
(c) State/UT Tax						
(d) Cess						
Bank Account Details (Drop Down)						

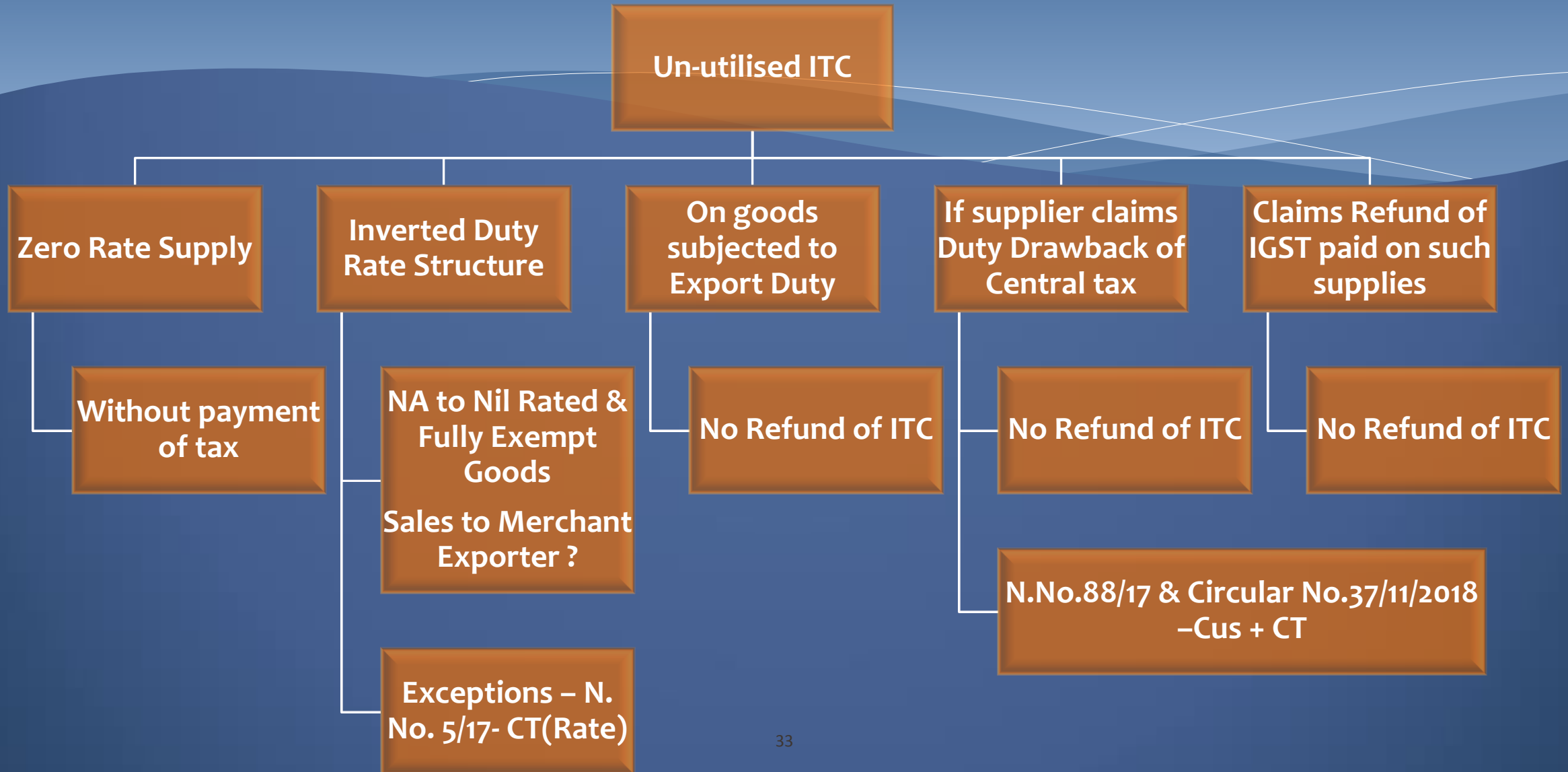
Practical Insights

Documents asked for:

1. RFD- 01
2. Challan
3. ARN
4. Electronic Cash Ledger
5. GSTR 3B and GSTR 1
6. Blank Cheque
7. Self Declaration



WHEN IS REFUND OF UN-UTILISED INPUT TAX GIVEN – Sec 54 (3)





Types of Refund- **Refund of Unutilised ITC**

❑ *It Comprises of :-*

A) Inverted Duty Structure

B) Export of goods or services **without** payment of tax. (Under Bond/ LUT)

❑ *Form of Application :-* RFD- 01/01A

❑ *Relevant Date for making Refund Application:- [CGST (Amend) Act No. 31 of 2018 Dtd. 29/08/18]*

- End of Financial Year?? [Explanation 2(e) of Sec 54]

or

- End of Tax Period?? [Sec 54 (3)]





Types of Refund- **Refund of Unutilised ITC**

A) INVERTED DUTY RATE STRUCTURE

- ❑ Restrictions on Refund of accumulated ITC in case of Inverted duty structure:-
 - (a) The refund of unutilized ITC on account of Inverse duty rate is not allowed where output supplies are **NIL rated** or **wholly exempt** [1st Proviso to Section 54]

 - (a) The refund of unutilized ITC on account of Inverse duty rate is not allowed against supplies of goods or services or both as may be **notified** by the Government on the recommendations of the Council
 - (i) **Notified Services-** Schedule II Item 5 (b)
*Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, **except** where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.*



Notified Goods where Refund was/is not allowed under Inverted Duty Structure [Notf. 5/17 & 44/17-CT (Rate)]

