

REFUND UNDER GST

**J. B. NAGAR CPE STUDY CIRCLE | 28TH NOVEMBER, 2021
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Types of Refunds

Brief Background of Refunds

Procedure of Refund application

Recent Circulars

Burning issues in Refunds under GST

AGENDA



DIFFERENT TYPES OF REFUNDS

28.11.2021

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DIFFERENT TYPES OF REFUNDS?

REFUND OF CASH

- Tax paid on zero-rated supplies
- Excess cash balance
- Tax paid on advance for which no supply has been done
- CGST / SGST paid instead of IGST
- **Any other amount**

REFUND OF CREDIT

- Unutilized input tax credit due to zero-rated supplies
- Unutilized input tax credit due to inverted duty structure



ZERO-RATED SUPPLIES

BRIEF BACKGROUND

28.11.2021

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WHAT ARE ZERO-RATED SUPPLIES?

- ‘Zero-rated supplies’ are neither ‘exempted supplies’ nor ‘nil-rated supplies’
- Zero-rated supplies have been defined in Section 16 of IGST Act as:
 - ❖ Export of goods or services; or
 - ❖ Supply of goods or service to SEZ Unit or SEZ Developer
- Supplier of Zero-rated goods or services may:
 - ❖ Supply **with payment** of tax
 - ❖ Supply **without payment** of tax

REFUND ON ZERO-RATED SUPPLIES

- If supply is made with payment of tax, then refund of tax paid on supply under Rule 96
- If supply is made without payment of tax, then refund of **'unutilized'** input tax credit as per formula given in Rule 89
- Formula prescribed in Rule 89(4) is as follows

Maximum Refund Amount = Turnover of zero-rated supply ÷ Adjusted Total Turnover x Net ITC

REFUND ON ZERO-RATED SUPPLIES

Notification No. 16/2020-CT dated 23.03.2020

- Value of zero-rated supply of goods has been restricted to 1.5 times the value of domestic supplied goods by same or similarly placed supplier

Circular No. 147/03/2021-GST dated 12.03.2021

- Restriction in value of zero-rated supply of goods to be applied to numerator and denominator both

REFUND ON ZERO-RATED SUPPLIES

Particulars	Before Change	After Change
Domestic Supply	Rs. 100	Rs. 100
Export Supply	Rs. 250	Rs. 250
Net ITC	Rs. 75	Rs. 75
Zero rated supply for Rule 89	Rs. 250	Rs. 150
Refund as per Rule 89	$250 / (250 + 100) * 75$	$150 / (150 + 100) * 75$
Refund Amount	Rs. 54	Rs. 45
Loss		Rs. 9

ZERO-RATED SUPPLIES

WITH PAYMENT

- Tax paid by utilizing ITC and Cash
- Refund of the tax paid on supply
- Refund of entire amount of tax
- ITC on capital goods can be utilised
- On notified supplies*

WITHOUT PAYMENT

- No payment of tax
- Refund of unutilized ITC
- Refund as per prescribed formula
- No refund of ITC on capital goods
- On all supplies

REFUND ON ZERO-RATED SUPPLIES

Amendment vide Finance Act, 2021:

- Zero-rated supplies with Payment of Tax has been restricted to only the 'notified supplies'. All other zero-rated supplies to be mandatorily done without payment of tax
- Supplies to SEZ also restricted only to 'authorized operations'
- This amendment has not yet been notified
- Once notified, zero-rated supplies to be made only without payment of tax except for specifically notified categories



INVERTED DUTY STRUCTURE

BRIEF BACKGROUND

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INVERTED DUTY STRUCTURE

- Refund of unutilized input tax credit can be claimed in case of 'Inverted Duty Structure' (IDS)
- IDS is when the rate of tax on inward supply is more than rate of tax on outward supply
- Refund is eligible only when there is accumulation of ITC due to IDS
- No refund if accumulation of ITC due to change in rate of tax on same goods
- Formula for determination of refund amount has been prescribed under Rule 89(5) of CGST Rules

