

Critical Issues & Resolutions – GST Refund

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GST REFUNDS

- Zero Rated Supplies
 - Exports of goods or services
 - Supply to SEZ unit or developer of SEZ
 - Deemed exports
- Inverted duty refund
- Excess payment of tax
- Excess balance in cash ledger
- Refund of provisional assessment
- Refund of pre-deposit based on court order
- Refund on wrong payment of tax based on POS Content
- Advance Tax by Casual Taxable Person
- Refund of GST paid on inward supplies by UNO, MFI , Consulate and Embassy

GST REFUNDS

- Export of Goods – Taking Goods out of India to a place out of India
- India
 - The territory of India as referred to in article 1 of the Constitution,
 - Territorial waters,
 - Seabed and sub-soil underlying such waters,
 - Continental shelf,
 - Exclusive economic zone,
 - Any other maritime zone,
 - The air space above its territory and territorial waters.

GST REFUNDS

- Export of Service export of services:
 - Supplier is located in India; and
 - Recipient is located outside India; and
 - Place of supply of service is outside India; and
 - Payment for such service has been received in convertible foreign exchange or INR wherever permitted by the RBI; and
 - the supplier of service and the recipient of service are not merely establishments of a distinct person
- Establishment of Distinct person
 - Will that include subsidiary/holding/group company?
 - Representation office - to be careful
- No Refund
 - If Good exported are subject to Export Duty
 - If Drawback of Central Tax claimed
 - Refund of IGST claimed
 - Less than INR 1,000/-

GST REFUNDS

- Incidence of Tax not to be passed on
 - Pricing
 - Expenses in P&L
 - Receivable in Balance Sheet
- 90% provisional in case of refund on account of Zero Rated Supply within 7days (Ack)
 - No prosecution in last 5 years for tax evasion >250L
- 10% within 60days from the date of application
- CG to disburse the refund of the state tax (01-09-2019)
- Withhold or deduction
 - Defaulted in furnishing any return
 - Required to pay tax, interest or penalty which is not stayed
- Delayed refund eligible for 6% interest after the expiry of 60days
 - Not automatic; need to apply

Exports under LUT

Issue: Should the period of limitation be counted invoice / FIRC wise or application wise.

As the claim can be filed on monthly, quarterly of half yearly or annually, therefore the period of limitation should be applied 2 years from the end of the period- CCE Vs Span Infotech (India) Pvt Ltd 2018 (12) GSTL 200 (Tri-LB) –

the relevant date for purposes of deciding the time limit for consideration of refund claims under Rule 5 of the CCR may be taken as the end of the quarter in which the FIRC is received, in cases where the refund claims are filed on a quarterly basis

- Ensure the refund claim is filed within 2 years from the relevant date.
 - Export of goods – within two years from the date of goods leaving India.
 - Export of Service - receipt of payment in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India], where the supply of services had been completed prior to the receipt of such payment; or
 - issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

Exports under LUT

- **What happens to claim filed just before the end of period of limitation and the officer issues a deficiency memo?**
 - DM can be issued if any documents as required in the rule is not furnished at the time of filing the claim.
 - Rule 90(3), if DM is issued a fresh claim is required to be filed.
 - Circular 125/44/2019- GST – such corrected claim should also be submitted within two years from the relevant date.
 - Check if PMT-03 was issued re-crediting the ITC to ECL.
 - 2005 (192) ELT 89 (Del) CCE Vs Arya Export & Industries: Any procedural irregularity the Department was under an obligation to require the assessee to submit the requisite documents. Refund is the right of the assessee and should not be taken away by the State especially with the approach of the kind that was adopted in the present case
- The said principle would not apply for claims filed with all documents as required in GST Rules. Circular 125/44/2019-GST
- Frivolous reasons and asking for a fresh application?

Exports under LUT

- No ITC refund if the goods are subjected to export duty under customs laws.
- ITC Refund can be claimed even for nil rated or exempted goods or services
 - Cess Refund possible even if the goods exported are not subjected to cess – Coal
- ITC refund and duty draw back can be claimed simultaneously.
 - (After Sept 2017, duty draw back only for customs, therefore ITC refund and duty draw back of customs can be claimed simultaneously) – Circular 37/11/2018-GST.
- Net ITC does not include capital goods credit for ITC refund purpose.
 - No restriction in Act. Refund has inclusive definition – Challenging possible

Exports under LUT

- Refund of transitional credit not allowed
 - Can't this be treated as ITC availed during the period? If not how it can be recovered? - Challenging possible
- NET ITC should be after application of Rule 42
- Adjusted total turnover – excludes exempted supplies, matching concept.

Issues in Computation – Cess

Particulars	Amount
Export Supplies	400
Domestic Supplies	450
Domestic Exempted	150
Total	1000

- For refund of GST - $400/850$
- For Refund of Cess – $400/850$ or $400/1000$ or $400/400$?

Exports under LUT- Rule 89(4)

- Turnover of zero rated supply of goods amended.
‘(C) “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 or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;’.
- Powers for giving valuation? Is this valid?
- What if no domestic supplies?
- Like goods is that the same ‘supply of goods or service or both of like kind and quality’
- Adjustment for quantity, quality etc?