Sr No.	Tariff item, heading, sub-heading or Chapter	Description of Goods
1	5007	Woven fabrics of silk or of silk waste
2	5111 to 5113	Woven fabrics of wool or of animal hair
3	5208 to 5212	Woven fabrics of cotton
4	5309 to 5311	Woven fabrics of other vegetable textile fibres, paper yarn
5	5407, 5408	Woven fabrics of manmade textile materials
6	5512 to 5516	Woven fabrics of manmade staple fibres
6A	5608	Knotted netting of twine, cordage or rope; made up of fishing nets and other made up nets of textile materials
6B	5801	Corduroy Fabrics
6C	5806	Narrow woven fabrics, other than goods of heading 5807; narrow fabrics consisting of warp without weft assembled by means of an adhesive (bolducs)
7	60	Woven fabrics of manmade staple fibres

8	8601	Rail locomotives powered from an external source of electricity or by electric accumulators
9	8602	Rail locomotives powered from an external source of electricity or by electric accumulators
10	8603	Self-propelled railway or tramway coaches, vans and trucks, other than those of heading 8604
11	8604	Railway or tramway maintenance or service vehicles, whether or not self-propelled (for example, workshops, cranes, ballast tampers, track liners, testing coaches and track inspection vehicles)
12	8605	Railway or tramway passenger coaches, not self-propelled; luggage vans, post office coaches and other special purpose railway or tramway coaches, not self-propelled (excluding those of heading 8604)
13	8606	Railway or tramway goods vans and wagons, not self-propelled
14	8607	Parts of railway or tramway locomotives or rolling-stock; such as Bogies, bissel-bogies, axles and wheels, and parts thereof
15	8608	Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) signalling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields; parts of the foregoing

Restriction of refund for fabrics **waived** under inverted duty structure for goods received **from**
01/08/18 (Notf. No. 20/18 CTR)

Restriction of refund still applicable



Highlights of Circular on Calculation of Lapse of ITC for Fabrics

[Circular No. 56/30/2018 dated 24-08-2018 -354/290/2018- TRU]

SR NO	QUESTION	CLARIFICATION
1	Whether all ITC lying unutilized after payment of tax up to July 2018 shall lapse ?	No. ITC relating to following shall NOT lapse: 1. Capital Goods 2. Services 3. Zero Rated Supplies 4. Stock as on 31-07-2018
2	Whether unutilized ITC in respect of services and capital goods shall also be disallowed ?	No.
3	Implication to fabrics like cotton and silk where there was no inverted duty rate structure ?	The formula for calculation of ITC to lapse takes care that ITC for which inverted duty rate structure is not applicable does not get covered.
4	Whether Accumulated ITC in respect of exports shall also be made to lapse ?	No. Formula under Rule 89(4) and Rule 89(5) takes care that refund of ITC on exports is allowed and attributable ITC does not get lapsed.
5	Whether government has power to lapse credit ?	It flows inherently from the power to deny refund of accumulated ITC
6	How to calculate amount of ITC to Lapse ?	Following Formula under Rules 89(5) shall apply mutatis mutandis for calculation of Maximum ITC to lapse as it applies to calculation of Maximum ITC eligible for refund $\{(Turnover\ of\ inverted\ rated\ supply\ of\ goods \div Adjusted\ Total\ Turnover) \times Net\ ITC\}$ - tax payable on such inverted rated supply of goods. Period to be captured is 01-07-17 to 31-07-17

Sr. No.	QUESTION	CLARIFICATION
7	If ITC calculated as per formula is 5 lacs but actual ITC is Rs. 10 lacs, how much ITC shall lapse ?	Rs. 5 lacs, because the formula gives maximum amount to lapse
8	If ITC calculated as per formula is 5 lacs but actual ITC is Rs. 3 lacs, how much ITC shall lapse ?	Rs. 3 lacs, because the formula gives <u>only</u> the maximum amount that can lapse.
9	IT total ITC is Rs. 42 lacs, and ITC on manmade fabrics is 25 lacs and ITC on cotton fabrics (not covered by inverted duty) is 10 lacs. Turnover of cotton fabrics is 2 crores and turnover of manmade fabrics is 5 crores. Tax Rate is 5%. How much ITC shall lapse ?	<p>Total ITC =42 lacs Total Turnover=7 crores Tax payable on MMF fabrics= 5% of 5 crores= 25 lacs ITC to lapse= $42 \times (5/7) - 25 = 5$ lacs</p>
10	Whether ITC on stock shall lapse ?	While calculating Net ITC for calculation of ITC to lapse, ITC attributable to inputs in finished goods shall be excluded. It shall reduce the amount of ITC to lapse and thus ITC attributable to stock as on 31-07-2017 shall not lapse
11	When ITC shall lapse ?	ITC to lapse shall be provided in GSTR-3B for August 2018 to be filed in September by providing the amount in columns 4B (2) of the return [ITC amount to be reversed for any reason (others)]
12	When the amount of ITC to lapse shall be verified ?	At the time of filing of first refund on account of inverted duty rate structure on fabrics. A detailed calculation sheet shall be furnished.



Refund Formula for ACCUMULATED UNUTILISED ITC

- Calculation of Maximum Refund Amount under Inverted Duty Rate Structure [Rule 89(5)]

$$\text{MRA} = \left\{ \frac{\text{(Turnover of inverted rated supply of goods and services)}}{\text{Adjusted Total Turnover}} \right\} \times \text{Net ITC} - \left\{ \text{Tax payable on such inverted rated supply of goods \& serv.} \right\}$$

- a) '**Net ITC**' shall mean ITC availed on **inputs** during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

NOTE :- Refund is allowed only against "INPUTS" and amount of "INPUT SERVICES" has to be deducted from total input tax credit. Further, no refund is allowed against ITC on "Capital goods."

- b) "**Adjusted Total turnover**" means the turnover in a State or a Union territory, as defined under clause (112) of section 2, **excluding** –

- * the value of **exempt supplies** other than zero-rated supplies and
- * the turnover of supplies in respect of which refund is claimed under sub rules (4A) or (4B) or both, if any, during the relevant period

Sec 2 (112) = (All taxable supplies – RCM Inward Supplies + Exempt + Exports – GSTs & Cess)



Format for Calculation of Accumulated Utilised ITC under Inverted Duty Structure

Format of Calculation under RFD-01A

Statement -1 [Rule 89(5)]

Refund Type: ITC accumulated due to inverted tax structure [clause (ii) of first proviso to section 54(3)]
(Amount in Rs.)

