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CA Jignesh Kansara



Practical issues in Exports & Inverted duty Refunds

Presenter: CA Jignesh Kansara

Agenda for Session

- Basics

1

- IGST Refund on Goods

2

- ITC + IGST Refund Services

3

- Inverted Duty Refund

4

- Merchant Exports

5

- Deemed Exports

6

- Q & A

7

- Misc.

8



Refund - Basics

Definitions : Export

- 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;
- 2(6) of IGST Act; "export of services" means the supply of any service when,-
 - (i) the supplier of service is located in India;
 - (ii) the recipient of service is located outside India;
 - (iii) the place of supply of service is outside India;**
 - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
 - (v) 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;**

Zero Rated SupRIY

- !• Section 16 IGST Act:
- !• All exports (whether of goods or services) as well as supplies to SEZs have been categorised as Zero Rated Supplies in the IGST Act.
- !• Refund of ITC is permitted even though No Tax is paid on Export of Goods / Services
- !• Exporter will be entitled to claim input tax credit in respect of goods or services or both used for such export supplies even though such supply may be exempt supply. 16(2)

Options available with Exporter

- !• 3 Options available with Exporter for making outward Export supply
- !• Option 1 : Supply Goods / Services under **Undertaking (LUT) / Bond** and claim refund of Unutilized ITC
- !• Option 2 : Supply on **payment of IGST** and claim refund of such tax paid on goods or services or both supplied
- !• Option 3 : If Exporters **part supplies** exports, follow Option 1. Exporter can then utilize Export ITC for payment of Domestic GST Liability. If Export ITC is fully utilised against Domestic GST Liability, he need not apply for refund at all. If still there is surplus he can go for refund under option 1. (Hybrid of 1 and 2)

Situations leading to Refund

01

Export of goods or services on payment of IGST

Export of goods or services without payment of IGST

02

03

Supplies to SEZs units and developers

Deemed exports

..

04

Situations leading to Refund

05

Supply of Goods at concessional Rate to Merchant Exporters (inverted duty)

Refund of taxes on purchase made by UN or embassy

06

07

Refund arising on account of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court

Refund of accumulated Input Tax Credit on account of inverted duty structure

08

Situations leading to Refund

09

Finalisation of Provisional assessment

Refund of pre-deposit Casual Taxable Person / Non Resident Taxable Person

10

11

Excess payment due to mistake. Refund from Cash Ledger

Refunds to International tourists of GST paid on goods in India **and carried abroad** at the time of their departure from India

12

Situations leading to Refund

13

Refund on account of issuance of refund vouchers.
GST paid on advances services have not been supplied

CGST & SGST paid treating the supply as intra- State
supply subsequently held as inter-State supply and
vice versa

14

15

Others- Government may on recommendation of
council notify

Instances of No Refund

01

Unjust Enrichment. If burden of Tax is already passed on to any other person

No Export Refund, if Export is subject to Export Duty.

02

03

Goods / Services is notified as not eligible for Refund (notification no. s/2017-CT (Rate), 29 and 44 – CT (Rate) **Export Refund Possible**

if the Exporter avails of drawback of central tax at H. er Rate

04

05

Refund Amount less than Rs. 1000

IGST Refund



Exporter will pay IGST even though export is zero rated **either from ITC balance or in the form of cash** or combination thereof and thereafter seeks refund of IGST paid



Supply to SEZ is also covered in IGST Refund

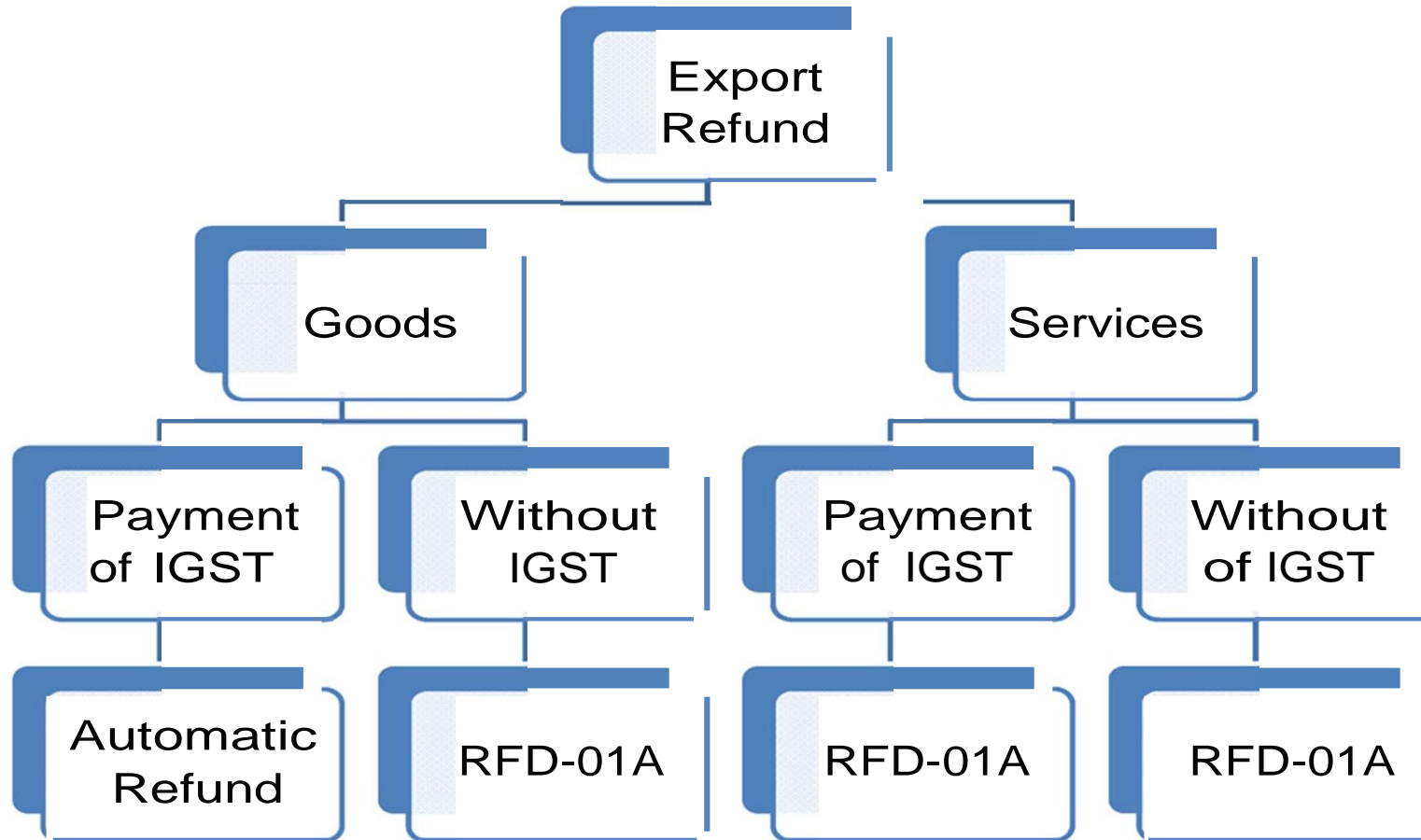
ITC Refund



Exporter will not pay IGST on export however GST paid on Input / Input Services will be claimed as Refund



Refund Process : Birds eye view.



Refund as defined in CGST Act.

Refund **includes** :

- Refund of tax paid
 - ! on **zero-rated supplies** of goods or services or both (**IGST Refund**) or
 - ! on **inputs or input services** used in making such zero-rated (**ITC Refund**) supplies
 - ! or refund of tax on the supply of goods regarded as deemed exports or (**Refund on Account of Deemed Export**)
 - ! refund of unutilised input tax credit as provided under sub-section (3). (**Inverted Duty Structure**)
(Section 54(14) explanation 1)

Case Study 1 : Simultaneous Drawback and Refund ?

Q: Whether Tax Payer can claim Drawback as well as Refund ?

From 1st July 17 to Sep 17, Exporter could have opted for either of

○ Higher Drawback or

○ GST Refund

From 1st Oct only lower drawback-GST Refund permitted.

