E-Book

Good and Service Tax Refund

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

Southern India Regional Council

Chennai

E-Book

Goods and Service Tax Refund

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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Southern India Regional Council

FOREWORD

Goods and Service Tax refund is a process in which, registered taxpayers can claim excess amount if they paid more than the Goods and Service Tax liability. They can claim after submitting a refund application with the necessary details in the Goods and Service Tax portal. It is a pleasure to share my happiness amongst the members and other stakeholders in bringing out an informative e-book on Foreign Exchange.

This e-book highlights the basic principles under the Goods and Services Tax (GST) with specific detailing on Refund on Zero Rated Supply and process for claiming the same. The objective of the e-book is to enable the reader to understand the relevant provisions under Goods and Service Tax in detail along with the interpretations by the tax authorities on the said provisions.

This e-book also includes the various types of claim for Zero Rated Supply with the specific details on relevant documentation, timelines, permissibility, Restrictions, etc required to make the claim.

This e-book, one in a series of member centric publications planned by SIRC, aims to serve as a Handbook and Guide for the professionals who would like to understand the provisions relevant to claim of refund on Zero Rated Supply in detail and make use of the same in their regular practice with clients/self.

On behalf of SIRC, I wish to place our sincere gratitude and appreciation to A. Shaikh Abdul Samad Ahmad and CA. Hitesh Jain, for sharing their rich experience and expertise on the Goods and Service Tax refund amongst our members through this e-book. I also acknowledge the contribution of CA. Hari Shankar who have reviewed the basic draft of this e-book with his touch of experience and professional excellence.

Comments and suggestions on the e-book are welcome at sirc@icai.in

CA.K.JALAPATHI

Chairman, SIRC of ICAI

CONTENT

INTRODUCTION:

Goods and Services Tax (hereinafter referred as "GST") is based on two principles i.e., 'Destination Based Principle' and 'Value Added Principle'. Destination based taxation seeks to levy and collect tax on the basis of location of consumption, whereas, the principle of value addition tends to levy tax on the supply of goods or services or both at each stage of the supply chain. The principle of destination-based tax coupled with the permission for availing Input Tax Credit (hereinafter referred as "ITC") in GST, results in accumulation of the ITC, as no output tax applies when the supply is consumed outside the taxable territory. However, on the other hand, imports are subject to IGST as a replacement to the countervailing duty on the same basis and on the rates at which such supply is subjected to tax in the domestic market.

This destination principle was sanctioned by the World Trade Organization (hereinafter referred as "WTO") after the liberalization of the international trade to allow free movement of goods and services between member countries by eliminating tariff as well as non-tariff barriers to a larger extent. Further, as per the framework of the WTO system, the member countries were allowed to provide exemption to the exporter of goods or services or both from duties or taxes borne by the like product when destined for consumption in the domestic market. Considering the above said principle laid in the international forum the concept of "ZERO RATED SUPPLY" has been introduced in the Integrated Goods and Service Tax (hereinafter referred as "IGST") Act, 2017; whereby it was vouched that local taxes are not appended to the cost of the such supplies.

Section 16 of the IGST Act, 2017 defines "zero-rated supply" to mean any of the following supplies of goods or services or both, namely:

→ Export of goods or services or both; or

→ Supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

Further, the section permitted registered person, to claim a refund, for making zero-rated supply under either of the following options: -

a. Supply goods or services or both under bond or Letter of Undertaking (hereinafter referred as "LUT"), without payment of integrated tax and claim refund of the unutilised input tax credit.
b. Supply goods or services or both, on payment of integrated tax and claim a refund of such tax paid on goods or services or both supplied.

Besides the refund for the ZERO-RATED SUPPLY, GST law has envisaged on situation which will attract Article 265 of the Constitution of India which provides that "no tax shall be levied or collected except by the authority of law". Therefore, no tax can be levied or collected in India, unless it is explicitly and clearly authorised by way of

legislation. Accordingly, the provisions have been incorporated for refund of taxes, interest on such taxes and any amount in the following scenarios:

→ Deemed Export

→ Inverted tax Structure

→ Balance lying in the electronic cash ledger

→ Taxes paid under wrong head

→ Taxes excessively paid

The material will apprehend the types of claims and their conditions with the help of the provisions in the GST Law:

ZERO – RATED SUPPLY:

Sub section (1) of section 16 of the IGST Act, 2017 prescribes the term "Zero rated supply". The provisions contained in the said section read as under:

16. Zero rated supply.

(1) "zero rated supply" 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 '**for authorised operations'** to a Special Economic Zone developer or a Special Economic Zone unit.*

***for authorised operations -** inserted by the Finance Act, 2021, however not notified.*

From the sub-section we can conclude that only such 'supplies' which are either 'export' or are 'supply to SEZ unit/developer' would qualify as zero-rated supply. Hence, in order to appreciate the concept of zero-rated supply, we need to understand the following:

→ **EXPORT OF GOODS:**

Sub-section (5) of the section 2 of the IGST Act, 2017 defined the term "export of goods", which is as follows:

(5) "export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India.

As per the above definition the goods should be taken out of India to a place outside India for the purpose to qualify them as "export of goods" and enjoy the zero-rated benefit. However, CBIC vide. Circular No. **108/27/2019 dated 18.07.2019**, clarified that only taking the goods out of India will not suffice the transaction as an "export".

The clarification specifically stated that activity of sending/taking the goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfies the tests laid down in Schedule I of the CGST Act (hereinafter referred as "exported goods"), do not constitute supply as the said activity does not fall within the scope of section 7 of the CGST Act, 2017 as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as 'Zero rated supply' as per the provisions contained in section 16 of the IGST Act.

→ **EXPORT OF SERVICES**:

Sub-section (6) of the section 2 of the IGST Act, 2017 defined the term "export of services", which is 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 or in Indian rupees wherever permitted by the Reserve Bank of India; and*

(v) *the supplier of service and the recipient of service are not establishments of a distinct person in accordance with Explanation 1 in Section 8 of the IGST Act.*

Every limb of the definition mentioned above should be satisfied for calling any transaction as export of services and thereby classifying the same under ZERO RATED SUPPLY.

CBIC vide. **Circular No. 161/17/2021-GST** dated **20.09.2021** clarified the following in connection to the clause (v) of sub-section (6) of section 2 of IGST Act:

→ *Clause (v) of sub-section (6) of section 2 of IGST Act, which defines "export of services", places a condition that the services provided by one establishment of a person to another establishment of the same person, considered as establishments of distinct persons as per Explanation 1 of section 8 of IGST Act, cannot be treated as export.*

→ *a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate persons under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as "merely establishments of a distinct person in accordance with Explanation 1 in section 8".*

→ *Therefore, supply of services by a subsidiary/sister concern/group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013 (and thus qualifies as a 'company' in India as per Companies Act), to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act 2017 for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under Explanation 1 of section 8 of IGST Act 2017 .*

→ *Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of section 8 of IGST Act 2017. Such supplies, therefore, would qualify as 'export of services', subject to fulfilment of other conditions as provided under sub-section (6) of section 2 of IGST Act.*

→ **SUPPLY TO SEZ UNIT/DEVELOPER**:

The SEZ Act, 2005 has an overriding effect over the provisions contained in any other Act, by the virtues of section 51(1). Hence, any transaction with the SEZ unit/developer should be apprehend from the lenses of the SEZ Act, 2005. Accordingly, the supply by the registered person in domestic tariff area (hereinafter referred as "DTA") is treaded as export under section 2 (m) and exempted from taxes (if the procurement is for *authorised operation*) under section 26 of the SEZ Act, 2005 and hence the transaction is treated as Zero-Rated Supply in GST.

The section is reproduced below:

(m) "export" means –

(i) taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or

(ii) supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer; or

(iii) ***supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different Special Economic Zone****;*

Section 26 of the SEZ Act, 2005 provided for either exemption or drawback or such other benefits as from may be admissible from time-to-time of duty / taxes levied in any law for the time being in force, on goods brought or services provided from Domestic Tariff Area to a Special Economic Zone or Unit, to carry on the authorised operations by the Developer or entrepreneur.

The CBIC vide **Circular No. 48/22/2018 - GST** dated **14.06.2018** clarifies when a transaction qualifies as Supply to SEZ in the below given FAQ:

Whether the benefit of zero-rated supply can be allowed to all procurements by a SEZ developer or a SEZ unit such as event management services, hotel and accommodation services, consumables etc.?

As per section 16(1) of the IGST Act, "zero-rated supplies" means supplies of goods or services or both to a SEZ developer or a SEZ unit. Whereas, section 16(3) of the IGST Act provides for the refund to a registered person making zero rated supplies under bond/LUT or on payment of integrated tax, subject to such conditions, safeguards and procedure as may be prescribed. Further, as per the second proviso to rule 89 (1) of the Central Goods and Services Tax Rules, 2017 (CGST Rules in short), in respect of supplies to a SEZ developer or a SEZ unit, the application for refund shall be filed by the:

(a) supplier of goods after such goods have been admitted in full in the SEZ for authorised operations, as endorsed by the specified officer of the Zone;

(b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone.

A conjoint reading of the above legal provisions reveals that the supplies to a SEZ developer or a SEZ unit shall be zero rated and the supplier shall be eligible for refund of unutilized input tax credit or integrated tax paid, as the case may be, only if such supplies have been received by the SEZ developer or SEZ unit for authorized operations. An endorsement to this effect shall have to be issued by the specified officer of the Zone.