INVERTED DUTY STRUCTURE

- Formula given in Rule 89(5) is reproduced herewith:

*Maximum Refund Amount = (Turnover of inverted rated supply ÷ Adjusted Total Turnover x **Net ITC** - tax payable on such inverted rated supply of goods and services.*

Particulars	Amount
Supply @ 5% (IDS)	Rs. 1,00,000
Supply @ 18% (Normal)	Rs. 1,50,000
Net ITC	Rs. 80,000
Pro-rata ITC	1 Lakh / 2.5 Lakh * 80,000 = 32,000
Net Refund	32,000 – 5,000 (1,00,000 * 5%) = Rs. 27,000

INVERTED DUTY STRUCTURE

- As per the Explanation to Rule 89(5), 'Net ITC' is the ITC of inputs availed during the relevant period

'Net ITC' 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 (4B) or both; and

INVERTED DUTY STRUCTURE

- Following goods and services have been excluded from availing refund under inverted duty structure:

Woven Fabrics (upto 01.08.2018);

Corduroy Fabrics (upto 01.08.2018);

Knitted or Crocheted Fabrics (upto 01.08.2018);

Railway Locomotives.

Construction of complex, building or a civil structure

Tobacco and Manufactured Tobacco Substitutes (Compensation Cess)

(Above list is only a summary, for precise description please refer the relevant notifications)



EXCESS CASH BALANCE

BRIEF BACKGROUND

28.11.2021

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EXCESS CASH BALANCE

- As per Section 49(6) of CGST Act, balance in the electronic cash ledger shall be refunded to the assessee as per the provisions of Section 54 of CGST Act
- As per Section 54(1) of CGST Act, refund of such excess balance is to be availed by filing GSTR-3
- Since GSTR-3 has not been implemented, refund of cash balance is to be made in RFD-01 per Circular No. 125/44/2019-GST dated 18.11.2019
- It is mandatory that all outstanding liabilities are paid before claiming of refund



OTHER TYPES OF REFUNDS

BRIEF BACKGROUND

28.11.2021

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OTHER TYPES OF REFUNDS

- If CGST / SGST has been paid instead of IGST or vice versa (Section 77)
- Tax has been paid on advance, and such advance has been returned back without any supply being made and invoice being raised (Section 54)
- Tax paid on account of provisional assessment (Section 60)
- **Any other amount**, where incidence of tax has not been passed onto any other person