Circular no. 37 also clarifies :

- A supplier availing of drawback **only with respect to basic customs duty** shall be eligible for refund of unutilized input tax credit of central tax / State tax / Union territory tax / integrated tax / compensation cess. (Lower Rate of Drawback)
- Refund of eligible Credit on account of **State tax** shall be available even if the supplier of goods or services or both has availed of **drawback in respect of central tax**.

○ Also Refer Circular No. 2212017-Customs

Case Study# 2: Multiple Refund Application

Q: Can Exporter file Multiple Refund Application **for Same Type of Refund** in Single Tax Period?

- As per GSTN Advisory Only one Refund application can be filed **for each type of refund** in a Tax period . E.g. ITC Refund application and IGST paid Refund application
- However Tax payer can't file 2 Refund application for **same type of refund** for single tax period.

Cast Stud# 3: CA / CWA Certificate

Q: Whether CA certificate is required for **each and every Refund Application** ?

v' CGST Rule 89(2) provides CA / CWA certificate 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** in a case **where the amount of refund claimed exceeds two lakh rupees**

v' However CA certificate is **not required** for following Refunds:

);> Export on payment of IGST- **IGST Refund**.

);> Export without IGST- **ITC Refund**

);> **GST paid in advance** and later on Service could not be provided

);> Instead of CGST / SGST IGST paid and vice versa

);> Refund application by Class of Recipient specified by notification



IGST Refund

Process for IGST Refund.

- Exporter to Export Goods with payment of IGST (**without Charging**)
- Shipping Bill (SB) to be filed by Exporter.
- EGM to be updated by Shipping Carrier.
- Exporter to disclose Export Supply in GSTR-1(SB +Port code)
- Exporter to file GSTR-3B and disclose correct Export Supply.
- Details of export invoice in GSTR-1 pushed to ICEGATE.
- Electronic confirmation of Export EDI. 96(2) CGST Rules.
- If confirmed, IGST paid **in respect of each Shipping Bill / Bill of Export** to be credited to Bank Account.
- **No Separate Refund Application.** Shipping bill filed by Exporter deemed to be an application for Refund of IGST on Goods exported out of India
- **Refund to be granted by Customs Authorities.**
- **Only in Exceptional cases manual intervention.**

Case Study# 4. Export General Manifest (EGM)

Q: Exporter has exported Goods on payment of IGST and is having Shipping Bill, he has correctly disclosed such Export Supply in Table 6 of GSTR-1 and 38. Is he required to carry out any Further compliance before he is entitled to Automatic Refund of IGST?

Rule 96(1)

- The shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:-
 - (a) the person in charge of the conveyance carrying the export goods duly files an export manifest (EGM) or an export report covering the number and the date of shipping bills or bills of export; and
 - (b) the applicant has furnished a valid return in FORM GSTR-3 or FORM GSTR-38, as the case may be;

Why IGST Refund were not processed earlier?

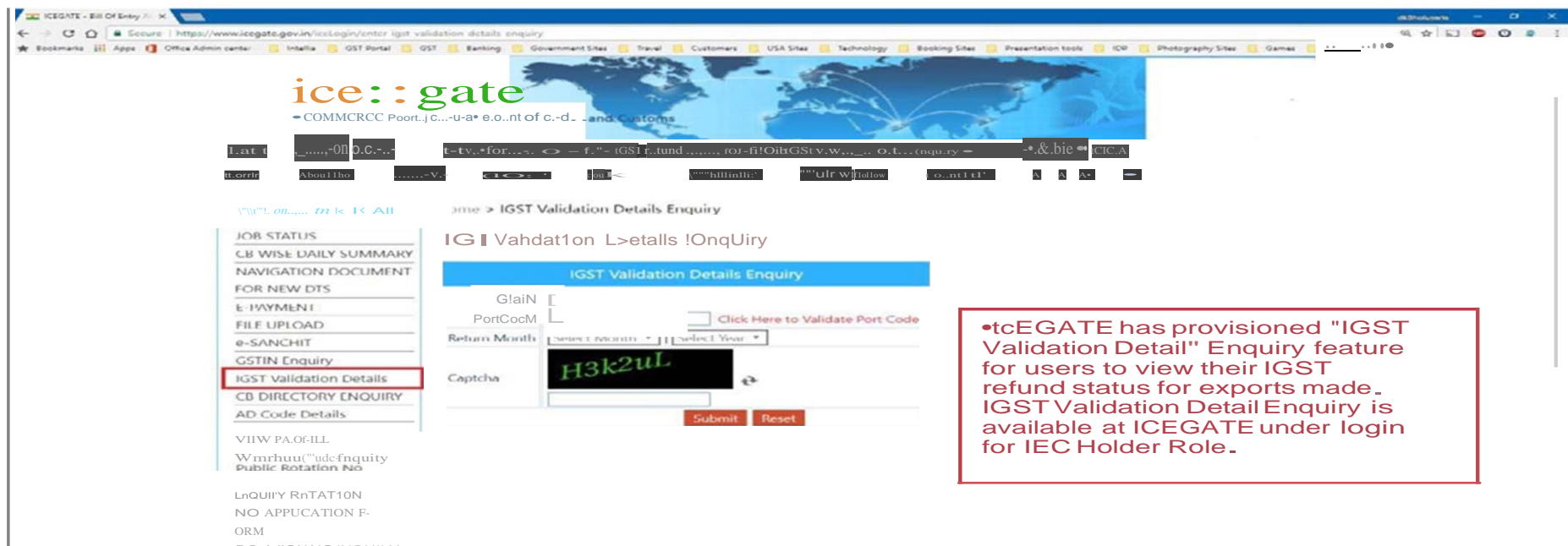
- Circular no. 5/2018-Customs dated 23-02-2018 clarifies
- Many **validation Errors** observed were :
 1. In many cases **shipping bill number or date or port code** are **missing in GSTR 1** and they are not subsequently amended or were invalid
 2. Mismatch of invoice number, taxable value and IGST paid in the **Shipping Bill** vis-a-vis the same details mentioned in **GSTR 1** Table 6 / 6A
 3. **GSTIN declared in the shipping bill does not match** with the GSTIN used to file the corresponding GST Returns
 4. Non-filing or incorrect filing of electronic Export General Manifest **(EGM}**.
 5. **IGST paid** amount claimed in GSTR 1 greater than the IGST paid amount indicated in Table 3.1(b) of GSTR 38 of the corresponding month

ICEGATE Login

Circular no. 5/2018-Customs dated 23-02-2018

ICEGATE Website : [real-time basis errors status to registered users.](#)

Exporters can track the refund status and errors pertaining to their shipping bills on the ICEGATE website





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Shipping Bill

TRACKING AT ICES

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ENTER SHIPPING BILL No

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ENTER IMAGE LETTERS



Submit

**Mechanism
to Track
EGM**

Track status of invoice data shared/to be shared with

[View Export Ledger](#)

Financial Year

2018-19

Month

April

SEARCH

Search Result based on Financial Year : 2018-19 & Month: APRIL

Details to be transmitted/partially transmitted to ICEGATE as below:

Data of vohd export invoices provided in the return period has been transmitted/partially transmitted by the GST System to ICEGATE for further processing.

Particulars	Count	Total Amount ()	Total CESS Amount ()
Total invoices processed from table	41	0.00	0.00
6A Invoices transmitted to ICEGATE	41	0.00	0.00
Invoices not transmitted to ICEGATE ¹ (SB/Port Code details are either missing or Port Code is incorrect)	0	0.00	0.00
Invoices rejected by ICEGATE ²	0	0.00	0.00

¹ Invoices are not transmitted to ICEGATE due to missing SB/Port Details or incorrect Port code. You can view details by clicking on error count and

Download Failed Invoices" button to download details of failed invoices.

Recommended Action: You can amend these errors in Table 9A of subsequent month GSTR-1 by making appropriate corrections and the record shall be revalidated in next execution cycle. No action is required if the invoices are for export of services.