Therefore, subject to the provisions of section 17(5) of the CGST Act, if event management services, hotel, accommodation services, consumables etc. are received by a SEZ developer or a SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero-rated supply shall be available in such cases to the supplier.

TYPE OF CLAIM FOR ZERO RATED SUPPLY

The supplier transacting Zero - Rated Supply is eligible to claim the input tax credit in respect of goods or services or both used for such supplies taxable as well as exempt supplies. The term "exempted supply" is defined in section 2 (47) of the CGST Act, 2017 which include 'non-taxable supply' but does not cover 'no supply'. They have two options as prescribed under section 16 (3) of the IGST Act, 2017; which is as follows:

→ Supply goods or services or both under the cover of Bond/LUT and claim a refund of accumulated ITC in E-credit ledger.

→ Supply goods or services or both with payment of IGST and claim refund of the taxes paid on account in Form GSTR 3B.

Based on the sub-section (3) of section 16 of the IGST Act, 2017, the supply can be relegated in the following manner:

(A) - Supply goods or services or both under the cover of Bond/LUT and claim a refund of accumulated ITC in E credit ledger.

→ on account of exports.

→ on account of supplies made to SEZ Unit/SEZ Developer.

(B) - Supply goods or services or both with payment of IGST and claim refund of the taxes paid on account in Form GSTR 3B.

→ tax paid on export of services.

→ tax paid on export of goods.

→ tax paid on supplies made to SEZ Unit/SEZ Developer.

The process and requirement for filing claim for each claim is different and the same is explained in detail.

(A) - CLAIM OF ACCUMULATED ITC

The person registered under GST is permitted to take and accumulate the ITC of the taxes paid on inward supplies. Such ITC will have to be carried over till such time as it can be utilised for payment of output tax liability. However, as per Section 54(3) of the CGST Act, 2017, a registered person is permitted to claim refund of unutilised input tax credit at the end of any tax period. A tax period is the period for which return is required to be furnished. Thus, a registered person can claim refund of unutilised ITC on monthly basis or in multiples of tax periods any time after filing the returns for the said periods. Further, the above said section permits refund of unutilised ITC in two scenarios, i.e., if such credit accumulation is on account of:

a. zero rated supplies: (type of zero-rate supply)
    - Export of goods or services or both.
    - Supply to developer of / unit in SEZ.
b. inverted duty structure.

In this segment, we shall deliberate only on the zero-rated supply.

The registered person (irrespective of type of zero-rate supply); who had opted to supply the goods or services or both under the cover of LUT/BOND without payment of IGST is eligible to claim refund of unutilised ITC. However, the following rudiment should be satisfied:

a. **Execution of Letter of Undertaking [hereinafter referred as "LUT"]** - The registered persons who intend to supply goods or services for export without payment of IGST, should execute LUT, except those who have been prosecuted for any offence under the CGST Act or the IGST Act, 2017 or any of the existing laws and the amount of tax evaded in such cases exceeds two hundred and fifty lakh rupees.

   The registered person shall fill and submit FORM GST RFD-11 on the common portal. An LUT shall be deemed to be accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online. The LUT shall be valid for the whole financial year in which it is tendered. An LUT shall be deemed to have been accepted as soon as an acknowledgement for the same, bearing ARN, is generated online. If it is discovered that an exporter whose LUT has been so accepted, was ineligible to furnish an LUT in place of bond as per Notification No. 37/2017 – C.T., then the exporter's LUT will be liable for rejection. In case of rejection, the LUT shall be deemed to have been rejected ab-initio.

   In situations, where the zero-rated supplies were made before filing the LUT, it has been emphasized by the CBIC that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made. The delay in furnishing of LUT in such cases may be condoned and the facility for export under LUT may be allowed on ex-post facto basis taking into account the facts and circumstances of each case.

Execution of Bond with bank guarantee – The registered person is permitted to supply goods or services for export without payment of IGST under the cover of bond with bank guarantee (i.e. 15% of the bond amount) in following situations:

- Exporter have been prosecuted for any offence under the CGST Act or the IGST Act, 2017 or any of the existing laws and the amount of tax evaded in such cases exceeds two hundred and fifty lakh rupees.
- Contravention to the rule 96A of the CGST Rules, 2017 and the registered person fails to pay the amount mentioned in the said sub-rule, the facility of supply under the cover of LUT will be deemed to have been withdrawn. As a result, supply, during the period from when the facility under LUT is withdrawn till the time the same is restored, shall be either on payment of the applicable IGST or under Bond with bank guarantee.

  The exporters shall furnish a running bond where the bond amount would cover the amount of self-assessed estimated tax liability on the export. The exporter shall ensure that the outstanding IGST liability on exports is within the bond amount. In case the bond amount is insufficient to cover the said liability on yet to be completed exports, the exporter shall furnish a fresh bond to cover such liability. The onus of maintaining the debit/credit entries of IGST in the running bond will lie with the exporter. The said record of such entries shall be furnished to the Central Tax officer as and when required.

b. **Export within the time prescribed**: Rule 96A (1) of the CGST Rules, 2017 provides that the registered person who opted for exporting the goods or services under the cover of LUT / bond should complete the export procedures with in the below given time frame.

→ Export of Goods: As per the definition of "export of goods" under section 2 (5) of the IGST Act, 2017 the goods should to taken out of India for a consideration. In the cases where the goods are exported under the cover of LUT, the exporter should also ensure that the goods are exported outside India within three months from the date of issue of the invoice. Failure to the above provision will result in exporter paying the tax due along with the interest as applicable within a period of fifteen days after the expiry of three months from the date of issue of the invoice for export.

→ Export of Services: In the cases of services, the exporter should satisfy all five stipulations prescribed in the definition under section 2 (6) of the IGST Act, 2017. One out of the five stipulation is the receipt of foreign convertible currency. The time period for repatriation of the currency is before expiry of one year from the date of issue of the invoice for export. Otherwise, the exporter within fifteen days after the expiry of one year from the date of issue of the invoice for exporter has to pay the tax due along with the interest as applicable.

In this regard, it is emphasized, in **Circular no. 125/44/2019 – GST** dated **18.11.2019**, that exports have been zero rated under the IGST Act and as long as goods have actually been exported even after a period of three months, payment of Integrated tax first and claiming refund at a subsequent

date should not be insisted upon. In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case. The same principle was suggested to be followed in case of export of services.

→ Supply to SEZ: As per sub-section (6) of the rule 96A, the provisions prescribed for export of goods or services, shall apply, mutatis mutandis, in respect of zero-rated supply of goods or services or both to a developer of or a unit in SEZ without payment of integrated tax.

→ Proof of Export [STATEMENT 3]: In rule 89 (2) of the CGST Rules, 2017 a statement containing the number and date of invoices and the relevant Bank Realization Certificates (BRC) or Foreign Inward Remittance Certificates (FIRC) is required in case of export of services whereas, in case of export of goods, a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices is required to be submitted along with the claim for refund.

→ Proof of Supply to developer of / unit in SEZ [STATEMENT 5]: As per the first provision to the rule 89 the registered person, who had supplied to a SEZ unit / developer, they shall get the following endorsement from the specified officer of the Zone:

  → The goods have been admitted in full in the SEZ for authorised operations.

  → The services have been received for authorised operations.

  Besides the above, in rule 89 (2) of the CGST Rules, 2017 a statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding the endorsement as specified above is required to be submitted along with the claim for refund.

c. **Realization of export proceeds**: Attention is invited to para-A (v) Part- I of RBI Master Circular No. 14/2015-16 dated 01st July, 01.07.2015 (updated as on 05th November, 05.11.2015), which states that "*there is no restriction on invoicing of export contracts in Indian Rupees in terms of the Rules, Regulations, Notifications and Directions framed under the Foreign Exchange Management Act, 1999. Further, in terms of Para 2.52 of the Foreign Trade Policy (2015-2020), all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan*". Further, attention is invited to the amendment to section 2(6) of the IGST Act, 2017 which allows realization of export proceeds of services in INR, wherever allowed by the RBI.

→ Rule 96B: The Rule 96B was introduced vide. Notification No. 16/2020 C.T. dated 23.03.2020. The rule provided for recovery of the claim amount along with interest, where the exporter could not repatriate the foreign current against the export of goods. If any refund of unutilised ITC / IGST paid has been granted to an applicant on account of export of goods, against which realization is not

made in India in full, or in part then the applicant shall deposit the amount so refunded along with the applicable interest under section 50 to the extent of unrealized export revenue. The payment should be done within thirty days of the expiry of the said period. The timeline for the realization from the export is within the period allowed under the Foreign Exchange Management Act, 1999. This provision does not get qualifies, where the Reserve Bank of India writes off the requirement of realization of sale proceeds on merits. The applicant is entitled to re-claim the amount paid on production of evidence about such realization within a period of three months from the date of realization of such proceeds. In the given scenario, the amount so recovered will be refunded by the proper officer to the applicant to the extent of realization provided the sale proceeds have been realized within such extended period as permitted by the Reserve Bank of India.