PROCEDURE OF REFUND

Brief background

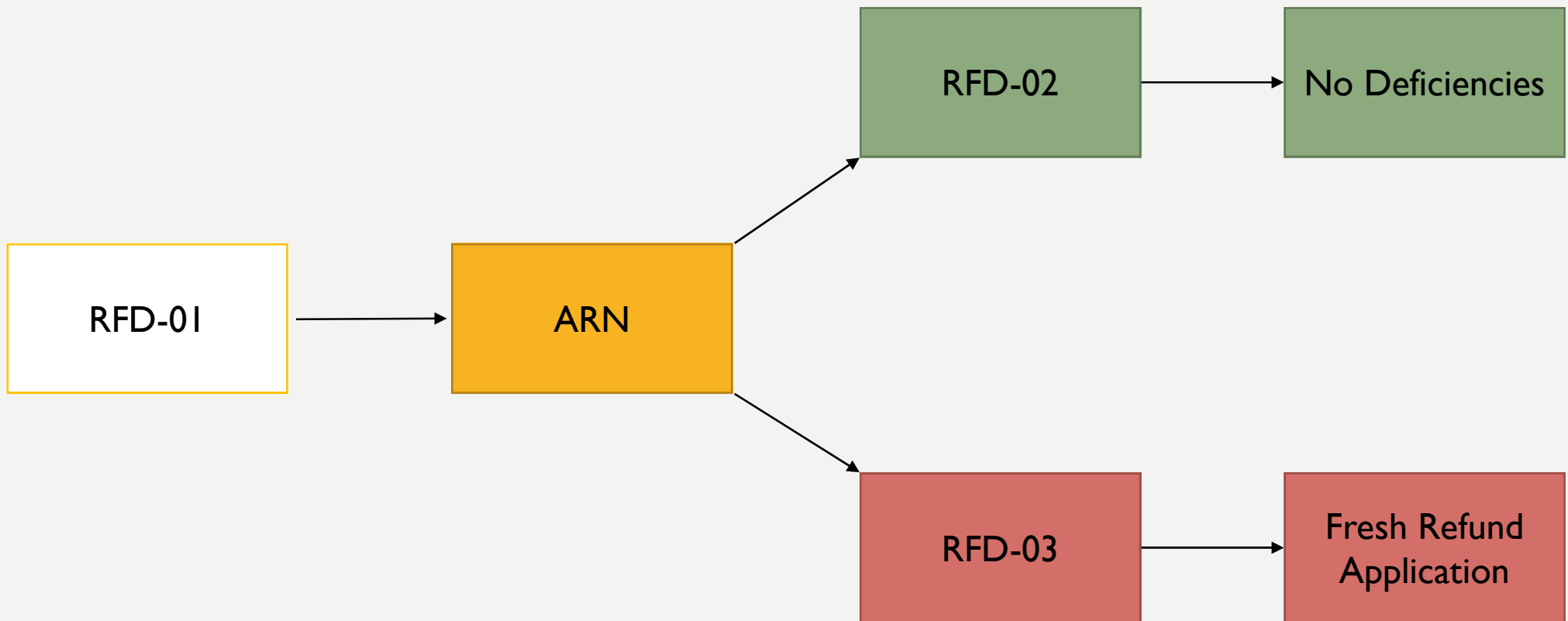
APPLICATION

- Refund application has to be made within **2 years from the relevant date** in RFD-01
- Multiple tax periods / financial years can be clubbed together (Delhi High Court in Pitamba Books Pvt. Ltd. - W.P.(C) 627/2020)
- All returns upto the date of filing of refund application shall be filed
- Debit to be made in the electronic credit / cash ledger, wherever required

APPLICATION

- List of outward invoices in the format prescribed in Annexure to RFD-01
- Documents prescribed in Rule 89(2) along with Annexure A to Circular 125/44/2019 – GST
- If refund pertains to unutilized input tax credit then statement of invoices on which ITC has been availed as per format in Annexure B of Circular 125/44/2019 – GST
- Declaration w.r.t. unjust enrichment:
 - ❖ If refund amount is less than Rs. 2 Lakhs – Self Declaration [Rule 89(2)(l)]
 - ❖ If refund amount is more than Rs. 2 Lakhs – CA Certificate [Rule 89(2)(m)]

PROCESSING



PROCESSING

- Period between RFD-01 and RFD-03 shall be excluded from time limit of 2 years, in case of fresh refund application (Notification No. 15/2021-CT)
- No new deficiencies can be pointed out in the fresh refund application
- In case refund is of excess cash balance, RFD-02 is issued first and application is verified later and hence, deficiencies can be pointed out later on as well

TAX PAID ON EXPORTS (RULE 96A)

- Shipping bill filed by the supplier shall be deemed to be the refund application
- Refund application is deemed to be complete when GSTR-3B is filed by the supplier
- Invoices disclosed in Table 6A of GSTR-I are validated with the Customs Database
- In case due date for filing GSTR-I is extended then statement of invoices in Table 6A to be submitted electronically
- Once the data in Customs Database and Table 6A is validated, refund shall be automatically paid to supplier

PROVISIONAL REFUND

- Section 54(6) – If refund application on account of zero-rated supply of goods and services 90% of the amount to be paid provisionally before passing an order
- Central Government is empowered to prescribe conditions, limitations and safeguards
- Applicant should not be prosecuted in previous 5 years under GST / erstwhile law where tax amount exceeds Rs. 2.50 Crores
- Provisional refund to be sanctioned only if Proper officer is '*prima facie* satisfied'
- If Provisional refund > Final refund, recovery to be made by issuing show cause notice

