

4 DAYS REFRESHER COURSE ON GST
ORGANIZED BY WIRC OF ICAI

Date : 03rd April, 2018

Venue: ICAI Tower, 'G' Block, Bandra (E)

Topic : Practical issues in refund

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CHARTERED ACCOUNTANT

A. Refund of Pre-deposit

1. (i) After the introduction of GST various assessees have been divided between Central and State. Many assessees are now being assessed by State Authorities. All Excise/ Service Tax Commissionerate's have been bifurcated and re-organized.

ii) If the assessee succeeds in appeal before any authorities he is entitled for refund of amount of pre-deposit made at the time of filing the appeal or paid in pursuance of order of Commissioner (A) or CESTAT.

iii) The non-clarity of Jurisdiction is causing substantial problem in granting of refund.

2. As per the CBEC Circular the refund in such cases was allowed by writing simple letter. All claim for refund currently are required to be first filed in portal and thereafter required to be manually submitted along with all document. It is not clear where to upload the application for refund inform of simple letter.

B. Claim for rebate of IGST on Export

- i) As per rule 96 of the GST rules, the shipping bill filed by the exporter is considered as an application for refund. It was expected that the data regarding exports and payment of tax will be transferred from GSTN to Custom portal for processing and granting of refund. However, due to various errors, like mis-match of GSTR-3B with the GSTR-1 etc., the data from GSTN portal to Customs portal could not be transferred.

ii)

Error Code	Description
SB000	Successful
SB001	Invalid SB Details
SB002	EGM Not Filed
SB003	Invalid GSTN ID
SB004	GSTR3 Already Filed
SB005	Invalid Invoice Number
SB006	Gateway EGM not filed

the custom

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iii) There was delay in acceptance of GSTR-1 by GSTN portal. This resulted in delay in transferring of data from GSTN portal to Customs portal. Therefore, a new table called Table 6A was developed and exporter was asked to file Table 6A even when GSTR-1 was not filed. The refund was sanctioned based on Table 6A and Customs portal. Even in Table 6A, the errors mentioned in (ii) above are noticed.

iv) Many companies have not mentioned shipping bill number in Table 6 of GSTR-1. It was advised to such companies to amend the Table 6 of GSTR-1 by mentioning the details in Table 9 of GSTR-1 of subsequent month. For example, if the shipping bill numbers are not mentioned in GSTR-1 for the month of July, one could incorporate the details in August GSTR-1 (Table 9). It was expected that August data will be processed for correcting the data of July. The shipping bill number / correct invoice number will be incorporated in Table 6 of GSTR-I of July. It appears that it has not been done. Therefore, refunds are not processed. Subsequently, CBEC has circulated that the company should file concordance statements in form given below where there has been mis-match of invoices/ shipping bills. The camp has been held for granting of refund. On submission of this document, the refunds have been sanctioned to many companies during the holding of camps.

Annexure A

The Concordance between GST Invoice and Export Invoice declared in shipping Bill is as follows:

Concordance Table

Sl. No.	GST Invoice No/ Date	Taxable Value as per GST	IGST Amount as per GST		Sl. No	Corresponding SB Invoice No./ Date	Taxable Value as per SB	IGST Amount as declared per SB	Final (Corrected) IGST Amount as per actual exports*
1					1.				
2									
3									
4					2.				
5					3.				

C. Export of Services.

i) Nature of documents

Recently CBEC vide Circular has circulated that the Jurisdictional officer shall insist upon only the following documents for the purpose of sanctioning the refund:

- i. Copy of Form RFD-01A filed on common portal
- ii. Copy of Statement 3A of Form RFD-01A generated on common portal

• Indicates Mandatory Fields

Important Message

* Please enter the same Turnover of zero rated supply of goods and services (Column 1) under all heads (Integrated, Central, State and Cess).
 * Please enter the same Adjusted total turnover (Column 3) under all heads (Integrated, Central, State and Cess). **NOTE - "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, during the relevant period.

Kindly enter values in statement 3A below for the Tax Period for which Refund is being claimed:

Computation of Refund to be claimed (Statement 3A)

	Turnover of zero rated supply of goods and services (1) (₹) •	Net input tax credit (2) (₹) •	Adjusted total turnover (3) (₹) •	Refund amount ((1×2)÷3) (₹)
Integrated Tax	₹0.00	₹0.00	₹0.00	0.00
Central Tax		₹0.00		0.00
State/UT Tax		₹0.00		0.00
CESS		₹0.00		0.00

Amount eligible for Refund (in ₹)

	Values as per Statement 3A (₹)	Balance in Electronic Credit Ledger (₹)	Tax Credit Availed during the period (₹)	Eligible amount (Lowest of all) (₹)
Integrated Tax	0.00	0.00	8,116,892.00	0.00
Central Tax	0.00	32,381.00	13,984,354.00	0.00
State/UT Tax	0.00	7,156,782.00	13,984,354.00	0.00
CESS	0.00	0.00	0.00	0.00

Note: The balance in the Electronic Credit Ledger is only for 'Matched ITC'.