Failure to comply with the above-mentioned provision will results in recovery as per section 73 & 74 considering the erroneous claim of refund by the applicant and recovery will be made including the interest applicable as per section 50.

d. **GST value vis-à-vis shipping bill value**: The value recorded in the GST invoice should normally be the 'transaction value' as determined under section 15 of the CGST Act read with the rules made thereunder. However, the shipping bill is prepared on FOB value and to eliminate this lacuna the form was amended to include the GSTIN, GST invoice details, Assessable Value of GST and IGST paid.

The registered person is expected to report the requirement correctly in the corresponding shipping bill/bill of export. During the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill/bill of export will be examined and the lower of the two values will be taken into account while calculating the eligible amount of refund.

e. **Time Limit for claiming refund**: The time limit of TWO YEARS is counted from the relevant date; which is explained in the below table:

Sr. No.	**Purpose of Refund**	**The relevant date is the date on which -**
1	Goods are exported out of India-via sea or air.	Ship or Aircraft leaves India.
2	Goods are exported out of India-via land route.	Goods pass the custom frontier.
3	Goods are exported out of India-via post.	Goods are dispatched by Post Office.
4	Export of Services - when the supply of service is completed before receipt of payment.	Payment is received in convertible foreign exchange, or Indian rupees wherever permitted by RBI.
5	Export of Services - when payment is received in advance before the issue of	The invoice is issued.

	invoice.	

f. **Maximum permissible refund amount**: The amount claimed as refund of accumulated credit of input and input services should be debited to the electronic credit ledger. the refundable amount as the least of the following amounts:

Refund Amount =

(Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC

Adjusted Total Turnover

The formula is applied on the consolidated amount of ITC, i.e., CGST (+) SGST /UTGST (+) IGST.

→ **Net ITC**

- DEFINITION**:** The "Net ITC" has been defined under rule 89 (4) (X) of the CGST Rules, 2017 and means input tax credit availed on **inputs and input services** during the relevant period other than the following ITC claimed in Form GSTR 3B:
    - Inward received under Deemed Export (Notification No. 48/2017 C.T. dated 18.10.2017).
    - Inward received under Merchant Export (Notification No. 40/2017 C.T. (Rate) or 41/2017 I.T. (Rate) both issued on dated 23.10.2017).
    - import of goods received by the EOU vide exemption Notification No. 78/2017 – Customs dated 13.10.2017.
    - import of goods received under AA/EPCG Schemes vide exemption Notification No. 79/2017 – Customs dated 13.10.2017.
- ITC WHEN IT IS TAKEN IN FORM GSTR 3B: Input tax credit can be said to have been "availed" when it is entered into the electronic credit ledger of the registered person. Under the current dispensation, this happens when the said taxable person files the monthly return in Form GSTR - 3B. Further, section 16 (4) of the CGST Act, 2017 stipulates that ITC may be claimed on or before the due date of filing of the return for the month of September following the financial year to which the invoice pertains or the date of filing of annual return, whichever is earlier. Therefore, the input tax credit of invoices issued in August, 2021, "availed" in September, 2021 cannot be excluded from the calculation of the refund amount for the month of September, 2021.
- STORES & SPARES ARE NOT CAPITAL GOODS: There are also instances where stores and spares charged to revenue are considered as capital goods and therefore the ITC availed on them is not included in Net ITC, even though the value of these goods has not been capitalized in his books of account by the applicant. The ITC of the GST paid on inputs, including inward supplies of stores and spares, packing materials etc., shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the CGST Act.

Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.

- INVOICE REFLECTING IN FORM GSTR 2A: The refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST dated 09.10.2019, the refund of accumulated ITC shall be restricted to the ITC as per 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.
- ANNEXURE B: It is the register will contain the particulars of invoices in relation to which the refund of ITC is being claimed and which are declared as eligible for ITC. Annexure – B helps to distinguish ITC on capital goods and/or input services out of total ITC for a relevant tax period.

→ **Turnover of zero-rated supply of services**

- DEFINITION**:** The "Turnover of zero-rated supply of services" has been defined under rule 89 (4) (X) of the CGST Rules, 2017 and means:

  The aggregate of the payments received during the relevant period:

  + supply has been completed for which payment had been received in advance in any period prior to RP.

  − advances received in RP for the supply of services which is yet to be completed.

→ **Turnover of zero-rated supply of goods**

- DEFINITION**:** The "Turnover of zero-rated supply of goods" has been defined under rule 89 (4) (X) of the CGST Rules, 2017 and the same is lesser of the below turnover:

  (a) Value of Zero-Rated Supply of goods other than:
  - Deemed Export (Notification No. 48/2017 C.T. dated 18.10.2017).
  - Merchant Export (Notification No. 40/2017 C.T. (Rate) or 41/2017 I.T. (Rate) both issued on dated 23.10.2017)

  (or)

  (b) 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier.

→ **Adjusted Total Turnover**

- DEFINITION: The term "Adjusted Total Turnover" as defined under rule 89(4) includes "Turnover in a State or Union Territory". As per section 2(112) of the CGST Act, "Turnover in a State or Union Territory" includes turnover/value of export/ zero-rated supplies of goods. As seen above, the definition of 'Turnover of zero-rated supply of goods' has been amended in view of the above, it can be stated that the same value of export/zero-rated supply of goods, as calculated as per

amended definition of "turnover of zero-rated supply of goods", needs to be taken into consideration while calculating "turnover in a State or a Union Territory", and accordingly, in "adjusted total turnover" for the purpose of rule 89(4).

Thus, the restriction of 1.5 times of the value of like goods domestically supplied, as applied in "turnover of zero-rated supply of goods", would also apply to the value of "adjusted total turnover" in rule 89(4) of the CGST Rules.

Adjusted Total Turnover means:

Value of zero-rated supply of goods or services as per rule 89 (4).

- Value of exempted supplies other than zero rated.
- Invoice value of zero-rated supply of goods or services.

g. **DEBITING THE CLAIM IN E-CREDIT LEDGER**: The registered person is required to debit the amount claimed in his E-Credit Ledger in the following manner:

→ Compare the least of the below amount:

- Amount computed as per rule 89 (4) of the CGST Rules, 2017.
- Balance of ITC, in E Credit Ledger, at the end of tax period for which refund is claimed (balance remaining after return for the period is filed).
- Balance of ITC, in E Credit Ledger, at the time of fling of refund application.

→ After calculating the least of the three amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the applicant in the following order:

- IGST, to the extent of balance available in E credit Ledger.
- CGST and SGST/UTGST, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, CSGT), the differential amount is to be debited from the other electronic credit ledger (i.e., SGST/UTGST, in this case).

→ In the case of refund of unutilized compensation cess, the calculation of the refundable amount of compensation cess shall be done separately and the amount so calculated will be entirely debited from the balance of compensation cess available in the electronic credit ledger.

h. STIPULATIONS IN SEC. 54 (3) OF THE CGST ACT, 2017: The third proviso to sub-section (3) of section 54 of the CGST Act states that no refund of input tax credit shall be allowed in the following cases:

→ where the supplier of goods or services or both avails of drawback in respect of Central Tax.

→ where the supplier had file claim application connected to IGST paid on such exports.

→ where the goods exported out of India are subjected to export duty.

i. List of all statements / declarations / undertakings / certificates and other supporting documents to be provided along with the refund application (Form GST RDF 01):

Sl. No.	Type of Refund	Declaration / Statement / Undertaking / Certificates to be filled online -	Supporting documents to be additionally uploaded -
01	On account of exports without payment of tax	a. Declaration under second and third proviso to section 54(3). b. Undertaking in relation to sections 16(2)(c) and section 42(2). c. Statement 3 under rule 89(2)(b) and rule 89(2)(c). d. Statement 3A under rule 89(4).	a. Copy of GSTR-2A of the relevant period. b. Statement of invoices (Annexure-B). c. Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period. [proof adhere the provision for rule 36 (4) of the CGST Rules, 2017] d. BRC/FIRC in case of export of services and shipping bill (only in case of exports made through non-EDI ports) in case of goods
02.	On account of Supplies made to SEZ units / developer without payment of tax	a. Declaration under third proviso to section 54(3). b. Statement 5 under rule 89(2)(d) and rule 89(2)(e). c. Statement 5A under rule 89(4). d. Declaration under rule 89(2)(f). e. Undertaking in relation to sections 16(2)(c) and section 42(2). f. Self-declaration under rule 89(2)(1) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise.	a. Copy of GSTR-2A of the relevant period. b. Statement of invoices (Annexure-B). c. Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period. [proof adhere the provision for rule 36 (4) of the CGST Rules, 2017]. d. Endorsement(s) from the specified officer of the SEZ regarding receipt of goods/services for authorized operations under second proviso to rule 89(1)

(B) - CLAIM OF IGST PAID

As per section 16 of the IGST Act, 2017 exports and supplies to SEZ for authorised operation are zero rated; which means that the entire supply chain of a particular zero-rated supply is tax free i.e., there is no burden of tax either on the input side or on output side. This is in contrast with exempted supplies, where only output is exempted from tax but tax is levied on the input side. The essence of zero rating is to make Indian goods and services competitive in the international market by ensuring that taxes do not get added to the cost of exports. In order to maintain the zero-taxing, suppliers who opt for the route of export on payment of IGST are permitted to claim refund of such tax paid. Accordingly, the GST law had provided for the following types of claims:

→ Export of goods with IGST payment.

→ Export of services with IGST payment.

→ Supply to SEZ developer / unit with IGST payment.