ORDER

- Proper officer shall pass an order within 60 days
- If the proper officer is satisfied that refund is eligible, refund will be sanctioned
- If officer is not satisfied, then
 - ❖ Show cause notice will be issued
 - ❖ Reply to show cause notice needs to be filed within 15 days
 - ❖ Order for sanction or rejection will be passed
- Refund cannot be rejected without giving an opportunity of being heard

APPEAL

- If the refund is rejected, assessee has the option to file an appeal with the Appellate Authority, Appellate Tribunal, High Court and Supreme Court
- Pre-deposit is not required to be paid in case of rejection of refund
- If the assessee is successful at any of the levels, then the refund shall be applied again in RFD 01 under the category of “On account of Assessment / Provisional Assessment / Appeal / A Other Order”
- Time limit for filing fresh refund application shall be 2 years from date of order sanctioning refund

WITHHOLDING OF REFUND

- **Sec 54(10) of CGST Act - Proper officer** may withhold the sanctioned refund if:
 - ❖ Any GST return has not been filed
 - ❖ There is any unpaid amount / outstanding liability
- **Sec 54(11) of CGST Act - Commissioner** may withhold the sanctioned refund if he believes sanctioning such refund may adversely affect any other proceedings due to fraud or malfeasance
- If assessee is successful at such proceeding, then interest at 6% needs to be paid on such withheld refund

RULE 96B

In case of **Export of Goods**:

- Foreign currency not received within time – refund given to exporter to be deposited back with the Government
- If foreign currency is received at a later date then such amount will be again refunded to the exporter
- No mechanism notified for such re-refund of tax on receipt of foreign currency

RULE 96C

Notification No. 35/2021 – CT dated 24.09.2021

- Refund to be credited in the bank account which is in the Name and PAN of the applicant;
- In case of sole proprietor, PAN and Aadhar card should also be linked with each other
- Effective date not yet notified

MISCELLANEOUS POINTS

- If sanctioned refund is not paid within 60 days from the **date of application**, then interest to be paid at 6% from 61st day onwards till the date of payment
- If refund is eligible due to order of Court, then interest to be paid at 9% from **61st day** of **fresh refund application**
- Refund application can be withdrawn any time before passing of the order by filing RFD-01W
- Amount debited from credit / cash ledger at the time of filing RFD-01 shall be credited back if refund is rejected / withdrawn
- Aadhar authentication of Proprietor / Partners / Directors / Trustees mandatory

MISCELLANEOUS POINTS

- Other than in case of zero-rated supplies, refund shall be granted in the proportion in which tax was paid by input tax credit and cash as per Circular 135/05/2020-GST

For Example:

Tax of Rs. 100 paid by Input tax credit, Rs. 40 and in cash, Rs. 60.

Out of the said amount, Rs. 50 is refundable to the assessee, then refund will be paid in the proportion in which tax was paid by the assessee i.e. ITC ledger will be credited by Rs. 20 and balance refund of Rs. 30 will be paid in cash

MISCELLANEOUS POINTS

In case of refund of unutilized input tax credit, refund amount shall be the higher of:

- Amount calculated as per applicable formula;
- ITC balance as on date of filing return;
- ITC balance as on date of filing refund application

MISCELLANEOUS POINTS

For Example:

Least of the following amounts will be granted as refund:

- Refund amount as per Rule 89(4)/(5) = Rs. 7,000;
- Balance in Electronic Credit ledger after filing GSTR-3B = Rs. 4,000
- Balance in Electronic Credit ledger at the time of filing refund = Rs. 4,500

Eligible refund amount is Rs. 4,000

COMMON REASONS FOR RFD-03

- Documents not submitted
- Mismatch between GSTR-1 and GSTR-3B
- Mismatch between GSTR-3B and GSTR-2A
- Declarations / Certificates not submitted

OFFICERS' MINDSET

Eligibility:

Whether refund is eligible?

Whether supply is export?

Whether there is any IDS?