Turnover of inverted rated supply of goods	Tax payable on such inverted rated supply of goods	Adjusted total turnover	Net input tax credit	Maximum refund amount to be claimed [(1×4÷3)-2]
1	2	3	4	5

Statement 1A [Rule 89(2)(h)]

Refund Type: ITC accumulated due to inverted tax structure [clause (ii) of first proviso to section 54(3)]

Sl. No.	Details of invoices of inward supplies received				Tax paid on inward supplies			Details of invoices of outward supplies issued			Tax paid on outward supplies		
	GSTIN of the supplier	No.	Date	Taxable Value	Integrated Tax	Central Tax	State Tax/Union territory Tax	No.	Date	Taxable Value	Integrated Tax	Central Tax	State Tax/Union territory Tax
1	2	3	4	5	6	7	8	9	10	11	12	13	14



B) Refund of Unutilised ITC on Export/ SEZ Supplies without payment of IGST

- ❑ A person making zero rated supply shall be eligible to claim refund of unutilised ITC in case of supplies made **without** payment of tax viz. under LUT/ Bond.

Whether refund can be claimed by the exporter of **Exempted or Non GST Goods ???**



Whether Bond/ LUT is required in the case of zero rated supply of **Exempted or Non-GST Goods???**

- ✓ **Sec 16(2)IGST**- ITC may be availed for making zero rated supplies, notwithstanding that such supply is an exempt supply.
- ✓ **Sec 2 (47) CGST**- Exempt supply includes non-taxable supply.
- ✓ **Sec 16(3) IGST**- Person making zero rated supply shall be eligible to claim refund when he makes supplies under bond or LUT
or
makes such supply on payment of IGST.

No, in my view



Refund Formula for UNUTILISED ITC ON EXPORTS/ SEZ SUPPLY

- Calculation of Maximum Refund Amount under Inverted Duty Rate Structure [Rule 89(4)]

$$\text{Maximum Refund Amount} = \left\{ \frac{\text{(Turnover of zero rated supply of goods + services)}}{\text{Adjusted Total Turnover}} \right\} \times \text{Net ITC}$$

a) “**Net ITC**” shall mean ITC availed on **inputs & input services** during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

b) “**Zero rated supply of Services**” =
Payment received for services provided in relevant period
+
Supply Completed for which payments received in advance in any prior period
-
Advances received for which supply of services has not been completed

c) “**Adjusted Total turnover**” = The turnover in a State or a Union territory, as per Sec 2(112) (Excluding the t/o of services)
+
Turnover of Zero Rated Supply of Services

excluding –

- the value of exempt supplies other than zero-rated supplies and
- the turnover of supplies in respect of which refund is claimed under sub rules (4A) or (4B) or both, if any, during the relevant period



Preview of Refund Form for Unutilised ITC On Exports

Statement- 3A [Rule 89(4)]

Refund Type: Export without payment of tax (accumulated ITC) – calculation of refund amount

(Amount in Rs.)

Turnover of zero rated supply of goods and services	Net input tax credit	Adjusted total turnover	Refund amount (1×2÷3)
1	2	3	4

Statement- 3 [Rule 89(2)(b) and 89(2)(c)]

Refund Type: Export without payment of tax (accumulated ITC)

(Amount in Rs.)

Sr. No.	Invoice details			Goods/Services (G/S)	Shipping bill/ Bill of export			EGM Details		BRC/FIRC	
	No.	Date	Value		Port code	No.	Date	Ref No.	Date	No.	Date
1	2	3	4	5	6	7	8	9	10	11	12

Practical Insights

Documents asked for:

1. RFD- 01A
2. Statement 3 & 3A
3. ARN
4. Invoices wrt IP & IPS
5. BRC/ FIRC for export of services
6. Electronic Cash Ledger
7. GSTR3B and GSTR1
8. Blank Cheque
9. Self Declaration



Preview of Refund Form for Unutilised ITC On SEZ Supply

Statement-4 [Rule 89(2)(d) and 89(2)(e)]

Refund Type: On account of supplies made to SEZ unit or SEZ Developer (on payment of tax)

(Amount in Rs.)

GSTIN of recipient	Invoice details			Shipping bill/Bill of export/Endorsed invoice by SEZ		Integrated Tax		Cess	Integrated tax and cess involved in debit note, if any	Integrated tax and cess involved in credit note, if any	Net Integrated tax and cess (8+9+10-11)
	No.	Date	Value	No.	Date	Taxable Value	Amt.				
1	2	3	4	5	6	7	8	9	10	11	12

Statement-5A [Rule 89(4)]

Refund Type: On account of supplies made to SEZ unit / SEZ developer without payment of tax (accumulated ITC) – calculation of refund amount

(Amount in Rs.)

Turnover of zero rated supply of goods and services	Net input tax credit	Adjusted total turnover	Refund amount (1×2÷3)
1	2	3	4

Practical Insights

Documents asked for:

1. RFD- 01A & ARN
2. Statement 4 or 5A
3. Invoices w.r.t. IP & IPS
4. Declaration that SEZ has not availed ITC of Tax Paid by Supplier.
5. GOODS- Endorsed Invoice
6. SERVICES- Endorsement Evidence+ Proof of Payment
7. Electronic Cash Ledger
8. GSTR 3B and GSTR 1
9. Blank Cheque



Types of Refund- Export of Goods and Services **with payment of Tax**

A) Export of GOODS with payment of tax-

- No separate application required to be filed
- Shipping Bill filed deemed to be an application of Refund
- Refund process automated
- GST portal → ICEGATE → Tax payers Bank A/c directly
- Not allowed to certain persons [Rule 96 (10)]

B) Export of SERVICES with payment of tax-

- Application in RFD-01A
- Not allowed to certain persons [Rule 96 (10)]
- Preview herein below

Statement- 2 [Rule 89(2)(c)]

Refund Type: Exports of services with payment of tax

(Amount in Rs.)