However, it is important to note that the persons claiming refund of **IGST paid on exports of goods or services** should not have [**RULE 96 (10)**]:

- inward received under Deemed Export (Notification No. 48/2017 C.T. dated 18.10.2017).
- inward received under Merchant Export (Notification No. 40/2017 C.T. (Rate) or 41/2017 I.T. (Rate) both issued on dated 23.10.2017).
- import of goods received by the EOU vide exemption Notification No. 78/2017 – Customs dated 13.10.2017.
- import of goods received under AA/EPCG Schemes vide exemption Notification No. 79/2017 – Customs dated 13.10.2017.

The benefit of the notifications mentioned above shall not be considered to have been availed only where the registered person has paid IGST and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty under the above referred notifications.

Clarification in PARA 51 & 52 of **Circular No. 125/44/2019** dated **18.11.2019** – GST:

Restrictions imposed by sub-rule (10) of rule 96 of the CGST Rules

51. *Sub-rule (10) of rule 96 of the CGST Rules, restricted exporters from availing the facility of claiming refund of Integrated tax paid on exports in certain scenarios. It was intended that exporters availing benefit of certain notifications would not be eligible to avail the facility of such refund. However, representations were received requesting that exporters who have received capital goods under the Export Promotion Capital Goods Scheme (hereinafter referred to as "EPCG Scheme"), should be allowed to avail the facility of claiming refund of the Integrated tax paid on exports. GST Council, in its 30th meeting held in New Delhi on 28th September, 2018, accorded approval to the proposal of suitably amending the said sub-rule along with sub-rule (4B) of rule 89 of the CGST Rules prospectively in order to enable such exporters to avail the said facility. Notification No. 54/2018 – Central Tax dated the 9th October, 2018 was issued to carry out the changes recommended by the GST Council. In addition,*

notification No. 39/2018- Central Tax dated 4th September, 2018 was rescinded vide notification No. 53/2018 – Central Tax dated the 9th October, 2018.

52. *The net effect of these changes is that any exporter who himself/herself imported any inputs/capital goods in terms of notification Nos. 78/2017-Customs and 79/2017-Customs both dated 13.10.2017, before the issuance of the notification No. 54/2018 – Central Tax dated 09.10.2018, shall be eligible to claim refund of the Integrated tax paid on exports. Further, exporters who have imported inputs in terms of notification Nos. 78/2017-Customs dated 13.10.2017, after the issuance of notification No. 54/2018 – Central Tax dated 09.10.2018, would not be eligible to claim refund of Integrated tax paid on exports. However, exporters who are receiving capital goods under the EPCG scheme, either through import in terms of notification No. 79/2017-Customs dated 13.10. 2017 or through domestic procurement in terms of notification No. 48/2017-Central Tax, dated 18.10.2017, shall continue to be eligible to claim refund of Integrated tax paid on exports and would not be hit by the restrictions provided in sub-rule (10) of rule 96 of the CGST Rules.*

► **EXPORT OF GOODS WITH IGST PAYMENT:**

This refund is governed by the Rule 96 of the CGST Rules, 2017. According to the said rule, there is no need for filing a separate refund claim as the shipping bill filed by an exporter is deemed to be an application for refund of IGST paid on the goods exported out of India. The said application is 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. details of the relevant export invoices in Table 6A of Form GSTR – 1, and

   b. a valid return (FORM GSTR3B).

a. **Transmission of data from GST Network to Custom's EDI System**: The claim is processed and disbursed by the customs department. 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 and have correct invoice number, invoice date, shipping bill number, shipping bill date and port code.
   3. The admitted tax liability of IGST under table 3.1(b) of GSTR3B, is equal to, or greater than, the IGST amount claimed to have been paid under Table 6A of GSTR-1 of the corresponding period.

   However, it has been observed that the exporters have inadvertently mis-declared IGST paid on export supplies as IGST paid on inter-state domestic outward supplies while filing GSTR-3B. The exporters have also in certain cases short paid IGST vis-à-vis their liability declared in GSTR-1. As a result of these mismatches in the amount of IGST paid on export goods between GSTR-1 and GSTR-3B, the transmission of records from GSTN to Customs EDI system has not happened and consequently, IGST refunds could not be processed.

   Hence, to overcome the problem of refund blockage CBIC had clarified the following procedure vide. **Circular No. 12/2018 - Customs** dated **29.05.2018**; which has been extended up to 31.03.2021 (vide. Circular No. 04/2021 - Customs dated 16.02.2021)

   — Cases where there is no short payment:

   - The Customs policy wing would prepare a list of exporters who's cumulative IGST amount paid against exports and interstate domestic outward supplies mentioned in GSTR-3B is greater than or equal to the cumulative IGST amount indicated in GSTR-1 for the same period. Customs policy wing shall send this list to GSTN.
   - GSTN shall send a confirmatory e-mail to these exporters regarding the transmission of records to Customs EDI system.
   - The exporters whose refunds are processed/sanctioned would be required to submit a certificate from Chartered Accountant, within the time prescribed, to the Customs office at the

port of export to the effect that there is no discrepancy between the IGST amount refunded on exports and the actual IGST amount paid on exports of goods for the period. In case there are exports from multiple ports, the exporter is at liberty to choose any of the ports of export for submission of the said certificate.

- A copy of the certificate shall also be submitted to the jurisdictional GST office (Central/State). The concerned Customs zone shall provide the list of GSTINs who have not submitted the CA certificate to the Board.
- Non-submission of the CA certificate shall affect the future IGST refunds of the exporter.
- The list of exporters whose refunds have been processed as above shall be sent to DG (Audit)/DG (GST) by the Board.

— Cases where there is a short payment:

- In cases where there is a short payment of IGST i.e., cumulative IGST amount paid against exports and interstate domestic outward supplies together mentioned in GSTR-3B is less than the cumulative IGST amount indicated in GSTR-1 for the same period, the Customs policy wing would send the list of such exporters to the GSTN and all the Chief Commissioner of Customs.
- E-mails shall be sent by GSTN to each exporter referred above so as to inform the exporter that their records are held up due to short payment of IGST. The e-mail shall also advise the exporters to observe the procedure under this circular.
- The exporters would have to make the payment of IGST equal to the short payment in GSTR 3B of subsequent months so as to ensure that the total IGST refund being claimed in the Shipping Bill/GSTR-1(Table 6A) is paid. The proof of payment shall be submitted to Assistant/Deputy Commissioner of Customs in charge of the port from where the exports were made. In case there are exports from multiple ports, the exporter is at liberty to choose any of the ports of export.
- Where the aggregate IGST refund amount for the said period is up to Rs. 10 lakhs, the exporter shall submit proof of payment (self-certified copy of challans) of IGST payment to the concerned Customs office at the port of export. However, where the aggregate IGST refund amount for the said period is more than Rs. 10 lakhs, the exporter shall submit proof of payment (self-certified copy of challans) of IGST to the concerned Customs office at the port of export along with a certificate from Chartered Account that the shortfall amount has been liquidated.
- The exporter would give an undertaking stating that they would return the refund amount in case it is found to be not due to them at a later date.

- The Customs zones shall compile the list of exporters (GSTIN only), who have come forward to claim a refund after making requisite payment of IGST towards the short-paid amount and complied with other prescribed requirements.
- The compiled list may be forwarded to Customs policy wing, DG (Audit) and DG (GST). Customs policy wing shall forward the said list of GSTINs to GSTN. On receipt of the list of exporters from Customs policy wing, GSTN shall transmit the records of those exporters to Customs EDI system.
- The exporters whose refunds are processed/sanctioned as above would be required to submit another certificate from Chartered Accountant, before the time prescribed, to the same Customs office at the port of export to the effect that there is no discrepancy between the IGST amount refunded on exports and the actual IGST amount paid on exports of goods for the period July' 2017 to March' 2021. A copy of the certificate shall also be submitted to the jurisdictional GST office (Central/State). The concerned Customs zone shall provide the list of GSTINs who have not submitted the CA certificate to the Board.
- Non-submission of the CA certificate shall affect the future IGST refunds of the exporter.

— Post refund audit.

The exporters would be subjected to a post refund audit under the GST law. DG (Audit) shall include the above-referred GSTINs for conducting audit under the GST law. The inclusion of IGST refund aspects in the Audit Plan of those units may be ensured by DG (Audit). In case, Departmental Audit detects excess refunds to the exporters under this procedure, the details of such detections may be communicated to the concerned GST formations for appropriate action.

b. **Validation of the export general manifest (EGM)**: Upon receipt of the information regarding the furnishing of a valid return in Form GSTR-3B and FORM GSTR-1 from the common portal, the EDI system designated by the Customs shall process the claim for refund and an amount equal to the IGST 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. However, to complete the process of filing of correct EGM is a must for treating the shipping bill or bill of export as a claim application.

It has been observed that due to mismatch in information furnished in EGM vis-a-vis shipping bill or non-filing of EGM in certain cases the compliance of 'exported out of India' requirement in Rule 96 (2) of the CGST Rules, 2017 remained unfulfilled and result in delay in refund. Hence, exporters are advised that they should follow up with their carriers to ensure that correct EGM/export reports are filed in a timely manner.

It is also noticed that Gateway EGM in case of many ICD's Shipping Bills have been manually filed due to which the system is unable to match the EGM details. Hence, in order to overcome this issue, the Shipping lines have been mandated to include the shipping bills originating from ICDs while filing the

electronic EGMs at the gateway ports. In cases where the EGMs have not incorporated the shipping bills pertaining to ICDs, the Shipping lines/agents have been asked to file supplementary EGMs.