² Invoices were transmitted to ICEGATE but were rejected by ICEGATE due to errors. You can view details by clicking on error count and "Download Failed Invoices" button to download failed invoices details.

Recommended Action: You can amend these errors in Table 9A of subsequent month GSTR-1 by making appropriate corrections and the record shall be



Dashboard

Services

GS

Dashboard

GSTIN :

Track status of invoice data

Financial Year

2018-19

SEARCH

Search Result based on Financial Year : 2018-19 & Month: APRIL

Data of valid export invoices provided in GST System to ICEGATE for further processing.

Export Ledger

Net IGST Balance:0.00
Net CESS Balance:0.00
Data displayed as on 26/06/2018

[DOWNLOAD AS CSV](#)

Return Period	Return Type	Credit/Debit	IGST Amount()	CESS Amount()
05-2018	R3B	Credit	0.00	0.00
05-2018	R1	Debit	0.00	0.00
04-2018	R1	Debit	0.00	0.00
03-2018	R1	Debit	0.00	0.00
04-2018	R3B	Credit	0.00	0.00

[View Export Ledger](#)

Mechanism to Check IGST paid Export

Particulars	Count	Total IGST Amount (₹)	Total CESS Amount (₹)
Total invoices processed from table 6A	41	0.00	0.00

Common Errors and Rectification Procedures

Code	Meaning	Rectification to be made
SB000	Successfully validated	No action required
SB001	Invalid SB details in GSTR-1	Amend GSTR-1 by using Table 9A and fill correct SB details in subsequent GSTR-1
SB002	EGM not filed	Approach shipping line / airline for filing of EGM
58003	GSTIN mismatch	Amend GSTR-1 by using Table 9A
SB004	Record already received and validated. Duplicate transmission	No action required
SBOOS	Invalid Invoice Number	Amend GSTR- 1 by using Table 9A and fill correct Invoice or follow custom Circular no.S
SB006	Gateway EGM not available	Approach shipping line or Gateway port Customs
PFMS Validation Errors	Bank account details of exporter not validated in PFMS	Approach EDI section at the gateway post Customs with correct account number, bank name and branch address and IFSC Code of the branch

SB 005 Error

Invoice details in the shipping bill



Invoice Details declared in GST Returns.

- **Reasons:** 2 Sets of Invoices were prepared by Exporters, Commercial Invoice and GST Invoice with different Serial number
- **Solution :** Circular no. 5/2018-Customs dated 23-02-2018
- Customs officer can verify the information furnished in GSTN and Customs EDI system and sanction refund in those cases where invoice details provided in GSTR 1- Table 6 are correct though the said details provided in the shipping bill were at variance (ie SBOOS Error-Invoice Mismatch Error)

SB 005 Error

- Procedure to Rectify IGST Refund error
 1. Exporter shall provide a **concordance table** indicating **mapping** between GST invoices and corresponding Shipping Bill invoices
 2. **email** such table to customs location where export took place
 3. following procedure laid down in circular **officer will verify SB** and sanction refund
 4. Concession is available only to SB filed upto 31/12/2017 (later on extended to 28/02/2018 and further extended to 30/04/2108 (Cir no. 15/2018-Cus)

SB 003 Error

GSTIN of entity
mentioned in the
Shipping bill



GSTIN of entity filing
GSTR-1/GSTR-3B

- **Reason:** Entity is Same.. Same PAN but entity filing Shipping bill is a registered office and the entity which has paid the IGST is manufacturing unit/other office or vice versa
- **Solution:** Circular No.IS/2018-Customs
- Entity claiming refund (one which has filed the Shipping bill) will give an undertaking to the effect that its other office (one which has paid IGST) shall not claim any refund or any benefit of the amount of IGST so paid. This undertaking has to be submitted to the Customs officer at the port of export.
- DG System has developed utility for Processing SB 003 Error

Case Study# 6: Discrepancy b/w GSTR 3B and GSTR 1

Q: Exporter has exported goods on IGST payment. Such Supply is correctly shown in GSTR-1. However Exporter has shown Zero rated Export Supply in **tables other than 3.1(b)**, say 3.1(a) of GSTR-38. How to resolve such errors.

Solution : Circular No. 12/2018-Customs- Dtd 29th May 2018

Only for IGST paid Export of Goods.

Circular No. 12/2018-Customs- Dtd 29th May 2018

Reason for non
Transmission of data
from GSTN to EDI

IGST Paid export
shown as IGST paid
Domestic Supply
(No Short payment)

IGST paid on Export
as per 3B lesser than
IGST payable as per
GSTR-1

Circular No. 12/2018-Customs- Dtd. 29th May 2018

No Short Payment of IGST

1. Cumulative IGST paid Export + Interstate domestic outward supplies for July to March 18 as per 3B \geq Cumulative IGST amount indicated in GSTR-1
2. Confirmatory email by department.
3. Exporter to Submit CA certificate before 31st October 2018 to Customs office at Port of Export. **No discrepancy between the IGST amount refunded on exports and the actual IGST amount paid on exports of goods for the period July' 2017 to March' 2018**
4. Copy of CA certificate to be submitted to jurisdictional GST office

Confirmatory email



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Dear Sir/M

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Thanks & Regards

Circular No. 12/2018-Customs- Dtd. 29th May 2018

Cases where there is short payment:

1. Cumulative IGST paid Export + Interstate domestic outward supplies for July to March 18 as per 38 < Cumulative IGST amount indicated in GSTR-1
2. Email from GSTN to inform the exporter that their refund / records are held up due to short payment of IGST.
3. Exporter to make payment of such short payment in next 38
4. **Payment Proof** to be submitted Assistant/Deputy Commissioner of Customs in charge of port from where the exports were made, If aggregate IGST refund amount for the said period is upto Rs. 10 Lakhs
5. If IGST Refund amount is more than 10 Lakhs also a **certificate from chartered Accountant** that the shortfall amount has been liquidated

Circular No. 12/2018-Customs- Dtd. 29th May 2018

6. Both the cases Exporter to submit **undertaking to return the refund amount** in case it is found to be not due to them at a later date.

7. **One more CA Certificate** to be submitted before 31st October, 2018 to the same Customs office at the port of export to the effect that there is **no discrepancy between the IGST amount refunded on exports and the actual IGST amount paid on exports of goods for the period July' 2017 to March' 2018**

The exporters would be subjected to a post refund audit under the GST law.

Only Cash payment or ITC can be used in case of Shortfall ?

Case Study# 7: SEZ Export disclosure error.

Q: While filing FORM GSTR-3B registered person has committed error and **Supplies made to SEZ on payment of IGST have been shown in the Table under column 3.1(a) instead of column 3.1(b)** of FORM GSTR-3B, but correctly shown in Table 6A or 6B of FORM GSTR-1 for the relevant tax period and duly discharged their tax liabilities. How to file Refund Application.

v' Circular No. 45/19/2018-GST

v' Refund filing will be allowed in RFD-01A

,/ **Portal even today is not allowing filing of Refund in such case**

,/ Provided IGST Refund Claimed > integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of FORM GSTR-3B filed for the corresponding tax period

Case Study# 8: IGST Refund on Services disclosure Error.

- Export of Services were made with payment of IGST in Feb 2018
- Such Turnover of Export of Services was Correctly shown in GSTR-1 Table 6
- However Zero Rating supply was shown in GSTR-3B Table 3.1.a or table 3.1.c instead of Table 3.1.b
- Can we apply IGST Refund Application for Feb 2018 post issue of Circular no. 45/19/2018-GST dated 30th May 2018?

From:		tax(Integrated Tax/Cess) filed for the selected return period
	Refund of Excess Balance in Electronic Cash Ledger	CREATE
	Refund of ITC on Export of Goods/ Services without Payment of Integrated Tax	CREATE
	On account of supplies made to SEZ unit/ SEZ developer (without payment of tax)	CREATE
	Refund on account of ITC accumulated due to Inverted Tax structure	CREATE
	Recipient of Deemed Exports	CREATE

Case Study# 8: IGST Refund on Services disclosure Error.

- Can we rely on circular no. 26/2017 and show such supply in GSTR-3B of March 2018 (next month) and claim IGST Refund?