Sr. No.	Invoice details			Integrated tax		Cess	BRC/FIRC		Integrated tax and cess involved in debit note, if any	Integrated tax and cess involved in credit note, if any	Net Integrated tax and cess (6+7+10-11)
	No.	Date	Value	Taxable value	Amt.		No.	Date			
1	2	3	4	5	6	7	8	9	10	11	12

Practical Insights - GOODS

1. Proper disclosure required in GSTR 1 (Table 6A /9A) and in GSTR 3B [Table 3.1(B)]
2. Export Ledger facility available on portal to verify status of Data transmitted to ICEGATE.
3. Accurate Port Code & Shipping Bill No. to be shown in GTSR-1.

Practical Insights - SERVICES

Documents asked for:

1. RFD- 01A
2. Statement 2
3. ARN
4. Invoices w.r.t. IP & IPS & Capital goods
5. BRC/ FIRC for export of services
6. Electronic Cash Ledger
7. GSTR 3B and GSTR 1
8. Blank Cheque
9. Self Declaration



Types of Refund- Refund to Supplier & Recipient in “Deemed Exports”

A. Transaction between ‘Manufacturer’ and ‘Merchant Exporter’ :-

- No Provision for Issuance of CT-1 Form. Also it is a supply and thus liable to GST

B. Transaction with EOU:-

- No special dispensation for them under GST and thus taxable like any other taxable supplies.
- Considered as deemed exports u/s 147 and not as zero rated supplies.



What is Deemed Exports ? Sec 2(39)

Definition: “**Deemed exports**” means such supplies of goods as may be notified under section 147 of CGST Act even though goods do not leave India.

* **Notification No. 48/2017 – Central Tax dated 18.10.2017:**

1. Supply of goods by a **registered person against Advance Authorisation**
2. Supply of **capital goods** by a registered person against **Export Promotion Capital Goods Authorisation**
3. Supply of goods by a registered person to an **Export Oriented Unit (EOU)** and includes:
 - Electronic Hardware Technology Park Unit (EHTP) or
 - Software Technology Park Unit (STP) or
 - Bio-Technology Park Unit (BTP).
4. Supply of gold by a **bank or Public Sector Undertaking** specified in the Notification No. 50/2017-Customs, dated the 30.06.2017 (as amended) **against Advance Authorisation.**

* **Aspects to be Noted:**

- The Foreign Trade Policy (2015-2020) in terms of Para 7.02 has provided a list of Supplies which are Deemed Supplies under the FTP.
- However, **only the aforesaid 4 supplies have been covered under Deemed Export under GST.**
- Further, the recipient is eligible to take Input Tax Credit of the tax paid by the Supplier subject to restrictions.



Procedure for Supply to EOU/EHTP/STP/BTP (Circular 14/17 Dtd 6/11/17)

Prior Intimation

- Intimation to be given in 'Form A' (serially numbered) by recipient EOU/EHTP/STP/BTP containing details of Goods to be procured and details of supplier.
- Intimation to be given to Supplier, Officer of Supplier, Officer of recipient

Supply to EOU

- Supplier will supply goods under TAX INVOICE to recipient EOU/EHTP/STP/BTP

Endorsement of Receipt by EOU

- On receipt of such supplies, recipient shall endorse the tax invoice
- Send endorsed tax invoice copy to Supplier, Officer of Supplier, Officer of recipient

Proof of Deemed Export

- ENDORSED TAX INVOICE will be considered as proof of Deemed Exports

Records to be Maintained by EOU

- Recipient to maintain records of such deemed export in 'Form B' in digital form

Form B to Jurisdictional Officer

- Records maintained in digital form to be provided to JO by 10th of next month



Types of Refund- Refund to Supplier & Recipient in Deemed Exports

Q:- Who can file the application?? 🤔

a) the recipient of deemed export supplies;

OR

a) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund

Statement 5B [Rule 89(2)(g)]

Refund Type: On account of deemed exports

(Amount in Rs)

Sl. No.	Details of invoices of outward supplies in case refund is claimed by supplier/Details of invoices of inward supplies in case refund is claimed by recipient				Tax paid			
	GSTIN of the supplier	No.	Date	Taxable Value	Integrated Tax	Central Tax	State Tax/Union Territory Tax	Cess
1	2	3	4	5	6	7	8	9

Practical Insights

Documents asked for:

1. RFD- 01A & ARN
2. GSTR 3B and GSTR 1
3. Proof that the said Deemed Export have been recd by the Recipt EOU :-

(i) Ackl by Jurisdictional Officer (or)

(ii) Tax Invoice duly signed by recipient EOU

4. Undertaking by Recipient EOU that :-

- (i) No ITC has been availed,
- (ii) He shall not claim refund



Other Types of Refund

- ❑ Refund of wrongly collected/ paid tax (Sec 77 of CGST Act)
- ❑ Refund of duty/tax under existing law
- ❑ Refund to Casual Taxable Person/ Non-Resident Taxable Person
- ❑ Refund of IGST to International Tourist
- ❑ Refund of Provisionally paid tax
- ❑ Refund of Compensation Cess
- ❑ Refund on account of Excess or Erroneous Deduction
- ❑ Refund on Inward Supplies to Canteen Stores Department
- ❑ Refund on Inward Supplies to UN and agencies and notified persons
- ❑ Refund of tax against supplies not made
- ❑ Refund of Interest against restoration of ITC
- ❑ Refund of Interest against restoration of reduction in output tax liability
- ❑ Refund due to order of Appellate Authority/Court
- ❑ Refund of Central Share in CGST & IGST in hilly areas
- ❑ Refund of Tax under Seva Bhoj Yojna



Documents Required – Sec 54 (4) and Rule 89 (2)

S. No.	Scenario	Documents
1	Refund on account of Pre-deposit	<ul style="list-style-type: none">✓ Reference number of the order✓ A copy of the order resulting in such refund or reference number of the payment of the pre-deposit amount
2	Refund on account of export of goods	<ul style="list-style-type: none">✓ A statement containing the number and date of shipping bills or bills of export✓ The number and the date of the relevant export invoices
3	Refund on account of export of services	<ul style="list-style-type: none">✓ A statement containing the number and date of invoices✓ The relevant Bank Realisation Certificates (e-BRC) or Foreign Inward Remittance Certificates (FIRC)
4	Refund on account Inverted Duty Structure	<ul style="list-style-type: none">✓ A statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilised input tax credit under sec 54 (3)
5	Refund as per Section 77	<ul style="list-style-type: none">✓ A statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply



Documents Required (contd..)