Whether application within time limit?

Outward Supply:

Statement-2, 3, 4 & 5 of Sales invoices;

Mismatch in GSTR-1, GSTR-3B and RFD-01;

Receipt of Foreign Currency (BRC / FIRC);

Shipping Bill mismatch

Inward Supply:

Matching of GSTR-3B, GSTR-2A and RFD-01;

Eligibility / Ineligibility of ITC;

Any ITC on Capital Goods;

Statement of Invoices in Annexure B

Declarations and Other Documents:

Documents submitted as per Annexure A;

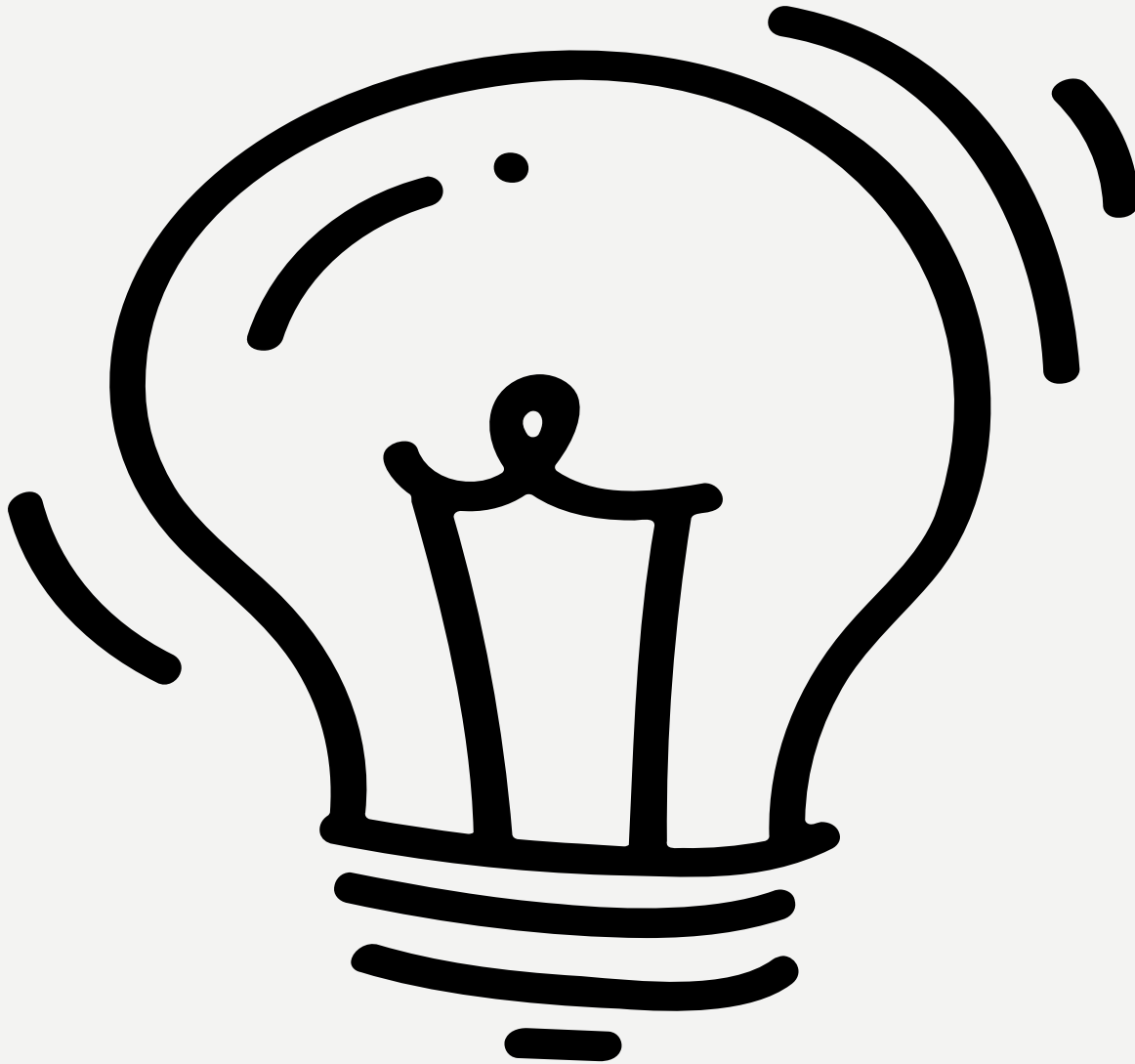
Self declaration / CA Certificate submitted;