Year - 2017-18

Month - April

Status - Open

CST RFD 01A

Export of Services with Input Tax Credit

Note: In the below table, the Refund amount claimed (Integrated Tax/ Cess) should not be more than the amount of Integrated Tax/ Cess mentioned in Zero-rated Supply of GSTR-3B item 3.1(b) filed for the period.

Refund Claimed (In)

Head	Integrated Tax (₹)	Central Tax (₹)	State/UT Tax (₹)	CESS (₹)	Total (₹)
TIX	711.110			711.110	1422.220

Note: The amount of refund claimed should not exceed the amount of Integrated Tax/ Cess mentioned in Zero-rated Supply of GSTR-3B item 3.1(b) filed for the period.

Bank Account Number

Select Account Number

Select

Note: In case you want refund in another preferred bank account which is different from the one mentioned in the return, you should inform that the disbursement of refund amount be credited to the preferred bank account.



ITC Refund

Pre requisite for export of Goods/Services without IGST

- Conditions of Definition of Export of Goods / Services needs to be followed.
- Export prior to export furnish a **bond or a Letter of Undertaking** in FORM GST RFD-11, agree to adhere conditions mentioned in LUT.
- Details of the export invoices to be updated in FORM GSTR-1 Table 6 /6A
- **Details of Export Invoices to be shown in GSTR-38 Table 3.1(b)**
- Online File an application electronically in FORM GST RFD-OIA along with annexures.
- Physical documents to be submitted with Jurisdictional Officer.

Case Study# 9 Export Without LUT

Q: Exporter has exported Services without filing LUT and have now filed Application for Refund of ITC. Jurisdictional Officer is of the view that Refund Application is not maintainable for non submission of LUT. Kindly advise Exporter in this case.

v' Rule 96A(1) mandates filing of LUT.

v' Circular no. 37 clarifies

v' Substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made

v' Delay in furnishing of LUT in such cases may be condoned and the facility for export under LUT may be allowed on ex post facto basis taking into account the facts and circumstances of each case

Case Study# 10 Discrepancy b/w GST invoice & SB

Q: While submitting SB due to typo error amount was wrongly mentioned as 2,40,000/-, instead of correct amount as per Invoice of Rs 2,50,000/-, how to rectify this error? Exporter is seeking ITC Refund and does not want to go for amendment of SB. What amount to be considered for Zero Rated supply of Goods.

v''' Circular no. 37 clarifies the value of the goods declared in the GST invoice and the value in the corresponding shipping bill / bill of export should be examined and the lower of the two values should be considered as Zero rated supply of Goods . .

Case Study# 11 Condition of Export within 90 days violated

Q: Exporter is exporting Goods on LUT without payment of IGST. Exporter has issued **export invoice on 15th September 2017** and could not export within 90 days from date of issue of invoice. **Actual export happened say on 28th February 2018**. Department is of the view that since LUT condition of exporting goods within 90 days of invoice (Rule 96A) is violated exporter should first pay IGST and then claim Refund.

v' Circular no. 37 clarifies :

v' As long as goods have actually been exported even after a period of three months, payment of IGST first and claiming refund at a subsequent date should not be insisted upon.

v' **jurisdictional Commissioner may consider granting extension** of time limit for export on post facto basis keeping in view the facts and circumstances of each case.

Case Study# 12 : Combined ITC Refund Application

Q: In case of Exporter say in July, Aug, September 17 inputs or input services were received and input tax credit has been availed but there was no export supply & October, November and Dec 17 only Export supplies were made, no input or Input Services. How to claim Refund of ITC in such case?

- ./ Circular no. 37 clarifies
- ./ Exporter, at his option, may file refund claim for **one calendar month / quarter or by clubbing successive calendar months / quarters within a financial year. (Option not yet Activated)**
- ./ **Other Practical Option, export October, November and December supply by paying IGST out of ITC of July, August and September and then claim IGST Refund.**
- ./ **Similar set of issues even in Inverted duty refund.**

Case Study# 13 :Simultaneous IGST & ITC Refund Application

Q: Exporter has 10 inward invoices during the month, ITC involved say Rs. 5 Lakhs. Against these 10 inward Invoices 3 export invoices were issued with IGST payment of Rs. 8 Lakhs. Can Exporter file 2 Refund application, one for IGST Refund of 8 Lakhs and another one for ITC Refund of 5 Lakhs, totalling to 13 Lakhs? Assume Exporter has no opening or closing stock and sufficient opening ITC.

v' Only one Refund Application.

v' 3rd Proviso to Section 54(3) reads as under

v' Provided also that **no refund of input tax credit shall be allowed**, if the supplier of goods or services or both avails of drawback in respect of central tax or **claims refund of the integrated tax paid on such supplies**

Case Study# 14: BRC / FIRC must for Export of Goods?

Q: Jurisdictional officer is insisting for BRC / FIRC for Export of Goods and since exporter could not produce BRC/ FIRC he is contemplating Rejection of Refund Application. Kindly advise Exporter.

,/ Circular no. 37 clarifies

,/ Realization of convertible foreign exchange is **one of the conditions for export of services & Not for Goods**, therefore proof of realization of export proceeds for processing of refund claims related to export of goods **is not required**.

Case Study# 15 Whether LUT is restrictive? _____

Q: Exporter has taken LUT, is it optional for him to export Goods on LUT or is it compulsory?. i.e. whether in spite of having LUT can exporter export against IGST and then claim Refund of IGST or he has to export without IGST and opt for ITC Refund ?

No such restriction. Exporter qua each consignment choose to pay IGST or Export under LUT.

Case Study# 16 Non Realisation of Forex _____

Q: Exporter has taken LUT and has exported Services say on 15th July 2017. Payment of such services is received by exporter say on 1st August, 2018. Kindly advise Exporter.

v' Rule 96A. Condition of LUT violated

v' Exporter has undertaken to pay the tax due along with the interest specified under sub-section (1) of section 50 within a period of fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange.

Case Study# 17 Export of Exempted Nil Rated Goods

Q: Whether bond or Letter of Undertaking (LUT) is required in the case of zero rated supply of **exempted or non-GST goods** (e.g. Alcohol for human consumption) and whether refund can be claimed by the exporter of exempted or non-GST goods?

v" Circular No. 45/19/2018-GST

v" No Requirement of LUT/Bond

v" Comply requirement of Existing Law, E.g. Excise / VAT / Custom etc.

v" No Question of IGST Refund.

v-' **Exporter would be eligible for refund of unutilized input tax credit of central tax, state tax, union territory tax, integrated tax and compensation cess in such cases**

v" Registration must to claim Refund.

Case Study# 18 Refund of Cess

Q: Whether an exporter of Aluminium Products (cess is not levied on Aluminium products) is eligible to claim refund of unutilized input tax credit of compensation cess paid on inputs (Coal)?

Circular No. 45/19/2018-GST

16(2) IGST act subject to 17(5) allows Refund of ITC.

If Export is Aluminium is made on payment of IGST as there is no cess on Outward supplies, **Refund of IGST Cess** is not permitted in this case

16(2) also applies to Cess Act therefore **Refund of ITC permitted.**

Can we apply same logic for inverted duty refund ?

Case Study# 19 : Deficiency Memo

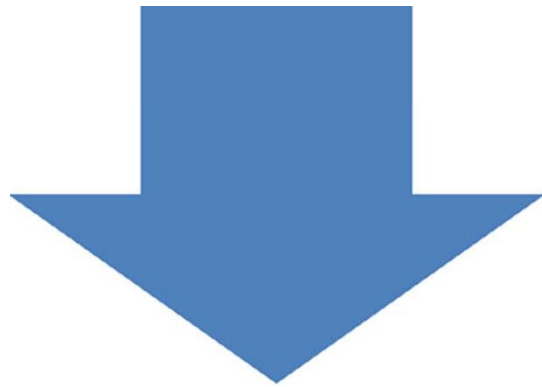
Q: Exporter has submitted Refund application for Refund of ITC. Later on Jurisdictional Officer have noticed deficiencies. Deficiency Memo was issued and were replied by Exporter. Officer is proposing to issue one more Memo. Whether more than one Deficiency Memo is allowed.