S. No.	Scenario	Documents
6	Refund on account of supply of goods made to a SEZ Unit/ Developer	<ul style="list-style-type: none">✓ A statement containing the number and date of invoices as provided in Rule 46✓ The evidence regarding the endorsement by the specified officer of the Zone.✓ A declaration to the effect that the SEZ Unit/ Developer has not availed the input tax credit of the tax paid by the supplier of goods or services or both.
7	Refund on account of supply of Service made to a SEZ Unit/ Developer	<ul style="list-style-type: none">✓ A statement containing the number and date of invoices✓ The evidence regarding the endorsement by the specified officer of the Zone✓ The proof of payment, made by the recipient to the supplier for authorized operations.✓ A declaration to the effect that the SEZ Unit/ Developer has not availed the input tax credit of the tax paid by the supplier of goods or services or both, made to a SEZ Unit/ Developer



Documents Required (contd..)

S. No.	Scenario	Documents
8	Refund on account of Deemed Exports (where refund is claimed by the Supplier)	<ul style="list-style-type: none">✓ A statement containing the number and date of invoices✓ Proof of receipt of Goods by the Eligible Recipient:<ul style="list-style-type: none">• <u>In case of Supply to Advance Authorisation Holder or EPCG Holder</u> – Acknowledgment that Holder has received the goods should be obtained from the jurisdictional Tax officer having jurisdiction over the said Holder• <u>In case of Supply to EOUs</u> - Copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it✓ Undertaking from the Recipient of the Deemed Export that the Recipient has not taken Input Tax Credit of the GST paid by the Supplier✓ Undertaking from the Recipient of the Deemed Export that they shall not claim the refund of the GST paid by the Supplier. <p>(Notification No. 49/2017 – Central Tax dated 18th October, 2017)</p>



Documents Required (contd..)

S. No.	Scenario	Documents
9	Refund on account of deemed exports (where refund is claimed by the Recipient of Deemed Exports)	<ul style="list-style-type: none">✓ A statement containing the number and date of invoices✓ Any further documents as may be notified.<ul style="list-style-type: none">▪ As of now, no notification has been issued. <p><i>Recommendation: It may be prudent for the recipient to obtain an undertaking from the supplier stating that he has not claimed refund of GST paid on Deemed Exports</i></p>
10	Refund on account of provisional assessment	<ul style="list-style-type: none">✓ The reference number of the final assessment order✓ A copy of the said order
11	Refund claimed does not exceed 2 lakh rupees	<ul style="list-style-type: none">✓ A Self declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person (Self declaration)
12	Refund claimed exceed 2 lakh rupees (Tax paid but the incidence has not been passed onto the other person)	<ul style="list-style-type: none">✓ A Certificate in Annexure 2 of FORM GST RFD-01 issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person



Format of Export Invoice (as per rule 46 of CGST Rules)

A S Kabra & Co.

Chartered Accountants

612, Vakratunda Corporate Park, Off Aarey Road, Near Udipi Vihar Hotel, Goregaon (E)
Mumbai - 400 063. Tel:- 66719058, 66719417. Fax :- 66719058

GSTIN :XXXXXXXXXXXXXX

PAN:XXXXXXXXXX

EXPORT INVOICE

Original for Recipient
Duplicate for Supplier/Transporter
Duplicate for Supplier

Supply Meant for Export Under Bond or Letter of Undertaking without Payment of Integrated Tax (IGST)

Reverse Charge :	Transportation Mode :
Invoice No. :	Vehicle Number :
Invoice Date :	Date of Supply :
State :	Place of Supply :
State Code :	

Details of Receiver		Billed to:		Details of Consignee		Shipped to:	
Name :				Name :			
Address :				Address :			
Country :				Country :	State Code :		

Sr. No	Description of Product / Service	HSN / ACS	UOM	Qty	Rate	Amount	Less: Discount	Taxable Value	CGST		SGST		IGST		Total
									Rate	Amount	Rate	Amount	Rate	Amount	
1								0							0
2															
3															
4															
5															
6															
7															
8															
9															
10															
Total				0				0	0	0	0	0	0	0	0

Total Invoice Amount in Words:	Total Amount Before Tax	0
	Add : CGST	0
	Add : SGST	0
	Add : IGST	0
	Tax Amount : GST	0
	Total Amount After Tax	0

Bank Details
 • Bank Name & Branch Name :
 • Bank Account Number :
 • Bank Branch IFSC :

: Terms and Conditions:

(Common Seal)

GST Payable on Reverse Charge
 Certified that the particulars given above are true and correct.
For A S Kabra & Co.
 Authorised Signatory



Format of Refund Voucher (as per rule 55 of CGST Rules)

A S Kabra & Co.

Chartered Accountants

612, Vakratunda Corporate Park, Off Aarey Road, Near Udipi Vihar Hotel, Goregaon (E)

Mumbai – 400 063. Tel:- 66719058, 66719417. Fax :- 66719058

GSTIN :XXXXXXXXXXXXXXXXXX

PAN: XXXXXXXXXXXXX

REFUND VOUCHER

Details of Receiver

Name :
Address :
GSTIN/UIN :
State :

State Code :

Reverse Charge :
Voucher Number :
Voucher Date :

Against Receipt No. :

Description of Product / Service	HSN / ACS	Taxable Value	CGST		SGST		IGST		Advance Refund (Rs.)
			Rate	Amount	Rate	Amount	Rate	Amount	

Amount Refunded [in Words]:

Certified that the particulars given above are true and correct.