In order to ensure a hassle-free processing of refund claims, the following steps may be ensured by the jurisdictional officers in ICDs:

(a) filing of local EGM i.e., train or truck summary, as the case may be, immediately after cargo leaves the port,

(b) liaising with jurisdictional officers at gateway port for incorporation of Shipping Bills pertaining to the cargo originating in ICDs, in the EGMs filed at gateway port by the Shipping lines/agents

(c) rectification of errors in local and gateway EGM, wherever necessary.

The jurisdictional officers at the gateway port should strictly monitor the EGM pendency and error reports available in ICES. The officers at the gateway port have to resolve the EGM errors in an expeditious manner by asking the Shipping lines/agents to file requisite amendments and approving those amendments on ICES. In cases, where there are errors either in the shipping bill or in the local EGM (i.e., truck or train summary), the remedial action has to be taken by jurisdictional officer in ICP. It has been observed that mis-match of information provided in local and gateway EGM mainly occurs because of:

- incorrect gateway port code in local EGM (error M).
- change in container for LCL cargo or mistakes committed while entering container number (error C).
- incorrect count of containers (error N).
- mistakes in entering the nature of cargo - LCL or FCL (error T).
- the let export order is given in ICES after sailing date of the vessel (error L).

ICES has provision to correct all aforementioned errors. The procedure to be followed for each type of error has been clearly delineated in the step-by-step guide issued by the Directorate of Systems for dealing with the errors. In case of specific difficulties, the same may be taken up with Directorate of Systems.

There is a shared responsibility between officers working at ICDs and gateway ports in ensuring an error free filing and integration of local and gateway EGMs. The officers at both locations should also ensure swift rectification of errors and effective coordination between the domestic carriers, who file local EGMs, and Shipping lines/agents, who file gateway EGMs.

c. **Validation of bank account**: As per Rule 96 of CGST Rules, 2017, the refund is to be credited in the bank account of the applicant mentioned in his registration particulars. As a practice, exporters have been declaring details of bank account to Customs for the purpose of drawback etc. There is a possibility that bank account details available with Customs do not match with those declared in the GST registration form. In order to ensure smooth processing and payment of refund of IGST paid on exported goods, it has been decided that said refund amount shall be credited to the bank account of the exporter registered with Customs even if it is different from the bank account of the applicant mentioned in his registration

particulars. However, exporters may be advised to either change the bank account declared to Customs to align it with their GST registration particulars or add the account declared with Customs in their GST registration details.

Further, as the refund payments are being routed through the PFMS portal, the bank account details need to be verified and validated by PFMS. The status of validation of bank account with PFMS is available in ICES. Exporters may be advised that if the account has not been validated by PFMS, they must get their details corrected in the Customs system so that their bank account gets validated by PFMS. Exporters are also advised not to change their bank account details frequently to avoid delay in refund payment.

In some cases, bank account details available with Customs have been invalidated by PFMS. Reports on such accounts/IECs have been provided to the Commissionerate by the Directorate of Systems in ICES and by email. Exporters may be advised that if the account has not been validated by PFMS, they must get their details corrected in the EDI system. Exporters are also advised not to change their bank account details frequently so as to avoid delay in refund payment.

d. **Withholding of IGST claim:** The proper officer at the Customs station has to put in place a mechanism ensuring that refunds are not processed and sanctioned in following scenarios:
    - Sub-rule (4) (a) of Rule 96 of the CGST Rules, 2017 provides that refund is to be withheld if a request has been received from the jurisdictional Commissioner of CGST, SGST or UTGST to withhold the payment of refund in accordance with the provisions of sub-section (10) or sub-section (11) of section 54.
    - Sub-rule (4) (b) of Rule 96 of the CGST Rules, 2017 provides that the refund is to be withheld where the goods exported in violation of the provisions of the Customs Act, 1962.

    The proper officer has to communicate to the applicant and the jurisdictional GST Commissioner independently about the withholding of the claim.

e. **Processing of refund claims**: The Proper officer of each jurisdiction shall generate a payment scroll of eligible IGST refunds in the same manner as RoSL scrolls are generated. The scroll shall be transmitted electronically to PFMS system for onward payment into their bank accounts.

► **EXPORT OF SERVICES WITH IGST PAYMENT:**

As per sub-rule (9) of rule 96 of the CGST Rules, 2017 the application for refund of IGST paid on the services exported out of India is filed in accordance with the provisions of rule 89 under the head "Refund of tax paid on export of services with payment of tax" within the time limit prescribed.

Zero-rated supplies wrongly declared in Table 3.1(a): The registered person is required to report the assessable Value and the IGST payment details for the tax period under the head "Zero-Rated Supply" in entry 3.1 (b) of the Form GSTR - 3B. Since there is a validation check in the GSTN system to ensure that the IGST paid on the export goods or services or both in any particular month [3.1 (b)] is not less than the refund claimed by the exporter [Table 6A].

However, it has been observed that the exporters have inadvertently mis-declared IGST paid on export supplies as IGST paid on inter-state domestic outward supplies while filing GSTR-3B. The exporters have also in certain cases short paid IGST vis-à-vis their liability declared in GSTR1. As a result of these mismatches in the amount of IGST paid on export services between GSTR-1 and GSTR-3B, the validation fails and GSTN will not permit to claim the refund. However, to overcome the problem of refund blockage of refund, the CBIC vide. **circular no. 125/44/2019** (as amended) had clarified the following:

In connection to the tax periods commencing from 01.07.2017 to 30.06.2021, such registered persons shall be allowed to file the refund application in FORM GST RFD - 01A on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of FORM GSTR-3B filed for the corresponding tax period.

Time Limit for claiming refund: The time limit of TWO YEARS is counted from the relevant date; which explained below in the table:

Sr. No.	Purpose of Refund	The relevant date is the date on which -
1	Export of Services - when the supply of service is completed before receipt of payment.	Payment is received in convertible foreign exchange, or Indian rupees wherever permitted by RBI.
2	Export of Services - when payment is received in advance before the issue of invoice.	The invoice is issued.

List of all statements / declarations / undertakings / certificates and other supporting documents to be provided along with the refund application (Form GST RDF 01):

Type of Refund	Declaration / Statement / Undertaking / Certificates to be	Supporting documents to be

	filled online -	**additionally uploaded -**
Refund of tax paid on export of services made with payment of tax	a. Declaration under second and third proviso to section 54(3). b. Undertaking in relation to sections 16(2)(c) and section 42(2). **c.** Statement 2 under rule 89(2)(c).	a. BRC/FIRC/any other document indicating the receipt of sale proceeds of services. b. Copy of GSTR-2A of the relevant period. c. Statement of invoices (Annexure-B). d. Self-certified copies of invoices entered in Annexure-A whose details are not found in GSTR-2A of the relevant period. **e.** Self-declaration regarding non-prosecution under sub-rule (1) of rule 91 of the CGST Rules for availing provisional refund.

► **SUPPLY TO SEZ DEVELOPER / UNIT WITH IGST PAYMENT:**

Special Economic Zone are notified area governed by the Special Economic Zone Act, 2005 (Hereinafter referred to as the SEZ Act, 2005). As per section 51 of the SEZ Act, 2005 the provisions of such Act would have an overriding effect on provisions of any other Act including taxation laws. Hence, it has to be noted that this Act has an overriding effect over GST Law. In case of any conflict between the two legislations, the provision of the SEZ Act will shall prevail.

Further, section 53 of the SEZ Act, 2005 provides that the area notified as SEZ shall be deemed to be a territory outside the customs territory of India for the purpose of undertaking authorized operations and be deemed to be port, inland container depot, land station or land customs station for the Customs Act, 1962. Accordingly, any supply of goods or services made to or SEZ and to provide relief from the burden of taxes to SEZ units. Concept of zero ratings has been made applicable for supplies made to SEZ under GST. Zero-rated supply as defined in section 16 (1) of the IGST Act, 2017. The supplier, who supply goods or services or both to a SEZ Developer or a Unit can claim of IGST paid by the virtues of section 16 (3) of the IGST Act, 2017. However, a supplier of goods or services to SEZ unit claiming refund of IGST paid on supplies to SEZ unit or input tax credits, may make an application before the expiry of two years from the relevant date in Form GST RFD- 01 rule 89 relating to refund stipulates that the supply, in respect of which tax had been paid and refund is sought, shall be necessarily for authorized operations.

The term 'authorised operation' in this context is not explicitly used in the IGST Act. Therefore, an issue arises as to whether the benefit of Zero rating will be eligible only in respect of supplies made for SEZ's authorized operations or in respect of all operations or in respect of all operations of SEZ in the course of its business.