./ Circular no 37 clarifies :

./ Deficiency memo can't be issued more than once unless

1. The deficiencies pointed out in the original memo **remain unrectified**, either wholly or partly, or
11. any **other substantive deficiency is noticed subsequently**.

Debit / Credit Entry in Electronic Credit Ledger.



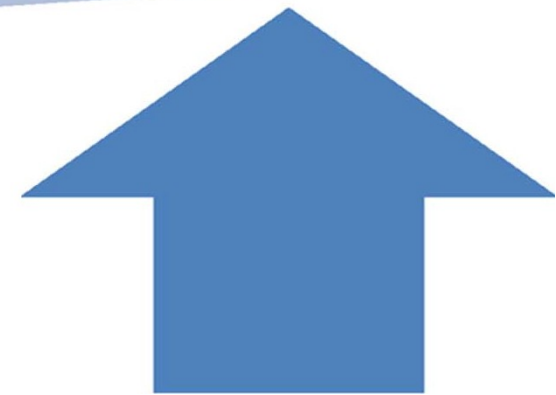
Debit Entry

Refund Application in Form RFD-OIA
To the extent of Refund Applied
Electronic Credit Ledger.



Credit Entry

Refund is not admissible or
refund is rejected either fully or partly
Expln Rule 93. Deemed to rejected only
when appeal is finally rejected or claimant
gives undertaking of not filing appeal.





ITC Refund Process

ITC / Inverted Duty Refund Process.

01

Online Submission of RFD-01A

02

Physical Submission of Documents

03

Initial Scrutiny of Documents by PO

ITC / Inverted Duty Refund Process

04

Acknowledgment of Refund Application
RFD-02

05

Deficiency Memo – RFD-03

06

Provisional Refund Order – RFD-04

ITC / Inverted Duty Refund Process

07

Payment Advice – RFD-05. (if no Adjustment / Withholding etc.)

08

Refund / Refund Rejection Order
RFD-06

09

Refund withheld / Refund Adjustment
order RFD-07

ITC / Inverted Duty Refund Process

10

SCN – Refund not admissible / payable
RFD-08

11

Applicant Reply within 15 days RFD-09

12

PO satisfied amount refundable RFD-06.
PO satisfied amount is not payable –
Credit to consumer fund.

Acknowledgement of Refund Application go cGsTRules

- !• **If Relates to refund from the electronic cash ledger :**

- !• immediately.

- !• **Other than claim of Refund from electronic cash ledger**

- No Immediate Acknowledgment across the counter

- Proper officer to scrutinise application for completeness within 15 days

- if found complete - Acknowledgment for Refund in FORM GST-RFD-02

- !• Time limit of 60 days (to complete Refund Process) shall be counted from date of acknowledgment. (effectively 75 days)

Communication of Deficiency

- !• If Deficiency noticed by Proper Officer while Scrutinizing Application for Completeness., **instead of issuing Acknowledgment, PO shall communicate the deficiencies** to the applicant in FORM GST RFD-03 manually
- Deficiency Memo (DM) should be complete in all respects
- !• Exporter is required **to file fresh Refund application manually** using the ARN and debit entry generated originally.

Provisional Refund

- 90% of Total Refund amount claimed (without making any reduction for credit being provisionally accepted)
- To be granted within seven days from the date of the acknowledgement of Refund application (7 + 15 effectively 22 days)
- Provisional refund shall be granted separately for each head CT / ST / UTII
- 3 Conditions for Grant of Provisional Refund
 - I. To be granted only to claimant if during any period of five years immediately preceding the tax period to which the claim for refund relates has not been prosecuted for any offence under the Act or under an existing law (Old regime) for tax evasion exceeding Two Crore Fifty lakh rupees.)

Provisional Refund

2. No proceedings of any **appeal, review or revision is pending** on any of the issues which form the basis of the refund . However if such proceeding are stayed by the appropriate authority or court then Refund is permissible . PO will insist on declaration affirming adherence to condition 1& 2.
3. Proper officer is **prima facie satisfied** that the amount claimed as refund is due to the applicant,
 - Order for Provisional Refund- FORM GST RFD-04
 - Payment advice in FORM GST RFD-05.
 - Remaining 10% will be paid within a maximum period of 60 days from the date of acknowledgment of application {RFD-02}.
 - Interest @ 6% is payable if full refund is not granted within 60 days.

Final Refund Order

If Final Refundable amount = the applied amount
Refund within 60 days from RFD-02 date

If Final Refundable amount < the applied amount

- PO to issue Notice to the applicant in **FORM GST RFD-08 (SCN)** .
- The applicant has to reply within 15 days of receipt of the notice in **FORM GST RFD-09**.
- Principles of natural justice to be followed before making the final decision.

Power to withhold Refund- Proper Officer

- D Section 54(10)
- D Refund is due
- D Registered Person has defaulted in furnishing any return or payment of any tax, interest or penalty, (not stayed by any court, Tribunal or Appellate Authority)
- D PO may withhold payment of refund due until Return is filed or payments are made OR
- D Deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law
- D VAT / Service Tax / Excise Dues can be deducted by PO
- D Refund in CGST can also be adjusted against Demand of SGST / IGST etc. by PO

Power to withhold Refund- Commissioner

- !• Section 54(11)
- !• Commissioner may, after giving the taxable person an opportunity of being heard, withhold the refund if
 - Order giving rise to a refund is the **subject matter of an appeal or further proceedings.**
 - **Other Proceedings is pending** and the Commissioner is of the opinion that grant of such refund is likely to **adversely affect the revenue**
 - Other proceedings on account of malfeasance or fraud committed is pending.

Case Study# 20: Provisional Refund.

Q: Take a case 100% exporter of goods who has applied for ITC Refund of say Rs. 1 Lakh, only 40,000 ITC is reflected in GSTR-2A, balance is not reflected. Exporter has submitted hard copy of all invoices to substantiate his claim of ITC of Refund of Rs. 1 Lakh. **Officer is proposing to allow Provisional Refund @ 90% of only 40,000/-.** Whether action of officer is in line with GST Law?

Case Study# 20: Provisional Refund.

- Section 54 (6) reads as under :
- Notwithstanding anything contained in sub-section (5), the proper officer may in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons other than such category of registered persons as may be notified by the Government on the recommendations of the Council refund on a provisional basis ninety per cent. of the total amount so claimed **excluding the amount of input tax credit provisionally accepted** in such manner and subject to such conditions limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

Case Study# 20: Provisional Refund.

- Section 41 Reads as under
- 41. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.
- (2) The credit referred to in sub-section (1) shall be utilised only for payment of self assessed output tax as per the return referred to in the said sub-section.

Case Study# 20: Provisional Refund.

- v' Circular no 37 clarifies :
- v' Because of delays in operationalizing the requisite modules on the common portal, in many cases, suppliers' invoices on the basis of which the exporter is claiming refund may not be available on the system. For processing of refund claims of input tax credit, verifying the invoice details is quintessential.
- v' As the refund claims are being filed by the recipient in a semi-electronic environment and is completely based on the information provided by them, it is necessary that invoices are scrutinized



Quantification of ITC Refund

Formula for Refund of ITC u/r 89(4)

- Refund Amount = (Turnover **outward supply** of Zero-rated supply of goods + Turnover of **outward supply of** zero-rated supply of services) x Net ITC **(after Section 17 / Rule 42 & 43 Reversal)** + Adjusted Total Turnover
- Reasoning for this formula?

Turnover of zero-rated supply of goods =====

- "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period **without payment of tax** under bond or letter of undertaking, **other than** the turnover of supplies in respect of which refund is claimed under **sub-rules (4A) or (48)** or both

Exclusion :

- Export of Goods with Payment of IGST
- 89(4A) : Turnover of Export of Goods made out of inward supply from {Deemed Export)-
 - Supply of **goods** by a registered person against **Advance Authorisation**
 - Supply of **capital goods** by a registered person against **Export Promotion Capital Goods Authorisation**

Turnover of zero-rated supply of goods =====

- Supply of goods by a registered person to **Export Oriented Unit**
- Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs., dated the 30th June., 2017 (as amended) against Advance Authorisation.