For A S Kabra & Co.

Authorised Signatory

(Common Seal)

Total Amount Before Tax	0
Add : CGST	0
Add : SGST	0
Add : IGST	0
Tax Amount : GST	0
Total Amount After Tax	0
GST Payable on Reverse Charge	

[E&OE]



Declaration forming part of Annexure to Form RFD- 01

DECLARATION (u/s 54(3)(ii))

I hereby declare that the goods exported are not subject to any export duty. I also declare that I have not availed any drawback on goods or services or both and that I have not claimed refund of the integrated tax paid on supplies in respect of which refund is claimed.

Signature

Name –

Designation / Status

DECLARATION (u/s 54(3)(ii))

I hereby declare that the refund of ITC claimed in the application does not include ITC availed on goods or services used for making nil rated or fully exempt supplies.

Signature

Name –

Designation / Status

DECLARATION (See rule 89)

I hereby declare that the Special Economic Zone unit /the Special Economic Zone developer has not availed of the input tax credit of the tax paid by the applicant, covered under this refund claim.

Signature

Name –

Designation / Status

SELF- DECLARATION

I/We _____ (Applicant) having GSTIN/ temporary Id -----, solemnly affirm and certify that in respect of the refund amounting to Rs. ---/ with respect to the tax, interest, or any other amount for the period from---to----, claimed in the refund application, the incidence of such tax and interest has not been passed on to any other person.

(This Declaration is not required to be furnished by applicants, who are claiming refund under rule 96 of the CGST Rules)



Refund Hiccups and Resolution

Data not being transmitted from GSTN to Customs System [ICES]

Mismatch of GST Invoice and Shipping Bill Details [SB001, SB003 and SB005]

Gateway Export General Manifest [EGM] not available [EGM Error] [SB006]
or EGM not filed [SB002]

Shipping Bill Matched but not appearing in Refund Scroll [SB:000]

Doctrine of Unjust Enrichment

- No one should make undue profits out of taxes
- Talking about unjust enrichment, a presumption is always drawn that the businessman will shift the incidence of tax to the final consumer.
- Principle of unjust enrichment will not apply in cases of Sec 54 (8)
- If the refund amount is upto Rs. 2 lakhs, then self declaration by the applicant would suffice. However, if the refund amount is more than Rs. 2 lakhs, then the applicant would be required to obtain a certificate from the Chartered Accountant/ Cost Accountant.
- Landmark Judicial pronouncements:-
 - Roplas Limited AIR(1989) Bom. 183
 - Mafatlal Industries v. UOI (1997) 89 ELT 247

Consumer Welfare Fund

- The Government shall constitute a Fund, to be called the Consumer Welfare Fund and there shall be credited to the Fund,—
 - a. The amount referred to in sub-section (5) of section 54;
 - b. Any income from investment of the amount credited to the Fund; and
 - c. Other monies received by it,
- UTILISATION OF FUNDS:-
 - All sums credited to the Fund shall be utilised by the Government **for the welfare of the consumers.**
 - The Government or the authority specified by it **maintain proper and separate account** and other relevant records in relation to the Fund and prepare an Annual Statement of accounts in consultation with the Comptroller and Auditor-General of India



Relevant Forms for Refund

Sr. No.	Form No.	Details	Relevant Provisions of CGST Rules, 2017
1	RFD-01	Application for Refund	Rule 89 (1)
2	RFD-01A	Application for Refund (Manual)	Rule 89 (1) and 97A
3	RFD-02	Acknowledgement	Rule 90 (1) and 90 (2)
4	RFD-03	Deficiency Memo	Rule 90 (3)
5	RFD-04	Provisional refund order	Rule 91 (2)
6	RFD-05	Payment advice	Rule 91 (3), 92 (4), 92 (5) and 94
7	RFD-06	Refund Sanction/ Rejection order	Rules 92 (1), 92 (3), 92 (4), 92 (5) and 96 (7)
8	RFD-07	Order for complete adjustment/ withholding of sanctioned refund	Rules 92 (1), 92 (2) and 96 (6)
9	RFD-08	Notice for rejection of application of refund	Rule 92 (3)
10	RFD-09	Reply to show cause notice	Rule 92 (3)



Key Points for filling form RFD-01

- ❑ Refund of excess amount available in electronic cash ledger can also be claimed through return or by filing application.
- ❑ Debit entry shall be made in electronic credit or cash ledger at the time of filing the application.
- ❑ Acknowledgement in Form GST RFD-02 will be issued if the application is found complete in all respects.
- ❑ Claim of refund on export of goods with payment of IGST shall not be processed through this application.
- ❑ Bank account details should be as per registration data. Any change in bank details shall first be amended in registration particulars before quoting in the application.
- ❑ Declaration shall be filed in cases wherever required.
- ❑ 'Net ITC' means ITC availed on inputs during the relevant period for the purpose of Statement-1 and will include ITC on input services also for the purpose of Statement-3A and 5A.
- ❑ 'Adjusted total turnover' means the turnover in a State or a Union territory, as defined under sec 2 (112) excluding the value of exempt supplies other than zero-rated supplies, during the relevant period.



Key Points for filling form RFD-01 (ctnd...)

- ❑ For the purpose of Statement-1, refund claim will be based on supplies reported in GSTR-1 and GSTR-2.
- ❑ BRC/ FIRC details will be mandatory where refund is claimed against export of services details of shipping bill and EGM will be mandatory to be provided in case of export of goods.
- ❑ Where the invoice details are amended (including export), refund shall be allowed as per the calculation based on amended value.
- ❑ Details of export made without payment of tax shall be reported in Statement-3.
- ❑ Availability of refund to be claimed in case of supplies made to SEZ unit or SEZ developer without payment of tax shall be worked out in accordance with the formula prescribed in Rule 89 (4).
- ❑ 'Turnover of zero rated supply of goods and services' shall have the same meaning as defined in Rule 89 (4).

Who will not get Refund?