Zero-rated supplies wrongly declared in Table 3.1(a): covered under the chapter "**EXPORT OF SERVICES WITH IGST PAYMENT".**

List of all statements / declarations / undertakings / certificates and other supporting documents to be provided along with the refund application (Form GST RDF 01):

Declaration / Statement / Undertaking / Certificates to be filled online -	**Supporting documents to be additionally uploaded -**
a. Declaration under second and third proviso to section 54(3). b. Declaration under rule 89(2)(f). c. Statement 4 under rule 89(2)(d) and rule 89(2)(e). d. Undertaking in relation to sections 16(2)(c) and section 42(2). **e.** Self-declaration under rule 89(2)(1) if amount	a. Endorsement(s) from the specified officer of the SEZ regarding receipt of goods/services for authorized operations under second proviso to rule 89(1). b. Self-declaration regarding non-prosecution under sub-rule (1) of rule 91 of the CGST Rules for availing provisional refund. **c.** Self-certified copies of invoices entered in

claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise.	Annexure-B whose details are not found in GSTR-2A of the relevant period. [proof adhere the provision for rule 36 (4) of the CGST Rules, 2017].

INVERTED TAX STRUCTURE

A situation, which result in accumulation of ITC due to variation in the rate of inward and outward supplies is called "Inverted Tax". Sub-section (3) of section 54 of the CGST Act, 2017 provides that refund of any unutilized ITC may be claimed 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).

REFUND IS RESTRICTED TO INWARD SUPPLY OF INPUTS: Sub-section (59) of section 2 of the CGST Act, 2017 defines inputs as any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Thus, inputs do not include services or capital goods. Therefore, clearly, the intent of the law is not to allow refund of tax paid on input services or capital goods as part of refund of unutilized input tax credit.

INVERTED TAX DUE TO CHANGE IN RATE IS NOT COVERED: CBIC vide **circular no. 135/05/2020 – GST** dated **31.03.2020** had further clarified the refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the CGST Act.

SUPPLY OF GOODS UNDER NOTIFICATION 40/2017 C.T. (RATE) (or) 41/2017 C.T. (RATE) IS COVERED: The supplier, who supplies goods at exempted rate for merchant export, is eligible for a refund on account of an inverted tax structure as per the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act, 2017.

MAXIMUM PERMISSIBLE REFUND AMOUNT - The amount claimed as refund of accumulated credit of input should be debited to the electronic credit ledger. the refundable amount as the least of the following amounts:

Refund Amount =

$$\frac{[(\text{Turnover of inverted rated supply of goods and services}) \times \text{Net ITC}] - \text{tax payable on such inverted rated supply of goods and services.}}{\text{Adjusted Total Turnover}}$$

→ **Net ITC**: It means input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed and excluding the following:

a. Inward received under Deemed Export (Notification No. 48/2017 C.T. dated 18.10.2017)
b. Inward received under Merchant Export (Notification No. 40/2017 C.T. (Rate) or 41/2017 I.T. (Rate) both issued on dated 23.10.2017).
c. import of goods received by the EOU vide exemption notification 78/2017 – Customs dated 13.10.2017.
d. import of goods received under AA/EPCG Schemes vide exemption notification 79/2017 – Customs dated 13.10.2017.

- INPUTS WITH DIFFERENT RATES: Further, Refund of unutilized ITC in give head, as provided in section 54(3) of the CGST Act, is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability. Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89 (5) of the CGST Rules, the term "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax.
- ITC WHEN IT IS TAKEN IN FORM GSTR 3B: Input tax credit can be said to have been "availed" when it is entered into the electronic credit ledger of the registered person. Under the current dispensation, this happens when the said taxable person files his/her monthly return in Form GSTR - 3B. Further, section 16 (4) of the CGST Act, 2017 stipulates that ITC may be claimed on or before the due date of filing of the return for the month of September following the financial year to which the invoice pertains or the date of filing of annual return, whichever is earlier. Therefore, the input tax credit of invoices issued in August, 2021, "availed" in September, 2021 cannot be excluded from the calculation of the refund amount for the month of September, 2021.
- STORES & SPARES ARE NOT CAPITAL GOODS: There are also instances where stores and spares charged to revenue are considered as capital goods and therefore the ITC availed on them is not included in Net ITC, even though the value of these goods has not been capitalized in his books of account by the applicant. The ITC of the GST paid on inputs, including inward supplies of stores and spares, packing materials etc., shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the CGST Act. Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.
- INVOICE REFLECTING IN FORM GSTR 2A: The refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST dated 09.10.2019, the refund of accumulated ITC shall be restricted to the ITC as per 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.
- ANNEXURE B: It is the register will contain the particulars of invoices in relation to which the refund of ITC is being claimed and which are declared as eligible for ITC. Annexure – B helps to distinguish ITC on capital goods and/or input services out of total ITC for a relevant tax period. → **Adjusted Total Turnover**: The term "Adjusted Total Turnover" as defi ned under rule 89(4) includes "Turnover in a State or Union Territory". As per section 2(112) of the CGST Act. "Turnover in a State or Union Territory" includes turnover/value of export/ zero-rated supplies of goods. As seen above, the definition of 'Turnover of zero-rated supply of goods' has been amended. In view of the above, it can be stated that the same

value of zero-rated/ export supply of goods, as calculated as per amended definition of "turnover of zero-rated supply of goods", needs to be taken into consideration while calculating "turnover in a State or a Union Territory", and accordingly, in "adjusted total turnover" for the purpose of rule 89(4). Thus, the restriction of 1.5 times of the value of like goods domestically supplied, as applied in "turnover of zero-rated supply of goods", would also apply to the value of "adjusted total turnover" in rule 89(4) of the CGST Rules.

Adjusted Total Turnover means:

Value of zero-rated supply of goods or services as per rule 89 (4).

— Value of exempted supplies other than zero rated.

— Invoice value of zero-rated supply of goods or services.

j. **DEBITING THE CLAIM IN E-CREDIT LEDGER**: The registered person is required to debit the amount claimed in his E Credit Ledger in the following manner:

→ Compare the least of the below amount:

- Amount computed as per rule 89 (4) of the CGST Rules, 2017.
- Balance of ITC, in E Credit Ledger, at the end of tax period for which refund is claimed (balance remaining after return for the period is filed).
- Balance of ITC, in E Credit Ledger, at the time of fling of refund application.

→ After calculating the least of the three amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the applicant in the following order:

- IGST, to the extent of balance available in E credit Ledger.
- CGST and SGST/UTGST, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, CSGT), the differential amount is to be debited from the other electronic credit ledger (i.e., SGST/UTGST, in this case).

→ In the case of refund of unutilized compensation cess, the calculation of the refundable amount of compensation cess shall be done separately and the amount so calculated will be entirely debited from the balance of compensation cess available in the electronic credit ledger.

k. STIPULATIONS IN SEC. 54 (3) OF THE CGST ACT, 2017: The third proviso to sub-section (3) of section 54 of the CGST Act states that no refund of input tax credit shall be allowed in the following cases:

→ where the supplier of goods or services or both avails of drawback in respect of Central Tax.

→ where the supplier had file claim application connected to IGST paid on such exports.

→ where the goods exported out of India are subjected to export duty.

l. List of all statements / declarations / undertakings / certificates and other supporting documents to be provided along with the refund application (Form GST RDF 01):

Declaration / Statement / Undertaking / Certificates to be filled online -	**Supporting documents to be additionally uploaded -**
a. Declaration under second and third proviso to section 54(3). b. Declaration under section 54(3)(ii). c. Undertaking in relation to sections 16(2)(c) and section 42(2). d. Statement 1 under rule 89(5). e. Statement 1A under rule 89(2)(h). **f.** Self-declaration under rule 89(2)(1) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise.	a. Copy of GSTR-2A of the relevant period. b. Statement of invoices (Annexure-B). c. Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period. [proof adhere the provision for rule 36 (4) of the CGST Rules, 2017].

DEEMED EXPORTS

Deemed exports are those transactions where the goods, manufactured in India, do not leave country and payment for such supplies is either received in Indian rupees or in foreign convertible currencies. Section 147 empower the Government, on recommendation of the GST Council, to notify supplies of goods which will get qualified as Deemed Exports.

In connection to the section 147, the Government issued Notification No. 48/2017 - C.T. dated 18.10.2017 wherein following supplies of goods have been notified as deemed export.

→ Supply of goods against Advance Authorisation (AA).
→ Supply of capital goods against Export Promotion Capital Goods Authorisation (EPCG).
→ Supply of goods to Export Oriented Unit (EOU)/ Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit / Bio Technology Parks (BTP) Unit.
→ Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017 -Customs, dated the 30.06.2017 (as amended) against Advance Authorisation.

Advance Authorisation (AA).

AA Scheme is discussed in Chapter 4 of the Foreign Trade Policy 2015 – 16 (FTP). This Scheme enables duty free import of inputs prior to export, which is either:

- physically incorporated in export product or
- consumed / utilized in the process of production of export product.

PARA 4.20 of FTP permits holder of an AA to procure inputs from indigenous supplier in lieu of direct import. The process for procurement against AA is against Release Order (ARO), or Invalidation Letter issued by Regional Authority.

Export Promotion Capital Goods Authorisation (EPCG).