89(48)

Notification No. 40/2017-Central Tax (Rate) 

Notification No. 41/2017-1 Integrated Tax (Rate)

(Procurement at concessional rate of 0.10% for export)

Notification No. 78/2017-Customs* - Seeks to exempt goods imported by **EOUs** from integrated tax and compensation cess

- Notification no. 79/2017 Customs* - Seek to amend various Customs exemption notifications to exempt Integrated Tax/Cess on **import of goods under AA/EPCG** Schemes

* (Exemption Extended upto 30th Sep 2018)

Net Input Tax Credit.

- v' "Net ITC" means input tax credit **availed** on **inputs and input services** during the **relevant period** other than the input tax credit availed for which refund is claimed under sub-rules (4A) (**Deemed Export**) or (4B) (**Outward supply to merchant exporter at concessional rate etc.**) or both;

Exclusion :

- ITC paid on inward supply from (Deemed Export) or (Outward supply to merchant exporter at concessional rate etc.)
- ITC on capital goods.

Inclusion :

- ITC paid on inward supply exported with payment of IGST.

Turnover of zero-rated supply of services

- "Turnover of zero-rated supply of services" = value of zero-rated supply of services **made without payment of tax** under bond or letter of undertaking, calculated in the following manner, namely:-
- Zero-rated supply of services=
 - !• Payments received during the relevant period for zero-rated supply of services
 - !• **Add:**
 - !• Zero-rated supply of services **where supply has been completed during relevant period** for which payment had been received in advance
 - !• **Less:**
 - !• advances received for zero-rated supply of services for which the **supply of services has not been completed** during the relevant period;

Exclusion :

- Export of Services with Payment of IGST

Adjusted Total turnover

Turnover **in a State** or a Union territory, as defined under clause (112) of section 2, excluding-

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

Exclusion :

- Domestic Outward supply of Exempt supplies
- Turnover of Export of Goods out of inward supply from (Deemed Export) or (Outward supply to merchant exporter at concessional rate etc)

Case Study# 21: Refund of ITC on CaRital Goods.

Q: Whether Exporter can avail Refund of ITC paid on Capital Goods?

Refer 89(4) Formula

"Net ITC" means input tax credit availed on **inputs and input services** during the **relevant period** other than the input tax credit availed for which refund is claimed under sub-rules (4A) **(Deemed Export)** or (4B) **(Outward Supply to merchant exporter at concessional rate etc)** or both;

Case Study# 22 : Refund of ITC on Concessional Procurement

- Q. Whether exporter will be eligible to take credit / Refund of ITC paid @ 0.05% / 0.10% paid to Vendors.
- v' "Net ITC" means input tax credit availed on **inputs and input services** during the **relevant period** other than the input tax credit availed for which refund is claimed under sub-rules (4A) (**Deemed Export**) or (4B) (**Outward supply to merchant exporter at concessional rate etc.**) or both;
 - v' Circular no. 37 Para 13.2. ult is also clarified that the exporter will be eligible to take credit of the tax @ 0.05% / 0.1% paid by him. .
 - v' Since such supply can only be exported_, kept out of formula to avoid reduction of ITC due to Proportionate method.

Case Study# 23 : Refund of ITC on Concessional Procurement

Q. Exporter is making Domestic as well Export supply. Exporter has procured supply by paying GST @ 0.10% to Vendors. For procuring and exporting this supply certain Services were availed by exporter e.g. Transport Services. **Whether exporter can claim full refund of ITC paid on such inward supply or has to claim refund on Proportionate basis as per 89(4) formula ?**

89(4B) reads

..... refund of input tax credit., availed in respect of inputs received under the said notifications for export of goods and **the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted**

Case Study# 24: Transitional Credit

Q. Whether Transitional Credit were migrated via TRAN-1 be claimed as ITC Refund post 1st July 2017

Circular no. 37 clarifies :

The transitional credit pertains to duties and taxes paid under the existing laws viz., under Central Excise Act, 1944 and Chapter V of the Finance Act, 1994, the same cannot be said to have been availed during the relevant period and thus, cannot be treated as part of 'Net ITC'

Refer Sec 2(62) definition of ITC, Transitional credit is not part of ITC.

Case Study# 25 : IGST Refund of Transitional Credit.

- Q. Transitional Credit carried forward through TRAN 1 and used against IGST payment of export. Whether Exporter can IGST refund on such Outward Supply ?

Possible View :

- I. What is claimed in Tran 1 becomes ITC by entering in Electronic credit ledger.
- II. ITC in electronic credit ledger can be used to pay any GST on Export (Tax Component) subject to Section 49(5)
- III. GST so paid on Export may be refunded if eligible under Section 54

Case Study# 26 : Refund of Taxes paid in earlier regime

Q. Tax payer has paid Service Tax on Advance basis in old regime, however services could not be provided and subsequently in New regime such amount was refunded. **Whether Refund of such excess Service Tax paid be claimed as Refund in GST ?**

,/ Circular no. 37 Clarifies:

Any Taxes paid in earlier regime and covered in Section 142(3)., (4) & (5) shall be disposed of in accordance with the provisions of the old law and such refund application shall be rejected in GST

Case Study# 27 : Export of Goods to Nepal & Bhutan

Q. Will export of goods to Nepal and Bhutan treated as zero rated and thereby qualify for all the benefits available to zero rated supplies under the GST regime?

v' Export of goods to Nepal or Bhutan fulfils the condition of GST Law regarding taking goods out of India. Hence, **export of goods to Nepal and Bhutan will be treated as zero rated** and consequently will also qualify for all the benefits available to zero rated supplies under the GST regime.

Case Study# 28 : Export of Services to Nepal & Bhutan

Q. Exporter is exporting Services to Nepal & Bhutan, however instead of forex he is getting payment in INR, whether zero rating benefit will be available in this case?

v' Notification 42/2017-Integrated Tax (Rate)

v' **IGST exempted** on inter-state supply of services to Nepal and Bhutan against payment in INR

v' Further it has been clarified that in respect of such supply ITC **Reversal u/r 42 and 43 is not required.**

v' Sec 16(2) IGST : Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply

Case Study# 28A : ITC Refund application Services.

Q. Exporter is 100% exporter of Services. In the month of January 18 , 10 Export services of 50 lakhs each were rendered. Net ITC is say 100 Lakhs. Out of this 10 Export Invoices, realisation in forex is collected for say 8 Invoices. For balance 2 Invoices realisation is likely to take some time. To avoid blockage of capital management is insisting on filing of Refund application immediately. Whether filing of Refund application is advisable in present scenario ?



ITC Refund – Mise
Matters.

Time limit for filing Refund Application

Section Ref	Details	Time limit
Exp. 2(a) to sec 54	Export of goods - By sea or air -By land -By post	Date on which ship or aircraft leaves India - Date on which goods passes the Frontier -Date of dispatch of goods by the Post Office
Exp. 2(b) to sec 54	Supply of goods as deemed exports	Date of filing of return relating to such deemed export
Exp. 2(c) to sec 54	Export of service -Supply of service completed before receipt of payment - Payment of service received prior to date of issue of invoice	Date of receipt of payment in convertible foreign exchange Date of issue of invoice
Exp. 2(d) to sec 54	Consequence of judgment of Higher Authorities etc.	date of communication of such judgment

Time limit for filing Refund Application

Section Ref	Details	Time limit
Exp. 2(e) to sec 54	Refund of Unutilized ITC due to inverted duty rate structure	End of the financial year in which such claim for refund arises
Exp. 2(f) to sec 54	tax is paid provisionally	the date of adjustment of tax after the final assessment thereof
Exp. 2(g) to sec 54	in the case of a person, other than the supplier	date of receipt of goods or services or both by such person; and
Exp. 2(h) to sec 54	in any other case	date of payment of tax

Refund application to be made within 2 years from Relevant date

Issues in fling statement 3

- Date format – DD/MM/YYYY Excel 2016 is most preferable
- EGM: Digits should not be more than 7
- FIRC date : e.g. if Refund Application is made for the month of August, 2017, FIRC dated July 2017 is not allowed .
- Absence of Error Validation details / help



Inverted duty
Refund

Meaning of Inverted Duty Refund

Where the credit has accumulated on account of **rate of tax on inputs** being higher than the **rate of tax on output supplies** (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

No Inverted Duty Refund if:

- Outward supply is NIL Rated
- Outward Supply is exempted
- Supplies notified by Government.