Statement of outward and inward invoices;

Any other required documents

ILLUSTRATIVE LIST OF FORMS

PURPOSE	FORM	PURPOSE	FORM
Refund application	RFD-01	Acknowledgement	RFD-02
Deficiency memo	RFD-03	Provisional refund	RFD-04
Payment order	RFD-05	Sanction / rejection order	RFD-06
Refund withholding	RFD-07A	Release withheld refund	RFD-07B
Show cause notice	RFD-08	Reply to show cause notice	RFD-09
Withdrawal of Application	RFD-01W	Appeal to appellate authority	APL-01
Re-credit cash / credit ledger on rejection / withdrawal	PMT-03		



RECENT CIRCULAR

EXPORT DUTY

Refund of ITC is not allowed on export of goods subject to 'Export Duty'

Circular 160/16/2021-GST dated 20.09.2021

- Restriction will be applicable on which export duty is 'actually payable'
- Restriction will not cover those goods on which rate of export duty is NIL or exempted from export duty
- Stand accepted by Hon'ble Bombay High Court in **Minescape Minerals Pvt Ltd - 2021-TIO 2045**

OVERSEAS BRANCH VS SUBSIDIARY

As per Section 2(6), recipient and supplier of service should not be merely establishments of the same person

Circular No. 161/17/2021-GST dated 20.09.2021:

- Company incorporated in India and another company incorporated under Foreign Law a separate legal entity and not establishments of the same person
- Supply of service by Indian company to foreign subsidiary / holding company incorporated under foreign laws will be considered to be export of service and not barred by the above restriction

SUBSEQUENTLY HELD

- As per Section 77, if CGST / SGST wrongly paid on a supply on which IGST was payable, the taxpayer is eligible for refund of CGST / SGST wrongly paid or vice versa
- Circular No. 162/18/2021-GST dated 25.09.2021 clarifies that it covers both the cases where the error is found by taxpayer himself or by tax officer in any proceeding
- Stand accepted by the Punjab & Haryana High Court in the case of **SBI Cards and Payment Services Ltd - 2021-TIOL-2141**
- Rule 89(IA) notified vide Notification No. 35/2021-CT dated 24.09.2021 – period of 2 years to be considered from the date of payment under correct head of tax

CASH LEDGER

- Balance lying in electronic cash ledger can be claimed as refund by filing RFD-01
- **M/s Appario Retail Pvt. Ltd. - 2021 (11) TMI 153** Hon'ble Telangana High Court has held that doctrine of Unjust Enrichment is not applicable on refund of balance in cash ledger
- Further held that TDS / TCS deposited by deductee is equivalent as cash deposited in the cash ledger and refund to be granted on the same
- Above view accepted by the Department in Circular No. 166/22/2021-GST dated 17.11.2021



REFUND

**ISSUES
UNDER
REFUND**

VALUE OF ZERO-RATED GOODS

- As per amendment in Rule 89(4) of CGST Rules, value of zero-rated goods 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

VALUE OF ZERO-RATED GOODS

- Value of Supply has already been defined in Section 15 of CGST Act and the Rules made thereunder
- Section 54 empowers Government to make Rules w.r.t. to the form and the procedure for application of refund
- Hon'ble Supreme Court in **Nat Steel Equipment Pvt. Ltd. Vs. CCE 1998 (34) ELT (SC)** while considering the meaning of the word "similar" held that the expression "similar" is a significant expression. **It does not mean "identical" but it means corresponding to, resembling to in many respects; somewhat like; or having a general likeness.** The statute does not contemplate that the goods classed under the words of "similar description" shall be in all respects the same. If it did, these words would be unnecessary.

