

Refunds under GST

INTRODUCTION

Timely refund mechanism is essential in tax administration, as it facilitates trade through release of blocked funds for working capital, expansion and modernization of existing business.

The provisions pertaining to refund contained in the GST law aim to streamline and standardise the refund procedures under GST regime. Thus, under the GST regime there will be a standardised form for making any claim for refunds. The claim and sanctioning procedure will be completely online and time bound which is a marked departure from the existing time consuming and cumbersome procedure. It has been decided, however, that since the online refund module is not available immediately, the refund process would be handled manually and Circular No. 17/17/2017-GST dated 15.11.2017 and Circular no. 24/24/2017-GST dated 21.12.2017 prescribing the detailed procedure have been issued.

SITUATIONS LEADING TO REFUND CLAIMS

The relevant date provision embodied in Section 54 of the

CGST Act, 2017, provision contained in Section 77 of the CGST Act, 2017 and the requirement of submission of relevant documents as listed in Rule 89(2) of CGST Rules, 2017 is an indicator of the various situations that may necessitate a refund claim. A claim for refund may arise on account of-

1. Export of Goods or services
2. Supplies to SEZs units and developers
3. Deemed Export supplies
4. Refund of taxes on purchase made by UN or embassies etc
5. Refund arising on account of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court
6. Refund of accumulated Input Tax Credit on account of inverted duty structure
7. Finalisation of provisional assessment
8. Refund of pre-deposit
9. Excess payment due to mistake
10. Refunds to International tourists of GST paid on goods in India and carried abroad at the time of their departure from India
11. Refund on account of issuance of refund vouchers for taxes paid on advances against which goods or services have not been supplied
12. Refund of CGST & SGST paid by treating the

supply as intra-State supply which is subsequently held as inter-State supply and vice versa.

Thus practically every situation is covered. The GST law requires that every claim for refund is to be filed within 2 years from the relevant date.

CREDIT NOTES

Further, Section 34 of the CGST Act, 2017 provides for issuance of credit notes for post supply discounts or if goods are returned back within a stipulated time. When such credit notes are issued, obviously it would call for reduction in output liability of the supplier. Hence, the taxes paid initially on the supply would be higher than what is actually payable. In such a scenario the excess tax paid by the supplier needs to be refunded. However, instead of refunding it outright, it is sought to be adjusted after verifying the corresponding reduction in the input tax credit availed by the recipient. Section 43 of the CGST Act, 2017 provides for procedure for reduction in output liability on account of issuance of such credit notes. This is another form of refund by adjustments in the output tax liability. Such refund is not governed under the general refund provisions contained in Section 54 of the CGST Act, 2017.

TREATMENT FOR ZERO RATED SUPPLIES

One of the major categories under which claim for refund may arise would be, on account of exports. All exports (whether of goods or services) as well as supplies to SEZs have been categorised as Zero Rated Supplies in the IGST

Act, 2017. “Zero rated supply” under Section 16 of the IGST Act, 2017 means any of the following supplies of goods or services or both, namely:

- (a) export of goods or services or both; or
- (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

On account of zero rating of supplies, the supplier will be entitled to claim input tax credit in respect of goods or services or both used for such supplies even though they might be non-taxable or even exempt supplies. Every person making claim of refund on account of zero rated supplies has two options. Either he can export under Bond/LUT and claim refund of accumulated Input Tax Credit or he may export on payment of integrated tax and claim refund thereof as per the provisions of Section 54 of CGST Act, 2017. Thus, the GST law allows the flexibility to the exporter (which will include the supplier making supplies to SEZ) to claim refund upfront as integrated tax (by making supplies on payment of tax using ITC) or export without payment of tax by executing a Bond/LUT and claim refund of related ITC of taxes paid on inputs and input services used in making zero rated supplies.

GRANT OF PROVISIONAL REFUND IN CASE OF ZERO RATED SUPPLIES

GST law also provides for grant of provisional refund of 90% of the total refund claim, in case the claim relates for refund arising on account of zero rated supplies. The provisional refund would be paid within 7 days after giving

the acknowledgement. The acknowledgement of refund application is normally issued within a period of 15 days. The provisional refund would not be granted to such supplier who was, during any period of five years immediately preceding the refund period, was prosecuted.

PAYMENT OF WRONG TAX

Under GST it might happen that the taxable person may pay integrated tax instead of central tax plus state tax and vice versa because of incorrect application of the place of supply provisions. In such cases, while making the appropriate payment of tax, interest will not be charged and the refund claim of the wrong tax paid earlier will be entertained without subjecting it to the provision of unjust enrichment.

