

## REFUNDS UNDER GST AND SOME ISSUES PERTAINING TO REFUND



CA Mehul Gala  
Email : mehultg@gmail.com

Timely refund mechanism is essential part of any taxation system, 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. Refunds under GST regime come with certain restrictions, limitations, time limits. To understand the same let us analyse Section 54 of the CGST Act, 2017, which is the main governing section pertaining to GST Refunds.

Section 54(1) of the CGST Act, 2017 states that “Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed”

### Analysis of Section 54

Section 54(1) states that –

- Any person (whether registered or not)
- who has paid any tax and interest, if any, paid on such tax or any other amount
- can apply for the claim of such tax, interest (if any) or any other amount so paid.
- Application for refund has to be made before the expiry of two years from the relevant date.

**Relevant date** means –

- In case of Goods exported out of India –
  - Exported by sea or air – the date on which Ship or aircraft leaves India.
  - Exported by Road – the date on which goods pass customs frontier.
  - Exported by Post – the date of dispatch of goods by the post office concerned to place outside India.
- In case of Deemed Exports – date on which Return relating to deemed export is furnished.
- In case where Refund arises on account of Judgement, order or direction of Appellate Authority – date of communication of such judgement, order or direction.
- In case of Services exported out of India – date of receipt of payment in convertible foreign exchange or date of issue on Invoice whichever is later.
- In case of Inverted duty structure – date on which return for the period in which such claim arises has been furnished.
- In case of Refund to be claimed by any person other than the supplier – date of receipt of goods or services or both by such person.

- In any other case – the date of payment of taxes.

### **Now let us understand in which situations Refund claim arises –**

Refund claims in GST arises in following situations -

1. Export of goods or services.
2. Supplies to SEZs units and developers.
3. Deemed exports.
4. Refund of CGST & SGST paid by treating the supply as intra- State supply which is subsequently held as inter- State supply and vice versa.
5. Finalization of provisional assessment
6. Refund of accumulated Input Tax Credit on account of inverted duty structure
7. Refund of pre-deposit
8. Refunds to International tourists of GST paid on goods in India and carried abroad at the time of their departure from India
9. Refund of Excess Balance in Electronic Cash Ledger
10. Refund on account of assessment/provisional assessment/appeal/any other order.
11. Refund on account of any other ground or reason.

### **Exceptions, Withholding and Non-Payment of Refunds –**

Following are the exceptional circumstances, where Refund of unutilised input tax credit may not be allowed or Refund may be withheld or not paid by the Assessing officer: -

- > No refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty.
- > No refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of duty drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.
- > Refund may be withheld when the assessee has defaulted in furnishing any return;
- > Refund may be withheld when the assessee has defaulted in payment of any tax, interest or penalty and
- > The Proper Officer is authorised to 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.

**Procedure for filing of GST Refund claims-**At present i.e., with effect from 26-09-2019 refund procedure is fully electronic. All steps of submission and processing in regard of refund shall be undertaken electronically. The GST Policy Wing issues a **Circular 125/44/2019** by which detail set of guidelines and processing of refund to be done electronically have been laid down.

> **Form GST RFD-01 and Documents-**

- a) The application shall be, inter alia, filled with statements/ declarations/ undertakings.
- b) Documents/ tax invoices shall be required for processing of the refund application be uploaded with the form.
- c) A comprehensive list of documents is provided at Annexure-A of the Circular.
- d) No other document needs to be provided at the stage of filing of the refund application except which are required and stated in Annexure-A.
- e) Ten Attachments maximum size of 5 MB may be uploaded with the Refund Application.
- f) Neither the refund application in FORM GST RFD-01 nor any of the supporting documents shall be required to be physically submitted to the office of the jurisdictional proper officer.

> **Application Reference Number (ARN) and Acknowledgement -**

- a) The Application Reference Number (ARN) will be generated only after the applicant has completed the process of filing the refund application in FORM GST RFD-01, and has completed uploading of all the supporting documents/ undertaking.
- b) The application shall be deemed to have been filed on the date of generation of the said ARN.
- c) The time limit of 15 days to issue an acknowledgement or a deficiency memo, as the case may be, shall be counted from the date of ARN.
- d) The acknowledgement (FORM GST RFD-02) for the complete application or deficiency memo (FORM GST RFD-03), as the case may be, would be issued electronically.

> **Refund Application for a tax period or by clubbing successive tax periods-**

Refund application may be filed for a tax period either monthly or quarterly. Quarterly return filers can only file refund application quarterly. The applicant may club successive tax periods with the refund application. Vide Circular No 135/05/2020 dated 31-03-2020 the restriction on bunching of refund claims across financial years shall not apply. For example, Refund Application can be filed by clubbing of months of March 2019 and April 2019 and for two quarters 4<sup>th</sup> quarter of 2018-19 and 1<sup>st</sup> quarter 2019-20.