- ❑ If the unutilized ITC is for GST paid on goods exported out of India which attract excise duty.
- ❑ Unutilised ITC refund is restricted only if there is drawback of CGST or IGST. Thus, refund of unutilized Input Tax Credit is allowed against drawback of customs duty. Further, the denial of CGST or IGST refund due to availment of drawback of CGST or IGST shall not result in denial of refund of unutilized SGST or UTGST.
- ❑ Unutilised ITC of Inverted Duty Structure in case of notified goods & services :
{Notf. No.5/17 CT (Rate)}
- ❑ Unutilised ITC of Inverted Duty Structure where output supplies are nil rated or wholly exempt.

Who will not get Refund?

- ❑ Refund of IGST Paid on Export of Goods NOT to be allowed to certain persons [Rule 96(10)]

Persons claiming refund of IGST paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of:

- Deemed Exports under *Notification No. 48/2017 dated 18-10-2017* (i.e. Supply against advance authorization or EPCG license or supply to EOU/EHTP/STP/BTP)
- Concessional Tax @ 0.1/0.05% under *Notification Nos.40/2017-Central Tax (rate) and 41/2017- Integrated Tax (Rate)*
- Import without payment of IGST under advance authorization [*Under Notification Nos. 78/2017- Customs and 79/2017-Customs*]



Clarification on export of services under GST issued on 31/12/18 (Circular No. 78/52/2018-GST)

Illustration: ABC Ltd. India has received an order for supply of services amounting to \$ 5,00,000/- to a US based client. ABC Ltd. India is unable to supply the entire services from India and asks XYZ Ltd. Mexico (who is not merely an establishment of a distinct person viz. ABC Ltd. India, in accordance with the Explanation 1 in Section 8 of the IGST Act) to supply a part of the services (say 40% of the total contract value).

Answer :-

- ✓ ABC Ltd. India shall be the exporter of services **for the entire value** if the invoice for the entire amount is raised by ABC Ltd. India.
- ✓ The services provided by XYZ Ltd. Mexico to the US based client shall be **import of services** by ABC Ltd. India and it would be liable **to pay IGST on the same under RCM** and also be **eligible to take ITC** of IGST so paid.

Further, if the provisions contained in section 2(6) of the IGST Act are not fulfilled with respect to the realization of convertible foreign exchange, say only 60% of the consideration is received in India and the remaining amount is directly paid by the US based client to XYZ Ltd. Mexico,

- ✓ Even in such a scenario, **100% of the total contract value shall be taken as consideration for the export of services** by ABC Ltd. India **provided** IGST on import of services has been paid on the part of the services provided by XYZ Ltd Mexico directly to the US based client and RBI (by general instruction or by specific approval) has allowed that a part of the consideration for such exports can be retained outside India.
- ✓ In other words, in such cases, **the export benefit will be available for the total realization of convertible foreign exchange by ABC Ltd. India and XYZ Ltd. Mexico.**



Clarification on Refund related issues under GST issued on 31/12/18 (Circular No. 79/53/2018-GST)

✓ Physical submission of refund claims with Jurisdictional Proper Officer:-

- Instead of providing copies of all invoices, a statement of invoices needs to be submitted in a prescribed format and copies of **only those invoices need to be submitted the details of which are not found in FORM GSTR-2A** for the relevant period.
- However, the said acknowledgement or deficiency memo shall continue to be issued manually for the time being.
- after the issuance of a deficiency memo, taxpayers would be required to submit manually the rectified refund application under the earlier Application Reference Number (ARN) only.

✓ Calculation of refund amount for claims of refund of accumulated ITC on account of inverted duty structure :-

- **Issue:** *Whether the refund of ITC of GST paid on those inputs which are procured at equal or lower rate of GST than the rate of GST on outward supply should be denied while calculating the maximum refund amount as specified in rule 89(5) of the CGST Rules?*
- **Clarification:** The term “Net ITC” covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax.

✓ Disbursal of refund amounts after sanction:

 Tax authorities are advised to issue the final sanction orders in **FORM GST RFD-06 within 45 days** of the date of generation of ARN, **so that the disbursement is completed within 60 days** by both Central and State Tax Authorities for CGST / IGST / UTGST / Compensation Cess and SGST respectively.

✓ Refund applications that have been generated on the portal but not physically received in the jurisdictional tax offices:

- All refund applications in which the amount claimed is less than the statutory limit of Rs. 1,000/- should be rejected
- For all applications wherein an amount greater than Rs. 1000/- has been claimed, a list of applications which have not been received in the jurisdictional tax office within a period of 60 days starting from the date of generation of ARN may be compiled. And e-mailed to applicant to submit physically within 15 days or else rejected.

✓ Issues related to refund of accumulated ITC of Compensation Cess:

- **Issue:** Whether refund of accumulated ITC of compensation cess on account of zero-rated supplies made under Bond/Letter of Undertaking is eligible?
- **Clarification:** It was clarified that refund is available even if the exported product is not subject to levy of cess. Method of calculation of the same is explained in detail.
- **Issue:** Can the said refund claim be rejected on the ground that coal is used for the generation of electricity which is an intermediate product and not the final product which is exported and since electricity is exempt from GST, the ITC of the tax paid on coal for generation of electricity is not available?
- **Clarification:** ITC in relation this cannot be denied since there is no distinction between intermediate goods or services and final goods or services under GST.



✓ Non-consideration of ITC of GST paid on invoices of earlier tax period availed in subsequent tax period:

- the input tax credit of invoices issued in August, 2017, availed in September, 2017 cannot be excluded from the calculation of the refund amount for the month of September, 2017.

✓ Misinterpretation of the meaning of the term “inputs”:

- **Issue:** Can ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items be denied, as part of Net ITC on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input.
- **Clarification:** No, since used for business purpose.

✓ Refund of accumulated ITC of input services and capital goods arising on account of inverted duty structure:

- **Issue:** Whether Refund of accumulated ITC of input services and capital goods arising on account of inverted duty structure is eligible?
- **Clarification:** Inputs do not include services or capital goods. Therefore, clearly, the intent of the law is not to allow refund of tax paid on input services or capital goods as part of refund of unutilized input tax credit.