Inverted Duty Refund

- Formula 89{5)
- Maximum Refund Amount = {(Outward Supply of Turnover of inverted rated supply of goods and services) x Net ITC + Adjusted Total Turnover of Outward Supply}- tax payable on such inverted rated Outward supply of goods and services
- Services is added retrospectively from 01/07/2017
- Logic for reducing Tax from Refund amount?

Net ITC for Inverted Duty Refund

- Net ITC_n 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 (48) or both;
- Meaning of Net ITC is same like 89(4)

Inclusion

- ITC only Inputs

Exclusion

- ITC of Capital Goods / Inputs services
- Whether ITC of all Inputs or only those inputs resulting into inverted duty Outputs? All inputs
- Interplay of Notification no. 5 etc.?

Adjusted Total turnover for Inverted Duty Refund

- "Adjusted Total turnover" means the turnover in a State or a Union territory.. as defined under clause (112) of section 2.. excluding-
- (a) the value of exempt supplies other than zero-rated supplies and
- (b) the turnover of supplies in respect of which refund is claimed under sub rules (4A) or (48) or both.. if any
- Meaning of Adjusted Total Turnover is [same like 89\(4\)](#)
- **Turnover of outward supply other than Inverted not to be deducted.**

Turnover of inverted rated supply of goods and services

How to arrive at Turnover of Inverted rated supply?

Whether one to one co relation is required when 89(5) prescribes straight -acket formula ?

Input X	Input V	Input Z	Output ABC	Turnover of inverted rated supply of goods and services?
5%	12%	18%	12%	Total Outward supply of ABC of relevant period
18%	18%	18%	18%	NA
12%	5%	5%	5%	Total Outward supply of ABC of relevant period
12%	12%	12%	Nil Rated	NA
12%	12%	12%	Exempted	NA

Case Study# 29 : Inverted Duty Refund- Services

Q. E Tailer is selling Goods having GST Rate 5% and consuming Input Services like Rent, Advertisement, Logistics Services, Professional Consultancy etc. having GST Rate more than 5% . Whether E Tailer can apply for Inverted Duty Refund on such services?

,/ As of now **No.**

,/ **Section 54(3)(ii) CGST**

,/ where the credit has accumulated on account of **rate of tax on inputs** being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council

Case Study# 30 : Notified Goods- Export ITC Refund

Q. Exporter is exporting Goods notified vide notification no. No.S/2017-Central Tax (Rate) as not eligible for ITC Refund (e.g. Woven Fabrics). If Exporter exports such notified goods, is he eligible for refund

Circular no. 18 clarifies:

Subject to the provision of Section 54(10) (Filing of Return / payment of Return Dues etc.), a manufacturer of such fabrics **will be eligible for refund of ITC** of GST in respect of such exports.

Case Study# 31: Inverted Duty Refund-Job Worker

Q. Whether Independent fabric processors (job workers) in the textile sector supplying job work services are eligible for refund of unutilized input tax credit on account of inverted duty structure under section 54(3) of the CGST Act, 2017, even if the goods (fabrics) supplied are covered under notification No. 5/2017-Central Tax (Rate) dated 28.06.2017?

Circular No. 48/22/2018-GST -fabric processors shall be eligible for refund of unutilized ITC on account of inverted duty structure

Refund can be claimed only for Inputs like Chemical etc.

No Inverted Duty Refund for Input Services.

Case Study# 32 : Inverted Duty Refund

Q. Assume X is a Manufacturer. He has purchased Item A {18% GST) and Item B (28% GST) and manufactured Product C (5% GST). Gross Margin of X Ltd is very low say 5%. X has exported Goods with 5% IGST and directly got IGST Refund. Whether X can also apply for Inverted Duty Refund ?

,/ Rule 96(3)

Upon Receipt of

as the case may be, shall process the claim of refund in respect of export of goods **and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant**

Case Study# 32 : Inverted Duty Refund

Section 54(3) third Proviso.

Provided also that **no refund of input tax credit shall be allowed**, if

- the supplier of goods or services or both avails of drawback in respect of central tax or
- claims refund of the integrated tax paid on such supplies

Case Study# 33 : Inverted Duty Rate identification.

Q. Assume a case where inputs with different rate of 12%, 18%, 28% are used together with different ratio to manufacture different product of 12%,18%,28% rate etc. In this situation, how it can be ascertained that particular product is of inverted duty structure?

Inverted Duty Refund Multiple Inputs & Multiple Outputs.

D Based on available Costing Records / BOM

D Input A: 5%_, 20% consumption for output X_, 30% for output Y_, 50% for output Z.

D Input B : 12%_, 10% consumption for output X_, 60% for output Y_, 30% for output Z.

D Input C: 18%_, 80% consumption for output X_, 5% for output Y_, 15% for output Z.

D Output X GST Rate : 5%

D Output Y GST Rate : 12%

D Output Z GST : 18%

D Assuming Normal Process loss.

D How to find out inverted duty Turnover for 89(5) formula?

Inverted Duty Refund Multiple Inputs & Multiple Outputs.

Weighted Average Working	Weighted Avg. Input Rate	Output Rate	Remark
Output X = $5 * 20\% + 12 * 10\% + 18 * 80\%$	16.6%	5%	Turnover of Output X to be counted for Inverted duty
Output Y = $5 * 30\% + 12 * 60\% + 18 * 5\%$	9.6%	12%	Turnover of Output Y NOT to be counted for Inverted duty
Output Z = $5 * 50\% + 12 * 30\% + 18 * 15\%$	8.8%	18%	Turnover of Output Z NOT to be counted for Inverted duty

Possible View

Case Study# 34 Inverted Duty Refund & Notification no. 5

- D Mr. X is a Processor as well as manufacturer of item covered by Notification no. 5 {Inverted ITC Refund Prohibited)
- D His processing services are taxed @ 5% and outward supply of goods are also taxed @ 5%
- D He is Buying chemicals say @ 18% and this chemicals are used equally in Processing as well manufacturing
- D Issues involved :
 - D Whether in this case Turnover of inverted rated supply of goods and services will include only Turnover of Services in this case? Is it correct to hold view that Notification no. 05/2017- CT(R) will override Explanation to Rule 89(5) ?
 - D Whether Net ITC will include Net ITC only in respect of Processing Services or Total Net ITC ?
 - D How to find out NET ITC attributable to such processing services?

Case Study# 34 Inverted Duty Refund & Notification no. 5

D One Possible view

D Net ITC = ITC availed as per Provision of GST Act / Law

D Notification no. 5 since debars credit, such debarred credit can't form part of Net ITC

D Only other ITC will form part of Net ITC for 89{5)

D Segregation of ITC will be an issue

D Either Detailed Records or based on turnover

Anti Profiteering

171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

- In earlier process, Cenvat was not receivable but now IT is receivable, whether availability of such ITC will fall under Anti Profiteering. Whether such ITC needs to pass on ?
- In GST Regime on one item was earlier taxed at say 18% and thereafter Government has reduced rate of tax say 12%, whether this reduction of 6% tax will fall under Anti profiteering and Taxable person trading on such Item is suppose to pass on such benefit to its recipient?

Whether Refund application be rejected on grounds of anti profiteering ?