CLAIM BY A PERSON WHO HAS BORNE THE INCIDENCE OF TAX

Any tax collected by the taxable person more than the tax due on such supplies must be credited to the Government account. The law makes explicit provision for the person who has borne the incidence of tax to file refund claim in accordance with the provisions of Section 54 of the CGST Act, 2017.

REFUNDS TO CASUAL/NON-RESIDENT TAXABLE PERSONS

A casual/Non-resident taxable person has to pay tax in advance at the time of registration. Refund may become

due to such persons at the end of the registration period because the tax paid in advance may be more than the actual tax liability on the supplies made by them during the period of validity of registration period. The law envisages refund to such categories of taxable persons also. But the amount of excess advance tax shall not be refunded unless such person has filed all the returns due during the time their registration was effective. It is only after such compliance that refund will be granted.

REFUND TO UN BODIES AND OTHER NOTIFIED AGENCIES

Supplies made to UN bodies and embassies may be exempted from payment of GST as per international obligations. However, this exemption is being operationalized by way of a refund mechanism. So a taxable person making supplies to such bodies would charge the tax due and remit the same to government account. However, the UN bodies and other entities notified under Section 55 of the CGST Act, 2017 can claim refund of the taxes paid by them on their purchases. The claim has to be made before the expiry of six months from the last day of the quarter in which such supply was received. It may be noted that refund would be granted by Central Government as facility of a single UIN has been made available to such agencies.

REFUND TO INTERNATIONAL TOURIST

An enabling mechanism has been introduced in Section 15 of the IGST Act, 2017 whereby an international tourist procuring goods in India, may while leaving the country seek

refund of integrated tax paid by them. The term, “tourist” has been defined and refers to any person who is not normally resident in India and who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes.

UNJUST ENRICHMENT

Talking about unjust enrichment, a presumption is always drawn that the businessman will shift the incidence of tax to the final consumer. This is because GST is an indirect tax whose incidence is to be borne by the consumer. It is for this reason that every claim of refund (barring specified exceptions) need to pass the test of unjust enrichment. And every such claim if sanctioned is first transferred to the Consumer Welfare Fund. The GST law makes this test inapplicable in case of refund of accumulated ITC, refund on account of exports, refund of payment of wrong tax (integrated tax instead of central tax plus state tax and vice versa), refund of tax paid on a supply which is not provided or which refund voucher is issued or if the applicant shows that he has not passed on the incidence of tax to any other person. In all other cases the test of unjust enrichment needs to be satisfied for the claim to be paid to the applicant. For crossing the bar of unjust enrichment, if the refund claim is less than Rs.2 Lakhs, then a self-declaration of the applicant to the effect that the incidence of tax has not been passed to any other person will suffice to process the refund claim. For refund claims exceeding Rs. 2 Lakhs, a certificate from a Chartered Accountant/Cost Accountant will have to be given.

STANDARDISATION OF PROCEDURE

The GST laws makes standardised provisions for making a refund claim. Every claim has to be filed online in a standardised form. The applications shall be forwarded to the proper officer who shall, within a period of fifteen days of filing of the said application, scrutinize the application for its completeness and where the application is found to be complete in all terms, an acknowledgement shall be made available to the applicant through the common portal electronically. However, till the time the refund module on the GSTN portal is operationalised, facility for manual filing of refund claims has been provided. The claim for refund of amount lying in the credit balance of the cash ledger can be made in the monthly returns also. The proper officer has to convey deficiencies if any in the refund claimed in such cases the claim will be sent back to the applicant along with the notified deficiencies and the applicant can file the refund claim again after making goods the deficiencies. The claim, if in order, has to be sanctioned within a period of 60 days from the date of receipt of the application of claim complete in all respect. If this mandatory period is exceeded, interest at the rate of 6% (9% in case of refund made on order passed by an adjudicating authority or Appellate Tribunal or court which has attained finality) will become payable along with refund from the expiry of 60 days till the date of payment of refund. However, if the refund claim is on account of pre-deposit made before any appellate authority, the interest becomes payable from the date of making such payment.