VALUE OF ZERO-RATED GOODS

In the case of **M/s B. R. Steel Products Pvt. Ltd. – 2021-TIOL-317-CESTAT-MUM**
Hon'ble Tribunal has held the following:

- Only difference is that of concentrated or diluted
- Due to higher level of concentration, price of export products is higher
- Technical specifications and Manufacturing process is the same
- Commercially, both are known as 'ceramic colours' only

REFUND OF INPUT SERVICE UNDER IDS

- Proviso (ii) of Section 54(3) of CGST Act allows refund of **unutilized input tax credit** if the **rate of tax on input goods being higher than rate of tax on outward supplies.**
- Refund is calculated under Rule 89(5) in relation to the 'Net ITC'. As per the Explanation to Rule 89(5), 'Net ITC' is the **ITC of inputs availed during the relevant period**
- Refund of ITC of input services allowed by Hon'ble Gujarat High Court in **VKC Footstep India Pvt Ltd - 2020-TIOL-1273-HC-AHM-GST**

REFUND OF INPUT SERVICE UNDER IDS

Hon'ble Supreme Court in **VKC Footsteps India Pvt. Ltd. - 2021-TIOL-237-SC-GST** has held the following:

- The proviso to Section 54(3) is not a condition of eligibility but a substantial restriction which must govern the grant of refund under Section 54(3).
- Refund of unutilized ITC can be availed of only when the accumulation is relatable to rate of tax on input goods being higher than the rate of tax on output supplies.
- Explanation (a) to Rule 89(5) in defining 'Net ITC' to mean ITC availed on inputs (goods) is, a matter of fact, entirely in line with the main provision, Section 54(3).

REFUND OF INPUT SERVICE UNDER IDS

Industries with heavy reliance on input services to suffer:

- E-commerce sellers;
 - Pharmaceuticals;
 - Textile Industry;
 - Job-work reliant industries
-
- Two GoMs looking into rate rationalization which may help ease out some of the accumulation and provide relief to such industries
-
- Change of rate in SPGS, textiles etc. is an example of relief

RULE 96B

- As per Rule 96B, in case of export of goods, proceeds to be received as per the timeline mentioned in FEMA. If not, then the exporter shall return the refund already received
- No such condition has been prescribed in the Act that proceeds shall be received in order to determine whether or not a supply is export of goods or not
- In Paragraph 48 of Circular No. 125/44/2019-GST department has clarified that proof of realization of export of goods is not a requirement envisaged under the law and therefore, not a requirement for processing of refund
- Paragraph 48 is clarificatory in nature and shall hold good even if the circular is rescinded unless an amendment is made into the Act

APPLICABILITY OF RULE 36(4)

- Rule 36(4) allows assessee to avail ITC upto 105% of the ITC matching with GSTR-2A
- As per Circular No. 125/44/2019-GST dated 18.11.2019, ITC for the purpose of refund shall be considered as per Rule 36(4)
- However, subsequently Circular No. 135/05/2020-GST dated 31/03/2020 issued to clarify that ITC shall be restricted upto amount reflecting in GSTR-2A for the purpose of refund application
- Rule 89(4) / (5) define 'Net ITC' as ITC availed in the tax period

ASSESSMENT DURING REFUND

- While processing the refund application, proper officer proceeds to verify all the aspects of the returns filed, especially input tax credit, which is as good as an assessment of returns
- Trite law that if refund claimed on any ineligible ITC, then parallel proceedings need to be initiated for denial of credit
- As per paragraph 20 of Circular No. 125/44/2019-GST, RFD-08 issued shall be issued for recovery of ineligible ITC as well as denial of proportionate refund

ASSESSMENT DURING REFUND

- For availing refund of excess cash balance, mandatory that there are no outstanding liabilities
- Proper officers often resort to scrutiny of returns while processing refund application
- Hon'ble Kerala High Court in the case of **Royale Edible Company – 2020 (12) TMI 93** has held that the only exercise that needs to be done by officer is to ascertain whether there was any balance in cash ledger after meeting any 'known liabilities'