> **For refunds of unutilized Input Tax Credit pertaining to exports without payment of tax, supplies made to SEZ Unit/SEZ Developer without payment of tax and accumulation due to inverted tax structure.**

- a) Form GSTR-2A shall have to be uploaded with refund application for the period for which the refund is claimed.
- b) The Applicant shall also upload the details of all the invoices on the basis of which input tax credit has been availed during the relevant period for which the refund is being claimed, in the format enclosed as Annexure-B.
- c) The proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are available in FORM GSTR-2A.

> **Deficiency Memos**

- a) A Deficiency Memo shall be issued within 15 days from the date of generation of ARN.
- b) Once an acknowledgement has been issued in relation to a refund application, no deficiency memo, on any ground, may be subsequently issued for the said application.
- c) A fresh application would be filed after correction/rectification of deficiencies as pointed out.
- d) Once an application has been submitted afresh, pursuant to a deficiency memo, the proper officer will not serve another deficiency memo with respect to the application for the same period, unless the deficiencies pointed out in the original deficiency memo remain un-rectified, either wholly or partly, or any other substantive deficiency is noticed subsequently.

> **Provisional Refund Order/Final Refund Order**

- a) Ninety percent of provisional refund may be granted against claim for refund on account of zero-rated supply of goods or services or both.
- b) The provisional refund shall be issued within seven days from the date of acknowledgement through GST form GST RFD-04.
- c) The proper officer may issue final order for total refund in place of provisional refund within seven days from the date of acknowledgement through GST form GST RFD-06 if the proper officer is fully satisfied about the eligibility of a refund claim on account of zero-rated supplies, and is of the opinion that no further scrutiny is required.

> **Re Credit of the Rejected amount in Electronic Credit Ledger**

- a) Where any amount claimed as refund is rejected either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to electronic credit ledger by an order made in FORM GST – PMT 03.
- b) An undertaking in writing from the dealer shall be obtained from the dealer stating therein that he would not be filing an appeal against the said order rejecting the Refund application.
- c) In case the refund claimed is on account of ineligible ITC, the same shall have to be paid by the dealer by filing FORM DRC-03 before the amount is re-credited to Electronic Credit Ledger.

**List of Various Forms under GST for Refund purpose**

- GST RFD – 01 – Form of Application of Refund
- GST RFD – 02 – Acknowledgement of Receipt of Application of Refund
- GST RFD – 03 – Deficiency Memo issued by the GST Officer
- GST RFD – 04 – Provisional Refund Order
- GST RFD – 05 – GST Refund Payment advice
- GST RFD - 06 – Refund Sanction Order
- GST RFD - 07 – Order for complete adjustment of Sanctioned Refund
- GST RFD - 08 – Notice for Rejection of application of Refund
- GST RFD – 09 – Reply to Show Cause Notice

## After understanding the procedure for filing of Refund claim now let us take up some Issues in GST Refund mechanism –

**Restriction of claim of Refund to ITC reflecting in GSTR 2A** - During the start of the GST regime, Refund of ITC was allowed on the basis of submission of physical ITC related invoices irrespective of whether the same are reflecting in GSTR 2A or not. This was beneficial to the genuine dealers to claim refund of ITC, where the supplier has supplied the goods or service to the dealer, but hadn't uploaded the GST number of the buyer in his GSTR 1. However, some of the non-genuine dealers started taking benefit of the above provisions by claiming refund of ITC of bogus purchase bills/ non genuine transactions. Government on getting the knowledge of the same, restricted the claim of ITC in GSTR 3B from October 2019 by insertion of Rule 36(4). *As per Rule 36(4), ITC pertaining to invoices not uploaded by the supplier in GSTR 1 (thereby not reflecting in GSTR 2A of the dealer) shall be restricted to 20% of the eligible credit reflecting in GSTR 2A.* This limit of 20% was later on reduced to 10% and now has been brought down to 5%. As a result of the above, Department vide Circular No 139/09/2020- GST dated 10<sup>th</sup> June 2020, has restricted the refund claim of accumulated ITC to those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. As a result of the above restriction imposed by Circular, now Refund can be claimed only of those Invoices, details of which are reflecting in GSTR 2A. It may be noted here that there are no similar amendments in Sections or Rules governing refund. *Can department restrict your refund claim by issuing a circular restricting claim of ITC, when no such consequent amendment has been made to Section and Rules governing Refund?*

**Valuation of Zero-Rated Supplies** - As per amended Rule 89(4) of the CGST Rules, Value of Zero-rated supplies shall be limited to 1.5 times of like goods domestically supplied by the same or similarly placed supplier. The terms 'like goods' and 'same or similarly placed supplier' have not been explained / defined anywhere in the Rules. This opens up Pandora's box for zero-rated suppliers, especially those who are involved in 100% exports.