DOCUMENTATION

The applicant need not file elaborate documents along with the refund claim. Standardised and easy to understand documents have been prescribed. Thus, for every claim the main document prescribed is a statement of relevant invoices (***NOT THE INVOICES ITSELF***) pertaining to the claim. In case refund is on account of export of services, apart from the statement of invoices, the relevant bank realisation certificates or FIRC evidencing receipt of payment in foreign currency is also required to be submitted. If it is a claim made by the supplier to the SEZ unit, an endorsement from the proper officer evidencing receipt of such goods/services in the SEZ also needs to be submitted. Further a declaration is also required from the SEZ unit to the effect that they have not availed input tax credit of the tax paid by the supplier. If the claim is for refund of accumulated ITC, only a statement containing invoice details as prescribed in the refund chapter of the CGST Rules, 2017 need to be given. In case of claim of refund on account of any order or judgment of appellate authority or court, the reference number of the order giving rise to refund should also be given. For crossing the bar of unjust enrichment, if the refund claim is less than Rs.2 Lakhs, then a self-declaration by the applicant to the effect that the incidence of tax has not been passed to any other person will suffice to process the refund claim. For refund claims exceeding Rs. 2 Lakhs, a certificate from a Chartered Accountant/Cost Accountant will have to be given.

COMPLIANCE WITH NATURAL JUSTICE

In case the claim is sought to be rejected by the proper officer, a notice has to be given online to the applicant stating the ground on which the refund is sought to be rejected. The applicant needs to respond online within 15 days from the receipt of such notice. Thus no claim can be rejected without putting the applicant to notice.

PAYMENT TO BE CREDITED ONLINE

The refund claim, wherever due, will be directly credited to the bank account of the applicant. The applicant need not come to the authorities to collect the cheques or for any other issues relating to the refund claim.

PROCEDURE FOR CLAIMING REFUND OF IGST PAID ON EXPORT OF GOODS

The shipping bill filed by an exporter 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 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-3B, as the case may be.

Since the system of filing of return in FORM GSTR-3 has not started so far, the refund of integrated tax on export of

goods would be granted based on FORM GSTR-1 and FORM GSTR-3B for the time being. The details of the relevant export invoices contained in FORM GSTR-1 (or Table 6A thereof) shall be transmitted electronically by the common portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

Upon receipt of the information regarding the furnishing of a valid return in FORM GSTR-3 or FORM GSTR-3B, as the case may be and FORM GSTR-1 from the common portal, the system designated by the Customs shall process the claim for refund 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 mentioned in his registration particulars and as intimated to the Customs authorities.

As per Rule 96, the refund of IGST paid on export of goods is processed and disbursed by Customs. For processing such refund, GST system transmits invoice level data of Table 6A in GSTR 1 subject to the following validations”

1. GSTR-3B is filed for the corresponding period, with admitted tax liability under Table 3.1(b);
2. Export invoices are submitted in GSTR-1/Table 6A thereof and have correct shipping bill number, shipping bill date and port code;
3. The admitted tax liability of IGST under table 3.1(b) of GSTR-3B, is equal to, or greater than, the IGST

amount claimed to have been paid under Table 6A of GSTR-1 of the corresponding period.

It may be noted that Rule 96(9) has been inserted, w.e.f 23.10.2017, in CGST Rules, 2017 vide Notification no. 75/2017-Central Tax dated 29.12.2017 so as to provide that the refund of integrated tax paid on export of goods or services is not permitted to such persons who have received supplies on which the supplier has availed the benefit of Notification no. 48/2017-Central Tax dated 18.10.2017 or Notification no. 40/2017- Central Tax (Rate) dated 23.10.2017 or notification No. 41/2017-Integrated Tax (Rate) dated 23.10.2017.

Manual filing of Refund Claims

Rule 97A has been inserted in the CGST Rules, 2017 vide Notification no. 55/2017-Central Tax dated 15.11.2017 to enable manual processing of refund claims. The said rule provides that any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to CGST Rules, 2017.

Circular no. 17/17/2017-GST dated 15.11.2017 and Circular no. 24/24/2017-GST dated 21.12.2017 has been issued clarifying the procedure for filing of manual refund claims. The circular mandates that due to the non-availability of the refund module on the common portal, it has been

decided that the applications/documents/forms pertaining to refund claims on account of zero-rated supplies shall be filed and processed manually till further orders.

Procedure for filing refund claims (other than refund under Rule 96 on account of export of goods and refund of unutilised ITC on account of zero rated supply)

The application for refund of integrated tax paid on zero-rated supply of goods to a Special Economic Zone developer or a Special Economic Zone unit or in case of zero-rated supply of services is required to be filed in FORM GST RFD-01A (as notified in the CGST Rules, 2017 vide Notification no. 55/2017 – Central Tax dated 15.11.2017) by the supplier on the common portal and a print out of the said form shall be submitted before the jurisdictional proper officer along with all necessary documentary evidences as applicable (as per the details in statement 2 or 4 of Annexure to FORM GST RFD – 01), within the time stipulated for filing of such refund under the CGST Act, 2017.