FRESH REFUND APPLICATION

- Once deficiency memo has been issued, assessee is required to file a fresh refund application after correcting the pointed out deficiencies
- This refund application also needs to be filed within 2 years from the relevant date. As per amended Rule 90(3), period between refund application and deficiency memo is to be excluded from calculation of time limitation for the fresh refund application.
- Hon'ble CESTAT in the case of **Repro India Ltd. - 2016 (4) TMI 328** wherein it has been categorically held that limitation period is required to be computed from the date of receipt of original application only, even if it was incomplete

RFD-03 NOT ISSUED

- Acknowledgement / Deficiency Memo is required to be issued within 15 days of ARN
- What happens if neither is issued within 15 days?
- Hon'ble Delhi High Court in the case of **M/s Jian International – 2020 (7) TMI 611**, held that when no acknowledgement or deficiency memo has been issued to the assessee within the prescribed period of 15 days, the refund application is assumed to be proper and the Department cannot issue a deficiency memo at a later stage.
- Despite the favourable judgement, practical issues persist and portal will ask to file fresh refund application

REFUND TO SEZ

Platinum Holdings Pvt Ltd - 2021-TIOL-2016 – Madras HC:

- Assessee is a SEZ unit claiming refund of GST charged by supplier and remitted to them by mistake
- Refund disallowed on the ground that only supplier of SEZ can apply for refund
- Hon'ble High Court has held that 'any person' can apply for refund and therefore, SEZ unit is eligible for refund of GST paid to suppliers by mistake

TIME LIMIT IN MULTIPLE PERIODS

- Vide Circular 135/05/2020-GST, refund application can be made for multiple financial years the same refund application
- However, bunching up of multiple tax periods leads to an issue of determining period limitation. Notifications / Circulars issued by the Department are silent on this aspect
- Hon'ble CESTAT in the case of **M/s EMC Data Storage System India Pvt Ltd - 2021 TIOL-1572-CESTAT-BANG** wherein it was held that when refund application has been filed for the entire financial year, then time limit must be considered from the end of the financial year.

LUT NOT FURNISHED?

- As per Rule 96A of CGST Rules, Letter of Undertaking (LUT) in Form RFD-11 shall be furnished before making zero-rated supplies without payment of tax
- What happens if the supplier fails to furnish such LUT?
- Trite law that substantial benefit cannot be denied due to procedural lapse
- As per Paragraph 44 of Circular No. 125/44/2019-GST, Zero-rating of exports is a substantial benefit and the same must not be denied to taxpayers for a procedural lapse i.e. failure to furnish LUT and post facto submission of LUT shall also be considered as valid compliance under Rule 96A

APPEAL FILED BY DEPARTMENT

- Section 112 of CGST Act allows the Assessee and the Department to file an appeal against an order of the Appellate Authority
- Appellate Tribunal under Section 112 has not yet been formed
- Does it give the right to Department to hold back refund which has been sanctioned so that it can file an appeal when the Tribunal is formed?
- Hon'ble Delhi High Court in the case of **Zones Corporate Solutions Pvt. Ltd. – 2021 TIOL-1168-HC-DEL** held that assessee cannot be asked to wait endlessly till the Department files an appeal with Appellate Tribunal.

THE LIMITATION ACT

- If any amount is collected as tax without the authority of law, then as per Article 265 Constitution, Government cannot retain it
- If GST is collected on any supply, and it is subsequently held to be non-taxable / exempt, the time limit of 2 years under Section 54 shall not apply
- In such cases, Section 17 of The Limitation Act shall apply i.e. 3 years from relevant date
- Recently, Hon'ble Gujarat High Court has upheld this view in the case of **M/s Coms Energy Pvt. Ltd. – 2021-TIOL-1334-HC-AHM-GST**

ANY QUESTIONS?



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