EPCG Scheme allows import of capital goods for pre-production, production and post-production at zero customs duty. Alternatively, the exporter may also procure Capital Goods from domestic market in accordance with provisions of paragraph 5.07 of FTP. Capital goods for the purpose of the EPCG scheme shall include:

- Capital Goods as defined in Chapter 9

- Computer systems and software which are a part of the Capital Goods

- Spares, moulds, dies, jigs, fixtures, tools & refractories

- Catalysts for initial charge plus one subsequent charge

In GST, the person who effects the transaction will be responsible to prove that the transaction is deemed export and hence he has to take all precaution in collating the documentary proof in this regard. Hence, in this

connection, the Government has issued Notification No. 49/2017 – C.T. dated 18.10.2017 notifying that the supplier should obtain the acknowledgement by the jurisdictional Tax officer of the AA holder or EPCG Authorisation holder, as the case may be, that the said deemed export supplies have been received. Besides the above said acknowledgement they have to also obtain the following undertakings from the receiver:

- no input tax credit on such supplies has been availed of by him.
- he shall not claim the refund in respect of such supplies and the supplier may claim the refund

Supply of goods to EOU / EHTP / STP / BTP:

CBIC vide Circular No. 14/14/2017 - GST dated 06.11.2017 clarified that supplies of goods by a registered person to EOUs etc. would be treated as deemed exports under Section 147 of the CGST Act, 2017 and refund of tax paid on such supplies can be claimed either by the recipient or supplier of such supplies.

Accordingly, Notification No. 48/2017 – C.T. dated 18.10.2017 has been issued to treat such supplies to EOU/EHTP/STP/BTP units as deemed exports. Further, rule 89 of the CGST Rules, 2017 has been amended vide Notification No. 47/2017- C.T. dated 18.10.2017 to allow either the recipient or supplier of such supplies to claim refund of tax paid thereon.

For supplies to EOU/EHTP/STP/BTP units in terms of Notification No. 48/2017-C.T. dated 18.10.2017, the following procedure and safeguards has been prescribed in the Circular No. 14/12/2017 – GST dated 06.11.2017:

- The recipient EOU/EHTP/STP/BTP unit shall give prior intimation in a prescribed proforma in "Form–A" (appended herewith) bearing a running serial number containing the goods to be procured, as pre-approved by the Development Commissioner and the details of the supplier before such deemed export supplies are made. The said intimation shall be given to —
    - the registered supplier;
    - the jurisdictional GST officer in charge of such registered supplier; and
    - its jurisdictional GST officer.
- The registered supplier thereafter will supply goods under tax invoice to the recipient EOU/EHTP/STP/BTP unit.
- On receipt of such supplies, the EOU/EHTP/STP/BTP unit shall endorse the tax invoice and send a copy of the endorsed tax invoice to –
    - the registered supplier;
    - the jurisdictional GST officer in charge of such registered supplier; and
    - its jurisdictional GST officer.
- The endorsed tax invoice will be considered as proof of deemed export supplies by the registered person to EOU/EHTP/STP/BTP unit.

- The recipient EOU/EHTP/STP/BTP unit shall maintain records of such deemed export supplies in digital form, based upon data elements contained in "Form-B" (appended herewith). The software for maintenance of digital records shall incorporate the feature of audit trail. While the data elements contained in the Form-B are mandatory, the recipient units will be free to add or continue with any additional data fields, as per their commercial requirements. All recipient units are required to enter data accurately and immediately upon the goods being received in, utilized by or removed from the said unit. The digital records should be kept updated, accurate, complete and available at the said unit at all times for verification by the proper officer, whenever required. A digital copy of Form - B containing transactions for the month, shall be provided to the jurisdictional GST officer, each month (by the 10th of month) in a CD or Pen drive, as convenient to the said unit.
- The above procedure and safeguards are in addition to the terms and conditions to be adhered to by a EOU/EHTP/STP/BTP unit in terms of the Foreign Trade Policy, 2015-20 and the duty exemption notification being availed by such unit.

EXPORTER AVAILED DEEMED EXPORT BENEFIT ARE NOT ALLOWED TO CLAIM REFUND UNDER RULE 96 OF THE CGST RULES, 2017: Sub-rule (10) of Rule 96 of the CGST Rules, 2017, restricts exporters from availing the facility of claiming refund of IGST paid on exports in certain scenarios. It was intended that exporters availing benefit of deemed export would not be eligible to avail the facility of such refund. It was clarified vide **Circular No. 70/44/2018 - GST** dated **26.10.2018** that the amendment in sub-rule (10) of rule 96 along with sub-rule (4B) of rule 89 of the CGST Rules prospectively would enable any exporter who himself/herself imported any inputs/capital goods in terms of notification nos. 78/2017-Customs and 79/2017-Customs both dated 13th October, 2017 shall be eligible to claim refund of the IGST paid on exports till the date of the issuance of the notification No. 54/2018 – Central Tax dated the 9th October, 2018 referred to above.

Further, after the issuance of notification no. 54/2018 – Central Tax dated the 9th October, 2018, exporters who are importing goods in terms of notification nos. 78/2017- Customs and 79/2017-Customs both dated 13th October, 2017 **would not be eligible for refund of IGST paid on exports as provided** in the said sub-rule. However, exporters who are receiving capital goods under the EPCG scheme, either through import in terms of notification No. 79/2017 - Customs dated 13th October, 2017 or through domestic procurement in terms of notification No. 48/2017-Central Tax, dated 18th October, 2017, shall continue to be eligible to claim refund of IGST paid on exports and would not be hit by the restrictions provided in the said sub-rule.

Who can file refund application?

- The supplier of deemed export supplies, provided that the recipient of deemed export supplies has neither claim the refund in respect of such supplies nor avail any input tax credit on such supplies.

- The recipient of deemed export supplies, an undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed in statement 5B for the tax period for which refund is being claimed and the amount does not exceed the amount of input tax credit availed in the valid return

filed for the said tax period. The recipient shall also be required to declare that the supplier has not claimed refund with respect to the said supplies. [as per the clarification in the master refund circular no. 125/44/2019 dated 18.11.2019 in PARA – 41 (as amended)].

Time Limit for filing refund application?

As per Explanation 2(b) to section 54 of CGST Act, "relevant date" for filing refund in case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, is the date on which the return relating to such deemed exports is filed.

List of all statements / declarations / undertakings / certificates and other supporting documents to be provided along with the refund application (Form GST RDF 01):

Sl. No.	**Type of Refund**	**Declaration / Statement / Undertaking / Certificates to be filled online -**	**Supporting documents to be additionally uploaded -**
01.	Refund to supplier of tax paid on deemed export supplies	a. Statement 5(B) under rule 89(2)(g) b. Declaration under rule 89(2)(g) c. Undertaking in relation to sections 16(2)(c) and section 42(2) d. Self-declaration under rule 89(2)(1), if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise.	Documents required under Notification No. 49/2017 -C.T. dated 18.10.2017 and Circular No. 14/14/2017 - GST dated 06.11.2017
02.	Refund to recipient of tax paid on deemed export supplies	a. Statement 5(B) under rule 89(2)(g). b. Declaration under rule 89(2)(g). c. Undertaking in relation to sections 16(2)(c) and section 42(2). d. Self-declaration under rule 89(2)(1), if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise.	Documents required under Circular No. 14/14/2017 - GST dated 06.11.2017

MERCHANT EXPORTS

Merchant Export is a popular term used in Foreign Trade. There are generally two parties involved in this transaction, Merchant Exporter, who exports the goods outside of the taxable territory and the supplier of the goods. Since Merchant Exporter has to procure the goods with an intention to export, CBIC had provided an exemption vide. Notification No. 40/2017 C.T. (Rate) dated 23.10.2017 [parallel notification issued for IGST - Notification No. 41/2017 – I.T. (Rate) dated 23.10.2017]; whereby the rate of tax was fixed 0.05% subject to below conditions specified in the above referred notifications:

a. The merchant exporter should be registered under GSTIN and Export Promotion Council or Commodity Board recognized by the Department of Commerce.
b. The merchant exporter should place an order to the manufacturer and its copy shall be provided to the jurisdictional tax officer of such manufacturer.
c. Goods should be dispatched directly from the place of the manufacturer to port, ICD, Airport of Land customs station from where goods are to be exported. Goods can also be sent to a registered warehouse from where goods can be sent to the port, ICD, Airport of Land customs station from where goods are to be exported. The goods can be aggregated at the registered warehouse and then sent to the port, ICD, Airport of Land customs station from where goods are to be exported.
d. In such a case, the merchant exporter shall endorse receipt of goods on the tax invoice and also the acknowledgment of receipt of goods in the registered warehouse. These should be provided to the manufacturer as well as to the jurisdictional tax officer of such manufacturer.
e. The merchant exporter is required to export the goods within 90 days from the date of issue of the tax invoice.
f. The merchant exporter is required to indicate the GSTIN of the registered supplier and the tax invoice number, in respect of the goods procured for export, in the shipping bill or bill of export.
g. when goods have been exported, the registered supplier shall provide copy of shipping bill or bill of export containing details of GSTIN and tax invoice of the registered supplier along with proof of export general manifest or export report having been filed to the registered supplier as well as jurisdictional tax officer of such supplier.

It has to be noted that the exporter will be eligible to take credit for the tax @ 0.05%/0.1% paid by him and export the goods only under the cover of LUT / Bond and apply for the refund of the ITC on such export. Further, it has been categorically clarified vide master refund circular no. 125/44/2019 date 18.11.2019 that such export cannot happen on payment of IGST. The procedure to claim a refund has been specified by CBIC in Circular No. 94/13/2019 - GST dated 28-3-2019 which is as follows:

→ This refund of accumulated ITC under rule 89(4B) of the CGST Rules shall be applied under the category "any other" instead of under the category "refund of unutilized ITC on account of exports without payment of tax" in FORM GST RFD-01 and shall be accompanied by all supporting documents required for

substantiating the refund claim under the category "refund of unutilized ITC on account of exports without payment of tax".