Facts of Case Study - I

CASE 1 : Procedure for Computation of refund of Unutilised ITC

Particulars	Amount (Rs.)
Export Turnover (without payment of tax)	75,000
Domestic Turnover (Inter-State)	1,25,000
Output IGST (125000*18%)	22,500
ITC availed during the relevant period -	
IGST	9,500
CGST	9,500
SGST	9,500

How to calculate eligible amount of refund?



SOLUTION OF CASE STUDY 1

Ans: Least of the following is eligible for refund:

- (i) Closing balance of ITC before claiming refund
- * (ii) Maximum refund amount computed as per formula mentioned under Rule 89(4) of CGST Rules given below

Formula u/r 89(4):

$$\text{Refund Amount} = \frac{\text{Turnover of Zero Rated Supply of Goods/ Services}}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

Step – 1: Maximum refund amount as per formula under Rule 89(4)

Particulars	IGST	CGST	SGST
Refund Amount	$9,500 \times \frac{75,000}{2,00,000}$	$9,500 \times \frac{75,000}{2,00,000}$	$9,500 \times \frac{75,000}{2,00,000}$
	3,563	3,563	3,563



Step – 2: Closing balance of ITC before claiming refund

Particulars	IGST	CGST	SGST
ITC Availed (Cr. In Electronic Credit Ledger)	9,500	9,500	9,500
Utilization of ITC for payment of Output IGST Rs. 22,500 (Dr. In Electronic Credit Ledger & Cr. In Electronic Liability Ledger)	9,500	9,500	3,500
Closing balance of ITC (Cr. In Electronic Credit Ledger)	Nil	Nil	6,000

Step – 3: Eligible amount of Refund

Particulars	IGST	CGST	SGST
Least of Step-1 and Step-2	Nil	Nil	3,563



Case Study - II

CASE 2: Whether refund of accumulated credit on account of inverted duty structure is available only for those inputs where the rate of GST is higher than the output supplies or for all kinds of inputs?

Answer : Refund on account of inverted duty structure shall be granted as per the formula provided under Rule 89(5) of CGST Rules, 2017.

Formula u/r 89(5):

Maximum Refund Amount =

$$\left\{ \frac{\text{Turnover of Inverted-Rated Supply of Goods/Services} \times \text{Net ITC}}{\text{Adjusted Total Turnover}} \right\} (-) \text{Tax Payable on such Inverted rated supply of goods/ services}$$

In this regard, the explanation to Rule 89(5) defines the term “Net ITC” as under:

“Net ITC” shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both”

The above explanation does not categorically specify inputs having higher GST rate than output supplies. Hence, taxpayers can consider entire credit of inputs for the purpose of calculating refund claim on account of inverted duty structure.



Case Study - III

CASE 3 : ABC Ltd. is engaged in providing the services in relation to repair and maintenance of Vehicles. It has its service centres in India. Mr. Y is a foreigner residing in USA and ask ABC Ltd. to repair one of his Cars in India. Can ABC Ltd. claim refund of tax on the basis of export of services?

Answer: Section 13 of IGST Act, 2017 shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India. Further, as per Section 13(3) of the said Act:

The place of supply of the following services shall be the location where the services are actually performed, namely: —

(a) services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:

In the present case, the Car is required to be made physically available in India by Mr. Y to enable ABC Ltd. providing repair services. Hence as per Section 13(3), place of supply will be in India and the said services will not fall under the ambit of export of services. Therefore ABC Ltd. is not eligible to claim refund.



Case Study - IV

CASE 4 : Mr. X has its liability of tax under IGST amounting to Rs. 5000/- during the month of May 2018. However, inadvertently he has paid 8000/- IGST. Now what is the provision to claim refund of excess amount of Rs. 3000/- under the GST Law?

Answer: Any amount paid under CGST, SGST or IGST by the taxable person shall be credited in the Electronic Cash Ledger. As per Rule 89(1) of CGST Rules, 2017, any claim for refund relating to excess balance in the electronic cash ledger may be made through the return furnished for the relevant tax period in Form GSTR-3 or Form GSTR-4 or Form GSTR-7, as the case may be. Also, the refund may be claimed directly by filing Form GST RFD-01.



Case Study - V

CASE 5 : Mr. P has the following tax liability:

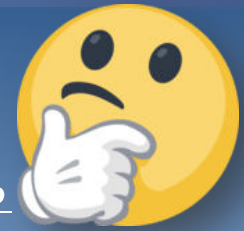
Particulars	Amount (Rs.)
Outward Supply (Intra-State)	1,00,000/-
Output CGST (100000*9%)	9,000/-
Output SGST (100000*9%)	9,000/-

At the time of payment of taxes, Mr. P paid 18,000/- under IGST (Inter-State) in place of CGST+SGST (Intra-State). What can be the possible solution?

Answer: In the present case, Mr. P has paid the taxes by wrongly mentioning the nature of tax as IGST instead of CGST+SGST. This will result in excess tax paid under CGST and SGST. The amount of excess tax paid under IGST amounting to Rs. 18,000/- can be claimed as refund under the provisions of Section 77 of CGST Act, 2017.



Thoughts to ponder upon.....



- Is Online Refund automated process – a practical possibility for cases where it undertakes invoice-on-invoice matching of inputs claimed?
- Will Rectification / Revision of Final Refund Order be allowed ?
- What if adjustment of proper disclosure in GSTR-3B is not possible during the same Financial year ?
- What to do for adjustments of previous Financial year ?
- How far GSTR-2A reports can be relied upon which is a fluctuating report ?
- Is it possible to file Condonation of delay for delay in filing of Refund application beyond stipulated time limit ?
- Can refund be applied in case of ITC lying accumulated as on date of cancellation of GSTIN or closure of business / merger ?



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So “Keep Smiling”



THANK YOU

From:-

Ankit Suresh Kabra [B.Com, ACA, LL.B.]