Procedure for filing refund claims of unutilised ITC on account of zero rated supply

The application for refund of unutilized input tax credit on inputs or input services used in making such zero-rated supplies shall be filed in FORM GST RFD-01A on the common portal and the amount claimed as refund shall get debited in accordance with sub-rule (3) of rule 86 of the CGST Rules, 2017 from the amount in the electronic credit ledger to the extent of the claim. The common portal shall generate a proof of debit (ARN- Acknowledgement Receipt

Number) which would be mentioned in the FORM GST RFD-01A submitted manually, along with the print out of FORM GST RFD-01A to the jurisdictional proper officer, and with all necessary documentary evidences as applicable (as per details in statement 3 or 5 of Annexure to FORM GST RFD-01), within the time stipulated for filing of such refund under the CGST Act, 2017.

Where to file the refund claims

The registered person needs to file the refund claim with the jurisdictional tax authority to which the taxpayer has been assigned as per the administrative order issued in this regard by the Chief Commissioner of Central Tax and the Commissioner of State Tax. In case such an order has not been issued in the State, the registered person is at liberty to apply for refund before the Central Tax Authority or State Tax Authority till the administrative mechanism for assigning of taxpayers to respective authority is implemented. However, in the latter case, an undertaking is required to be submitted stating that the claim for sanction of refund has been made to only one of the authorities. It is reiterated that the Central Tax officers shall facilitate the processing of the refund claims of all registered persons whether or not such person was registered with the Central Government in the earlier regime.

Modalities/Records in respect of manual refund claims

The Circular no.17/17/2017-GST dated 15.11.2017 read with Circular no. 24/24/2017-GST dated 21.12.2017 lays down the modalities for maintenance of records in respect

of such manual refund claims, which needs to be adhered to scrupulously. The time limits laid down in the Act need to be followed and the prescribed forms need to be generated manually for processing of such refund claims

Manual filing and processing of refund claims on account of inverted duty structure, deemed exports and excess balance in electronic cash ledger

Due to the non-availability of the refund module on the common portal, it has been decided by the competent authority that the applications/documents/forms pertaining to refund claims on account of inverted duty structure (including supplies in terms of notification Nos. 40/2017-Central Tax (Rate) and 41/2017-Integrated Tax (Rate) both dated 23.10.2017), deemed exports and excess balance in electronic cash ledger shall be filed and processed manually till further orders. The procedure to be followed for manual filing of following type of refund claims and processing thereof shall be in accordance with Circular no. 24/24/2017-GST dated 21.12.2017 read with Circular no. 17/17/2017-GST dated 15.11.2017 :-

- (i) refund of unutilized input tax credit 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) of goods or services or both except those supplies which are notified by the Government on the recommendations of the Council (section 54(3) of the CGST Act, 2017 refers);

- (ii) refund of tax on the supply of goods regarded as deemed exports; and
- (iii) refund of balance in the electronic cash ledger.

Manual claims in respect of inverted duty structure

Refund claims on account of inverted duty structure shall be filed for a tax period on a monthly basis in FORM GST RFD-01A. However, the registered persons having aggregate turnover of up to Rs. 1.5 crore in the preceding financial year or the current financial year and opting to file FORM GSTR-1 on quarterly basis (Notification no. 71/2017-Central Tax dated 29.12.2017 refers) shall apply for refund on a quarterly basis. Further, it is stated that the refund claim for a tax period may be filed only after filing the details in FORM GSTR-1 for the said tax period. It is also to be ensured that a valid return in FORM GSTR-3B has been filed for the last tax period before the one in which the refund application is being filed. Since the date of furnishing of FORM GSTR 1 from July, 2017 onwards has been extended while the dates of furnishing of FORM GSTR 2 and FORM GSTR 3 for such period are yet to be notified, it has been decided by the competent authority to sanction refund of provisionally accepted input tax credit at this juncture. However, the registered persons applying for refund is required to give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of sections 42 of the CGST Act, 2017 have not been complied with in respect

of the amount refunded. This undertaking should be submitted manually along with the refund claim till the same is available in FORM RFD-01A on the common portal. Further the prescribed statements - Statement 1 and Statement 1A of FORM GST RFD-01A are also required to be filled.

It may be noted that Rule 89(4B) has been inserted, i.e. 23.10.2017, in CGST Rules, 2017 vide Notification no. 75/2017-Central Tax dated 29.12.2017 so as to provide that refund of input tax credit, availed **only** in respect of inputs availed in respect of inputs received under Notification no. 40/2017-Central Tax (Rate) dated 23.10.2017 or Notification no. 41/2017-Integrated Tax (Rate) dated 23.10.2017, or both or other inputs or input services used in making such exports shall be granted.