Concessional Rate
Procurement –
Merchant Export-
Deemed Export

Supply at concession rate to Merchant Exporter

- Notification no. 40/2017-CentralTax {Rate) dt. 23rd October 17
- Notification no. 41/2017-IGST {Rate) dt. 23rd October 17

- Summary:
- Intra State supply : CGST 0.05% + SGST rate 0.05%
- Inter State Supply : IGST 0.10%
- Subject to fulfilment of conditions.
- Only for Goods / Services
- Supply of Goods only to Merchant Exporter.
- Supply of goods to Manufacturer exporter
- Benefit is optional. Supplier is not require to submit Bond / LUT etc.
- Such supply is not an exempt supply (only wholly exempt supply is exempt supply)

Cumulative Conditions.

1. Registered supplier shall supply the goods to the registered recipient on a tax invoice;
2. Registered recipient shall export the said goods within a period of 90 days from the date of issue of a tax invoice by the registered supplier;
3. Registered recipient shall be registered with an Export Promotion Council or a Commodity Board recognised by the Department of Commerce

Cumulative Conditions.

4. Registered recipient shall indicate the **GSTIN** of the registered supplier and **the tax invoice number** issued by the registered supplier in respect of the said goods in the **shipping bill or bill of export**, as the case may be:

Circular no. 42/2017 (Customs) dated 7th Nov 2017 further clarifies:

- Name and GSTIN of the registered supplier should be provided against each item in **Third Party details column of Shipping Bill**.
- GST Invoice details of registered supplier of each item should be declared in ARE certificate and **Date column** of Shipping Bill format.
- in case of an export consignment containing **multiple supplies by registered suppliers**, the registered recipient (merchant exporters) need to provide details of all registered suppliers and corresponding invoices against each item in the Shipping bills.

Cumulative Conditions.

5. Registered recipient shall place an order (in Writing) on registered supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the registered supplier;
 - a. Whether Purchase Order is require to be submitted before supply or can it be submitted Post supply / Post export ?
 - b. Whether such submission of PO is online or offline?.
 - c. What if Copy of Purchase order is not submitted with JurisdictionalTax officer of Supplier?

Cumulative Conditions.

- e. What if there is mismatch between actual quantity supplied and quantity mentioned in Purchase Order?
 - Quantity supplied (100) is more than mentioned in PO (SO) .
 - Quantity supplied (40) is lesser than mentioned in PO (SO).
- f. Is there any specific format for submission of Purchase order information?

Cumulative Conditions.

6. Registered recipient shall **move the said goods** from place of registered supplier
 - (a) **directly to the Port**, Inland Container Depot., Airport or Land Customs Station from where the said goods are to be exported; or
 - (b) directly to a **registered warehouse** from where the said goods shall be move to the Port., Inland Container Depot., Airport or Land Customs Station from where the said goods are to be exported;

Circular no. 42/2017 (Customs) dated 7th Nov 2017 further clarifies:

- Registered principal place of business or registered additional place of business shall be deemed to be a "registered warehouse" .

Cumulative Conditions.

7. If the registered recipient intends to aggregate supplies from multiple registered suppliers and then export, the goods from each registered supplier shall move to a registered warehouse and after aggregation, the registered recipient shall move goods to the Port, Inland Container Depot, Airport or Land Customs Station from where they shall be exported;

8. in case of situation referred to in condition (7), the registered recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the registered warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgment of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier; and

Cumulative Conditions.

9. when goods have been exported.. the registered recipient shall provide **copy of shipping bill or bill of export** containing details of Goods and Services Tax Identification Number (GSTIN) and **tax invoice of the registered supplier along with proof of export general manifest or export report** having been filed to the registered supplier as well as jurisdictional tax officer of such supplier.
- **How to ensure commercial secrecy while submitting above details?**
 - **Circular no. 42/2017 (Customs) dated 7th Nov 2017 : Registered recipients (Merchant exporters) may.. if required.. **exclude** commercially sensitive information while providing copies of Shipping Bills to registered suppliers.**

Major Deterrent

- The registered supplier shall not be eligible for the above mentioned exemption (Supply of concessional rate of .10%) if the registered recipient fails to export the said goods within a period of ninety days from the date of issue of tax invoice.
- How can Supplier safeguard against risk of non export by exporter within 90 days ?
- What will be Rate of Tax in such case?
- Who will bear Interest?
- Whether exemption will be withdrawn only in respect of those transaction where export could not be made within 90 days ?

Case Study# 35 Instance of Concessional rate supply

- Mr. X is a manufacturer_, selling Goods to Mr. Y (Bill to) and despatching Goods to Mr. Z (Ship to). Mr. Z is actual exporter and undertakes to complete export goods in compliance with notification no. 40 (CTR) /41(ITR) .
- Whether Mr.X can supply goods to Mr.V at concessional rate of .10% ?
- Whether Mr.V can supply goods to Mr.Z at concession rate of .10% ?

Case Study# 36 : Concessional Rate supply to EOU ?

- Whether Registered Supplier can supply goods to EOU at concessional Rate of 0.10%. EOU undertakes to actually export goods within 90 days.
- Whether merchant exporter who purchases the grey cloth from weaver and later on organise dyeing process from Textile dyeing unit and then get embroidery work done from other unit, can purchase grey cloth & services like dyeing, embroidery charges etc. @.10%.
- Whether such merchant exporter can send Inputs for processing to job work before export?

Case Study# 37 Concessional Rate Sale for Export & ITC Refund

Q. Mr. X has Purchased Good for Rs. 8 Lakhs + 18% IGST. Mr. X has sold such Goods to Mr. A Merchant Exporter for Rs. 10 Lakhs + 0.1% IGST. (Concessional Rate). Who can apply for Refund , Quantum of Refund and under Which Rule?

Mr. A will get maximum Refund of Rs. 1.,000 subject to Rule 89(4) on export of Goods.

Mr. X will get maximum Refund of Rs. 1.,44.,000 subject to Rule 89(5) inverted duty structure.

Case Study# 38: Direct Export and Concessional rate

- If exporter is doing direct export and also supply certain goods to some merchant exporter at concessional rate then whether exporter is required to file :
 - One combined application for Refund or
 - 2 Separate Refund application. First refund application under LUT without payment of IGST or with payment of IGST and second one Under inverted duty structure on merchant exporter portion ?

Case Study# 39 Concessional Rate Purchase for Export

Q: Mr. A Merchant Exporter has purchased Goods of Rs. 10 Lakhs at 0.1% IGST and exported for Rs. 15 Lakhs. Goods are subject to 18% GST. Mr. A has sufficient ITC Credit in his Ledger. Can he export such Goods on payment of 18% IGST and thereby Refund of Rs. 2.70 Lakhs?

Notification No. 3/2018-Central Tax, dated 23.01.2018 - 96(10) CGST Rule clarifies :

Case Study# 39 Concessional Rate Purchase for Export

Rule 96(10) CGST : restriction on IGST refund

The persons claiming refund of integrated tax paid on exports of goods or services **should not have received supplies on which the supplier has availed the benefit of**

- Notification No.48/2017. – Deemed Export
- Notification No.40/2017-Central Tax (Rate)
- Notification No.41/2017-Integrated Tax (Rate).
- Notification No.78/2017-Customs (EOU- IGST exemption)
- Notification No. 79/2017-Customs. (AA / EPCG – IGST exemption)

- **Only ITC Refund is permissible in all aforesaid cases**

Relevant Date for Refund Application- Merchant Export

Explanation 2 to Section 54(14)

Limitation period of 2 year starts from :

- the end of the financial year in which such claim for refund arises

Case Study# 40 : Deemed Export

Q: Supplier (located in DTA) is supplying to units Export Oriented Unit (EOU) / Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit / Bio-Technology Parks (BTP). What Rate of GST should be charged on such supply? Who can claim Refund application and under which Rule ?

,/ Notification no. 4712017 CGST and Circular no. 1412017,

,/ Deemed Export- Normal Rate of Tax

,/ Refund application may be filed by -

,/ (a) the recipient of deemed export supplies EOU etc ulr89(4) or

,/ (b) 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- Refund application will be filed ulr89(5)

Parting Brain Teaser :89{4A)

- (4A) In the case of supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/2017-Central Tax dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 1305 (E) dated the 18th October, 2017, refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.
- Meaning and significance of underlying texts above?

Questions / Thanks =====



**Thanks for
your time!**