*Also, when there is separate Valuation mechanism provided by Section 15 which provide for Valuation of transactions, can department impose separate valuation mechanism for the purpose of Refund by inserting amendment to Rule pertaining to Refund. Section 54 empowers Government to make rules with respect to the form and procedure for application of Refund, then how can department restrict the refund by imposing valuation restrictions on export of goods.* Also, it may be noted that the above restriction of valuation as provided by Rule 89(4) does not govern the transactions of Exports made with payment of IGST. The above restrictions apply only to export transactions made without payment of IGST (ie Exports Under LUT).

**Refund of Input Services under Inverted Duty Structure**- Section 54(3) provides for Refund of Unutilised Input Tax Credit in case of Zero-Rated supplies and in case 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.

It is important to note that Input tax credit has been defined under Section 2(63) to mean credit of **Input tax**. Input tax is further defined in Section 2(62) to mean tax charged on supply of goods or services or both made to any registered person.

Accordingly, if we replace the definition of Input tax credit in Section 54(3) it reads as “refund of unutilised tax charged on supply of goods or services or both is provided in two circumstances –

- (1) Zero Rated supplies
- (2) In cases where the credits have been accumulated on account of rate of tax on inputs being higher than rate of tax on output supplies.



Government has amended the Rule 89(5) which provides for Refund in case of Inverted Duty Structure vide Notification No 21/2018 dated 18<sup>th</sup> April 2018 to restrict the refund in case of Inverted duty structure only to refund of inputs and accordingly no refund of unutilised credit of Input Services is available. Also, this notification was amended retrospectively.

*The question here was that, whether the circumstance mentioned at Serial No 2 above is just a criteria or is a restriction in itself.*

Gujarat High Court in **VKC Footsteps India (P.) Ltd. v. Union of India (2020) 118 taxmann.com 81 (Gujarat)** held that 'input' and 'input service' are both part of the 'input tax' and 'input tax credit'. Therefore, as per provision of sub-section 3 of section 54, the legislature has provided that registered person may claim refund of 'any unutilised input tax', therefore, by way of rule 89(5) of the CGST Rules, 2017, such claim of the refund cannot be restricted only to 'input' excluding the 'input services' from the purview of 'Input tax credit'. Gujarat High Court judgement was a welcome judgment for many and all the dealers started claiming refund of Input Credit Services as well under Rule 89(5) on the basis of the above judgment.

Then there was this Madras High Court Judgement in case of **Tvl. Transtonnelstroy Afcons Joint Venture v. Union of India (2020) 119 taxmann.com 324 (Madras)**, where it was held that Section 54(3)(ii) curtails a refund claim to the unutilised credit that accumulates only on account of the rate of tax on input goods being higher than the rate of tax on output supplies. In other words, it qualifies and curtails not only the class of registered persons who are entitled to refund but also imposes a source-based restriction on refund entitlement and consequently, the quantum thereof.

As a corollary, rule 89(5), as amended, is in conformity with section 54(3)(ii). Consequently, it is not necessary to interpret rule 89(5) and, in particular, the definition of Net ITC therein so as to include the words input services.

Government went into appeal against the Gujarat High Court decision in Supreme Court and now we have Supreme court decision in the case of **Union of India v. VKC Footsteps India Pvt Ltd.(2021) 130 taxmann.com 193 (SC)** where it has been held that Clause (ii) of the first proviso to Section 54(3) is not merely a condition of eligibility for availing of a refund but a substantive restriction under which a refund of unutilized ITC can be availed of only when the accumulation is relatable to an inverted duty structure, namely the tax on input goods being higher than the rate of tax on output supplies. There is therefore no disharmony between Rule 89(5) on the one hand and Section 54(3) particularly Clause (ii) of its first proviso on the other hand. *Explanation (a)* to Rule 89(5) in defining 'Net ITC' to mean ITC availed on inputs (goods) is, as a matter of fact, entirely in line with the main provision, Section 54(3).

*Now the Supreme court has clearly laid down the above issue in the favor of government, thereby now no refund of unutilized Input tax credit can be claimed in case of Services in case of Inverted duty structure.*

**There are few more issues relating to refund, however considering the length of the article I would be restricting to the above main three issues.**

I would like to conclude here by saying that Refund mechanism is an important part of GST implementation, and now the majority of the technical glitches, issues pertaining to portal have been streamlined by the government. It is very important that the refund applications are filed on timely basis with all the supporting documents so that timely refunds are disbursed by the government which in turn would help the dealers with their working capital inflows.