Manual Claims in respect of Deemed Exports

The Government has issued notification No.48/2017-Central Tax dated 18.10.2017 under section 147 of the CGST Act, 2017 wherein certain supplies of goods have been notified as deemed export. Further, the third proviso to rule 89(1) of the CGST Rules, 2017 allows the recipient or the supplier to apply for refund of tax paid on such deemed export supplies. In case such refund is sought by the supplier of deemed export supplies, the documentary evidences as specified in notification No. 49/2017-Central Tax dated 18.10.2017 are also required to be furnished which includes an undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and that no input tax credit on such supplies has been availed of by him.

The undertaking from the recipient should be submitted manually by the supplier along with his application for refund claim. Similarly, in case the refund is filed by the recipient of deemed export supplies, an undertaking by the supplier of deemed export supplies that he shall not claim the refund in respect of such supplies is also required to be furnished manually. The procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU) / Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit / Bio-Technology Parks (BTP) Unit under deemed export as laid down in Circular no. 14/14/2017-GST dated 06.11.2017 needs to be complied with.

Further, as per the provisions of rule 89(2)(g) of the CGST Rules, 2017, the statement 5B of FORM GST RFD-01A is required to be furnished for claiming refund on supplies declared as deemed exports.

It may be noted that Rule 89(4A) has been inserted, w.e.f 23.10.2017, in CGST Rules, 2017 vide Notification no. 75/2017-Central Tax dated 29.12.2017 so as to provide that refund of input tax credit, availed in respect of only other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted in case of supplies received on which the supplier has availed the benefit of Notification no. 48/2017-Central Tax dated 18.10.2017.

Refund amount to be sanctioned by respective authorities

Para 2.5 of Circular No. 17/17/2017-GST dated 15.11.2017

may be referred to in order to ascertain the jurisdictional proper officer to whom the manual application for refund is to be submitted. Where any amount claimed as refund is rejected under rule 92 of the CGST Rules, 2017, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in FORM GST RFD-1B until the FORM GST PMT-03 is available on the common portal. Further, the payment of the sanctioned refund amount shall be made only by the respective tax authority of the Central or State Government. Thus, the refund order issued either by the Central tax authority or the State tax/UT tax authority shall be communicated to the concerned counter-part tax authority within seven working days for the purpose of payment of the relevant sanctioned refund amount of tax or cess, as the case may be. This time limit of seven working days is also applicable to refund claims in respect of zero-rated supplies being processed as per Circular No. 17/17/2017-GST dated 15.11.2017. It must be ensured that the timelines specified under section 54(7) and rule 91(2) of the CGST Rules, 2017 for the sanction of refund are adhered to.

Special Procedure to facilitate smooth refund of Central Tax and State Tax

In order to facilitate sanction of refund amount of Central tax and State tax by the respective tax authorities, it has been decided that both the Central and State Tax authority shall nominate nodal officer(s) for the purpose of liaisoning through a dedicated e-mail id. Where the amount of

Central tax and State tax refund is ordered to be sanctioned provisionally by the Central tax authority and a sanction order is passed in accordance with the provisions of rule 91(2) of the CGST Rules, 2017 the Central tax authority shall communicate the same, through the nodal officer, to the State tax authority for making payment of the sanctioned refund amount in relation to State tax and vice versa. The aforesaid communication shall primarily be made through e-mail attaching the scanned copies of the sanction order [FORM GST RFD-04 and FORM GST RFD-06], the application for refund in FORM GST RFD-01A and the Acknowledgement Receipt Number (ARN). Accordingly, the jurisdictional proper officer of Central or State Tax, as the case may be, shall issue FORM GST RFD-05 and send it to the DDO for onward transmission for release of payment. After release of payment by the respective PAO to the applicant's bank account, the nodal officer of Central tax and State tax authority shall inform each other. The manner of communication as referred earlier shall be followed at the time of final sanctioning of the refund also.

In case of refund claim for the balance amount in the electronic cash ledger, upon filing of FORM GST RFD-01A, the amount of refund claimed shall get debited in the electronic cash ledger.

Drawback of all taxes under GST (Central Tax, Integrated Tax, State/Union Territory Tax) should not have been availed while claiming refund of accumulated ITC under section 54(3)(ii) of the CGST Act, 2017. A declaration to this effect forms part of FORM GST RFD-01A as well.

POWER WITH THE COMMISSIONER TO WITHHOLD REFUND IN CERTAIN CASES

GST law provides that 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.

CONCLUSION

In sum, the law envisages a simplified, time bound and technology driven refund procedure with minimal human interface between the taxpayer and tax authorities.