Refund Claimed (in ₹)

Head	Integrated Tax (₹) •	Central Tax (₹) •	State/UT Tax (₹) •	CESS (₹) •	Total (₹) •
TAX(ITC)	0.00	0.00	0.00	0.00	0.00

Note: The amount claimed is subject to adjustment of the recoverable amount. You are advised to discharge the recoverable liabilities at the earliest.

iii. Copy of Statement 3 of Form FRD-01A

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

iv. Invoices w.r.t. input and input services

v. BRC/FIRC for export of services

vi. Undertaking/ Declaration in Form RFD-01A

It will be evident from these documents that the nature of services to be rendered cannot be ascertained. The agreement between service provider and supplier and the recipient is essential documents for the purpose of determining the nature of services. Accordingly, it will be difficult to determine whether the services can be considered as a export of services. The 'Export of Service' is defined under Section 2(6) as follows:

- (6) “*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;”*

One of the main condition of export of service is that the place of supply shall be outside India. The nature of service and its category shall be known before the place of supply can be determined as per provision contained in Section 13 of IGST Act.

ii) Many of the service providers are now being assessed by the State authorities. The Central authorities were assessing service provider since 1994. They were familiar with the nature of services and provision relating to export of service. The explanation will have to be again provided to State authorities. These will have initial problems in granting of refund.

D. Supply of service to SEZ Units or Developer on payment of tax.

- (i) Rule 89 of the GST Rules specifies nature of documents required to be attached along with application for refund. The Second proviso to rule 89 reads as follows:

“(89) Provided further that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the –

- (a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorized operations, as endorsed by the special officer of the Zone;*
- (b) supplier of services along with such evidence regarding receipt of services for authorized operations as endorsed by the specified officer of the Zone;”*

Clause (b) provides that in case of a supply to SEZ, the evidence that the services have been received for the authorized operation as endorsed by the specified officer shall be submitted. It will be difficult for the specified officer to determine the use of the services for the authorized operation. For example, if a bank sanctions loan for purchasing of equipment's or for carrying out any construction activity in SEZ, the bank may pay GST on the processing charges and claim refund. It will be very difficult for specified officer to determine the use of such loan in authorized operation of SEZ. Therefore, specified officer may not certify the services. Hence it will be difficult for the bank to obtain refund.

ii) Similarly, Clause (e) of Rule 89(2) provide submission of the statement. The Clause (e) reads as follows:

“(e) a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to Special Economic Zone unit or a Special Economic Zone developer.”

E. Taxes paid on supply of Deemed Export.

- 1) The deemed export is a concept prevailing in export/ import policy. The deemed export was not defined in Excise, VAT or Service Tax. As per Notification No. 48/2017-CT following supplies are considered as deemed exports:
 - 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 Export Oriented Unit.
 - 4) 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.

The above provisions will have to be explained to authorities to substantiate that supply shall be considered as deemed export. The help of provision of export import policy shall be taken to explain above.

ii) As per Third proviso to rule 89, the application can be filed by the supplier or recipient. The Third proviso reads as follows:

“Provided also that in respect of supplies regarded as deemed exports, the application may be filed by –

- a) the recipient of deemed export supplies; 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 as undertaking to the effect that the supplier may claim the refund. “

iii) Additionally, the 3 returns namely, GSTR-01, GSTR-02 & GSTR-03 were contemplated in GST. However, due to complication a simplified return is now been designed. Under the current provision the invoice-wise details of the output supply is required to be provided in GSTR-01. This information shall match with the information available in GSTR-3B portal. As per one of the report 82% of returns do not tally. Therefore, one will never be sure whether the payment has been made for the deemed supplies. It is essential to understand that the payment of GST is made as per GSTR-3B and not as per data made in GSTR-01. Therefore, in case of mis-match it will be difficult to understand the payment of taxes.