Exports under LUT Rule 89(4)

- For majority of goods exported there is no export duty.
- Therefore valuation of goods not properly assessed.
- In order to curb inflated ITC refund. Valuation of export goods, check created restricting the value of export of goods to 1.5 time of domestically supplied goods. (Practical challenges to be added)
 - Export value of goods Rs 1,00,000,
 - Domestic value of goods Rs 75,000,
 - Export of goods = 100000 or (75000×1.5) 112500 WEL = Rs 100000

Case -II

- Export value of goods Rs 3,00,000
- Domestic value of goods Rs 1,00,000
- Export of goods = 300000 or $(1,00,000 \times 1.5)$ 150000 WEL = Rs 150000

Exports under LUT Rule 89(4)

- Impact for exporter of goods – ITC refund gets reduced for genuine exporters.
- Double edge benefit for Govt: Realization of proceeds fully, and curtail down the refund amount.
- Rule 89(4) was unwarranted when Rule 96B was introduced.

Rule 96B- Non realisation of export proceeds

- Not in the Act, is this valid? - can be challenged
- If realization is not received within specified timelines in full or in part, as allowed under FEMA.
- To an extent proceeds not received, refund along with interest to be paid back, within 30 days of expiry period.
- Else
- Recovery in terms of section 73 or 74, impact of penalty, **can penalty be u/s 74 be imposed** for non- realization of export proceeds.
- If RBI writes off the requirement of realisation within the period specified by RBI, no recovery of refund could be initiated.
- If export proceeds realized after recovery, proper officer to refund back the amount, provided realization happen within extended period specified by RBI.
- Application to be made within 3 months from the date of realization

Exports on payment of IGST

13. In the said rules, in **FORM GST RFD-01**, after the declaration under rule 89(2)(g), the following undertaking shall be inserted, namely:-

“UNDERTAKING

I hereby undertake to deposit to the Government the amount of refund sanctioned along with interest in case of non-receipt of foreign exchange remittances as per the proviso to section 16 of the IGST Act, 2017 read with rule 96B of the CGST Rules 2017.

Signature-

Name –

Designation / Status”.

Exports on payment of IGST

- Ensure exports declared in Zero rated supply column and IGST paid.
- Value and IGST should match between GSTR-1 and GSTR-3B and shipping bill in case of export of goods
- Export can claim ITC refund on exports and export on payment of IGST in the same month for two different invoices.
- Export on payment of IGST to be form part of adjusted total turnover, while claim ITC refund on exports.
- Rule 96(10) Exporter of goods or service should not have received the supplies
 - U/s 48/2017 - CT
 - 41/2017-IGST (Rate)
 - 78/2017-Cus
- Rule 96(10) Explanation, if registered person has paid IGST and Compensation cess on imports and availed exemption only for BCD, it will be treated that the benefit of notification 78/2017-Cus was not claimed –retrospective amendment
- Imports should be considered for inputs and capital goods.
- For past if imported claiming IGST and CC exemption, tax may be paid with interest to regularize the past. 9.10.2018

Rule 92(1A)

- Refund of Excess payment of tax/ provisional assessment/ any other refund/ refund of tax paid on intra state supply held as inter state supply.
- To an extent paid in cash will be refund in cash
- To an extent paid through credit will be re-credited to ECL through PMT-03
 - Excess payment of Tax refund claimed Rs 5,00,000
 - Paid through ITC Rs 2,00,000 and paid in cash Rs 3,00,000 (2:3)
 - Extending demand on appellant of Rs 50,000/-
 - Refundable amount will be Rs 4,50,000/- (after adjusting against demand)
 - Refund in cash $\text{Rs } 450000 \times \frac{3}{5} = 2,70,000/-$
 - Re-credit in electronic credit ledger = $\text{Rs } 450000 \times \frac{2}{5} = 1,80,000/-$ in PMT-03

EOS on payment of IGST is rejected, will the IGST be re-credited to ECL

- Presently there is no facility to get the re-credit of the same,
- unlike of ITC refund which gets rejected.
- Go for a fresh refund claim under excess payment of tax or refund under others, citing reasons and circumstance for such claim.
- GST council in the last meeting, has proposed to re-credit excess payment of tax.

Inverted duty refund

- Transitional credit, Capital goods credit and input service credit not allowed as refund.
- Exempted goods not to be considered for the purpose of claiming refund.
- Trader purchases the goods at 18% and avails ITC, at the time of selling the said goods rate reduced to 12%, no inverted duty refund in such circumstance. – Circular 135/05/2020

Issues in Computation – Cess

Particulars	Amount
Export Supplies	400
Domestic Supplies	450
Non Inverted	150
Total	1000

- For Inverted + Exports - $850/1000$ or $450/1000$ or $450/600$?

Refund of Wrong payment of Tax

- Section 77
 - CGST and SGST/UTGST paid on interstate supply.
 - IGST paid on Intrastate Supply
- Subsequently held - Self-corrections?
- Time limit of 2 years from the date of order

General provision for refunds

- Clubbing of turnovers restriction within the financial year done away vide circular 135/05/2020-GST, yet to be implemented in the portal.
- Refund of ITC to be claimed only on the basis of GSTR-2A.
- Annexure B- Statement of invoice for refund of unutilized ITC to contain HSN/SAC.
- Refund by non-registered person – customer
- Refund of credit on closer of unit?

Thank YOU

Questions???

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