F. Refund of unutilized credit on account of exports or Inverted Duty Structure available under Section 54(3)

This Sub-section 54(3) and to First Proviso reads as follows:

“(3) Subject to the provisions of sub-section (10) a registered person may claim refund of any unutilized input tax credit at the end of any tax period:

Provided that no refund of unutilized input tax credit shall be allowed in cases other than –

- i) zero-rated supplies made without payment of tax;*
- ii) 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:”*

The refund is required to be filed within a period of 2 years from the relevant dates as provided in Section 54(1). As per Clause 2(e) of Explanation given below Section 54, the relevant date in case of unutilized credit is the end of the Financial year. The clause (e) reads as follows:

” (e) in the case of refund of unutilized input tax credit under sub-section (3) the end of the financial year in which such claim for refund arises;

A person shall wait till end of financial year for filing application for refund of unutilized credit.”

G. Refund of input tax to Merchant Exporter

As per rule 96(10) of GST Rules, merchant exporter is not entitled to refund of IGST if he has availed benefit of procuring goods at the rate of 0.1% of value. Rule 89(4A) provides for granting of refund in case of a merchant exporter. As per this rule the refund of input tax credit availed in respect of other inputs or input services used in making export of goods shall be available. The invoice of the supplier needs to be correlated with shipping bill.

H. Refund to exporter availing deemed export and other benefits

- i. As per rule 89(4B) the refund of input tax paid on inputs and input services used for export of supply is also available. The exporters who are availing the following benefits will have to apply for refund under this rule.
 - a) Exporter procuring goods under deemed export benefit under Notification No. 48/ 2017-CT (Rate)
 - b) Exporter availing benefit under any of the export promotion scheme mentioned in table above.

The refund is available for inputs and input services used in making zero-rated supply. Therefore, correlation between the inputs and input service and export may be established. The establishment of correlation will cause substantial problems.

- ii. The above exporter is not entitled to refund of IGST paid. Therefore, they must export under LUT only.

I. Credit accumulation due to inverted duty structure i.e. due to tax rate higher on input than on output.

a) As per the Section 54(3), the refund of unutilised credit shall be allowed in following cases:

- i. zero-rated supplies made without payment of tax;
- ii. 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.

It is evident from this that refund is available when rate of tax on inputs is higher than the rate of tax on output supplies. Output supply can be of goods or services and not only of goods. The formula provided of Rule 89(5) for determining the amount of refund is as follows:

“(5) in the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula –

Maximum Refund Amount = {(Turnover of inverted rated supply of goods) × Net ITC ÷ Adjusted Total Turnover} – Tax payable on such inverted rated supply of goods

Explanation. – For the purposes of this sub-rule, the expressions “Net ITC” and “Adjusted Total turnover” shall have the same meaning as assigned to them in sub-rule (4).”

This formula refers to turnover of goods only and not for supply of services. Thus, there is a lot of confusion in determining the quantum of refund.

J. Refund of IGST or CGST or SGST due to wrong charging of tax.

- i) There is lot of confusion in charging correct nature of tax some of them are the status of the SEZ is not entered in the portal by the company or having entered not captured by the portal. Therefore, many have entered Inter-State to enable to make entry in GSTR-01.
- ii) The provisions of Section 7(3) & (4) is reproduced below:
 - (3) *Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in—*
 - (a) *two different States;*
 - (b) *two different Union territories; or*
 - (c) *a State and a Union territory, shall be treated as a supply of services in the course of inter-State trade or commerce.*
 - (4) *Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.*

In case of service provided of intermediary the place of supply is location of intermediary and therefore whether CGST and SGST shall be charged or IGST shall be charged, is very confusing.

iii) The seller delivers the goods in the same State but knows that the recipient will transfer the goods Inter-State. Therefore, the goods will travel Inter-State.

iv) Errors made by the assessee.

K. Refund of Excess Tax Paid

- i) In many cases it is observed that due to wrong code, the amount has been deposited in different taxes, like compensation cess, SGST, etc. Due to wrong registration number it has been deposited in different states. Therefore, refund is required to be made. It is informed that such refunds are easily received.

L. Refund of tax paid on input to specified

agencies

Section 55 of GST Act provides for refund of GST paid by specialized agencies of United Nations or in multilateral financial institutions or organizations as may be specified. The Notification No. 16/2017 - CT has specified the entities which are entitled to refund of GST under Section 55. The Notification No. 75/2017-CT provided that the claim shall be filed by such institutions by filling RFD-10. The recipient is required to file statement in Form GSTR-11. The portal will match both the information before granting refund.

- ii) Due to delay in readiness of portal, the statement could not be filed. Therefore, refund may be sanctioned without GSTR-11
- iii) Further clarification was given in by CBEC vide Circular No. 36/16/2018 in GST. It is clarified that all the refunds will be granted by Central Tax officer and refund can be filed manually as RFD-10 is not available on the portal.

THANK YOU

BALANCED VIEW

PRESENTED BY

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