→ After scrutinizing the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through FORM GST DRC-03.

→ Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GST RFD-06 and the payment order in FORM GST RFD-05.

PAYMENT OF WRONG TAXES

Section 77 of the CGST Act and Section 19 of the IGST Act, 2017 provide that in case a supply earlier considered by a taxpayer as intra-State or inter-State, **is subsequently held** as inter-State or intra-State respectively, the amount of central and state tax paid or integrated tax paid, as the case may be, on such supply shall be refunded in such manner and subject to such conditions as may be prescribed.

CBIC vide. **Circular No. 162/18/2021-GST** dated **25.09.2021** clarified that the term "subsequently held" in section covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found / held:

- by taxpayer himself; or
- by the tax officer in any proceeding;

as intra-State or inter-State respectively.

Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above-mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.

In order to prescribe the manner and conditions for refund under section 77 of the CGST Act and section 19 of the IGST Act, sub-rule (1A) has been inserted after sub-rule (1) of rule 89 of the CGST Rules, 2017 vide. Notification No. 35/2021-Central Tax dated 24.09.2021.

The aforementioned amendment in the rule 89 of CGST Rules, 2017 clarifies that the refund under above referred sections can be claimed before the expiry of two years from the date of payment of tax under the correct head,

→ IGST paid in respect of subsequently held inter-State supply, or

→ CGST and SGST in respect of subsequently held intra-State supply, as the case may be.

However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of notification No. 35/2021- Central Tax dated 24.09.2021, the refund application under sections can be filed before the expiry of two years from the date of issuance of the above said notification. i.e., from 24.09.2021.

EXCESS PAYMENT OF TAXES

The registered person is also permitted to claim refund of taxes paid in advance under the head "Excess payment of tax, if any" in the following situations:

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

b. GST is paid by the supplier on advances received for an event which got cancelled subsequently and for which **no invoice has been issued** in terms of section 31 (2) of the CGST Act, he is required to issue a "refund voucher" in terms of section 31 (3) (e) of the CGST Act, 2017 read with rule 51 of the CGST Rules, 2017 and claim refund of the taxes paid.

c. GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which **invoice is issued before supply of service**, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim. However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim.

d. Goods supplied by a supplier are returned by the recipient and where tax invoice had been issued, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim in such a case. However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim.

Time Limit for claiming refund: The time limit of TWO YEARS is counted from the date of payment of such taxes.

List of all statements / declarations / undertakings / certificates to be provided along with the refund application (Form GST RDF 01):

→ Statement 7 under rule 89(2)(k)

→ Undertaking in relation to sections 16(2)(c) and section 42(2)

→ Self-declaration under rule 89(2)(1) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise

EXCESS PAYMENT IN E-CASH LEDGER

Any person can claim the refund of under the head "refund of excess balance in the electronic cash ledger" due to any of the following reasons:

- → where taxes are deposited under the wrong head (e.g. tax pay-out of SGST wrongly paid under the head of Cess), thereby creating excess balance in the cash ledger.
- → where tax deducted or collected in excess is paid while discharging the liability in FORM GSTR - 7 or FORM GSTR - 8, as the case may be, and the said amount has been credited to the electronic cash ledger of the deductee, who does not have the mean for adjusting the same.
- → where the supplier had remitted amount over actual pay-out in cash.

Any person claiming any of the above-referred refunds is required to make an application to the proper officer of before the expiry of TWO YEARS from the relevant date in prescribed form and manner. However, the time limit of TWO YEARS does not apply to the claim application file for the reason excess balance in the electronic cash ledger.

However, CBIC has recently introduced Form PMT-09 for transfer of amount from one head to another head. This enables a registered taxpayer to transfer any amount of tax, interest, penalty, etc. that is available in the electronic cash ledger, to the appropriate tax or cess head under IGST, CGST and SGST in the electronic cash ledger. Hence, if a taxpayer has wrongly paid CGST instead of SGST, he can now rectify the same using Form PMT-09 by reallocating the amount from the CGST head to the SGST head.

REFUND PROCESS

CBIC vide Circular No. 125/44/2019 – GST dated 18.11.2019 had clarified that, with effect from 26.09.2019, the applications for refunds should be filed in FORM GST RFD 01 on the common portal and the same will be processed electronically. It has been further clarified that 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. The process for claiming the refund is as follows:

Application using GSTN utility:

The registered person, who intent to claim refund has to make an application online and depending on the nature of claim upload the required statements/declarations/undertakings which are part of FORM GST RFD-01 itself. Besides above, the applicant has to upload other documents/invoices which shall be required to be provided by him for processing of the refund claim.

Generation of Application Reference Number (ARN):

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/statements/invoices and, where required, the amount has been debited from the electronic credit/cash ledger.

As soon as the ARN is generated, the refund application along with all the supporting documents shall be transferred electronically to the jurisdictional proper officer who shall be able to view it on the system. The application shall be deemed to have been filed under sub-rule (2) of rule 90 of the CGST Rules, 2017 on the date of generation of the said ARN and the time limit of 15 days to issue an acknowledgement or a deficiency memo, as the case may be, shall be counted from the said date.

This will obviate the need for an applicant to visit the jurisdictional tax office for the submission of the refund application and/or any of the supporting documents. Accordingly, the acknowledgement for the complete application (FORM GST RFD-02) or deficiency memo (FORM GST RFD-03), as the case may be, would be issued electronically by the jurisdictional tax officer based on the documents so received from the common portal.

Acknowledgement:

The proper officer after verifying the completeness of the application has to issue either acknowledgement in Form GST RFD – 02 or Deficiency Memo in Form GST RFD – 03.

Deficiency Memo:

the proper officer with in the period of 15 days from the date of generation of ARN for FORM GST RFD - 01 should communicate the deficiencies in FORM GST RFD- 03. It has been clarified that either an acknowledgement or a deficiency memo should be issued within the aforesaid period of 15 days starting from the date of generation of ARN.

Once an acknowledgement has been issued in relation to a refund application, no deficiency memo, on any grounds, may be subsequently issued for the said application. After a deficiency memo has been issued, **the refund application would not be further processed and a fresh application would have to be filed within 2 years of the relevant date, as defined in the explanation after sub-section (14) of section 54 of the CGST Act**. Provided that the time period, from the date of filing of the refund claim in FORM GST RFD 01 till the date of communication of the deficiencies in FORM GST RFD 03 by the proper officer, shall be excluded from the period of two years as specified under sub-section (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.

Re-credit of the claim amount (only when the same was debited while filing the claim):

Any amount of input tax credit/cash debited from electronic credit/cash ledger would be re-credited automatically once the deficiency memo has been issued. It may be noted that the re-credit would take place automatically and no order in FORM GST PMT- 03 is required to be issued. The applicant is required to rectify the deficiencies highlighted in deficiency memo and file fresh refund application electronically in FORM GST RFD- 01 again for the same period and this application would have a new and distinct ARN.

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 (only in case of Zero-Rated Supply):

The proper officer has to releases 90% of the amount claimed through Form GST RFD 04; however, CBIC in the master circular for refund 125/44/2019 had clarified that there is no prohibition under the law preventing a proper officer from sanctioning the entire amount within 7 days of the issuance of acknowledgement through issuance of FORM GST RFD- 06, instead of grant of provisional refund of 90 per cent of the amount claimed through FORM GST RFD- 04. 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, the proper officer may issue final order in FORM GST RFD- 06 within 7 days of the issuance of acknowledgement. In such cases, the issuance of a provisional refund order in FORM GST RFD- 04 will not be necessary.

CBIC had has further clarified that no adjustment or withholding of refund, as provided under sub-sections (10) and (11) of section 54 of the CGST Act, shall be allowed in respect of the amount of refund which has been provisionally sanctioned. In cases where there is an outstanding recoverable amount due from the applicant, the proper officer, instead of granting refund on provisional basis, may process and sanction refund on final basis at the earliest and recover the amount from the amount so sanctioned.

Scrutiny of Application:

The proper officer will scrutinise the refund application along with the enclosed document and process the refund application within 60 days from the date of ARN. In case of refund claim on account of export of goods without

payment of tax, the shipping bill details shall be checked verified by the proper officer through ICEGATE SITE portal (www.icegate.gov.in) wherein the officer would be able to check details of EGM and shipping bill by keying in the port name, shipping bill number and date. It is advised that while processing refund claims, information contained in Table 9 of FORM GSTR-1 of the relevant tax period as well as that of the subsequent tax periods should also be taken into cognizance, wherever applicable.

In this regard, Circular No. 26/26/2017-GST dated 29.12.2017 may be referred, wherein the procedure for rectification of errors made while filing the returns in FORM GSTR-3B has been provided. Therefore, in case of discrepancies between the data furnished by the taxpayer in FORM GSTR-3B and FORM GSTR-1, the proper officer shall refer to the said Circular and process the refund application accordingly.

Re-crediting of electronic credit ledger on account of rejection of refund claim:

In case of rejection of refund claim of unutilized/accumulated ITC due to ineligibility of the credit under any provisions of the CGST Act and rules made thereunder, the proper officer shall have to issue a show cause notice in FORM GST RFD- 08, under section 54 of the CGST Act, read with section 73 or 74 of the CGST Act, requiring the applicant to show cause as to why:

(a) the refund amount corresponding to the ineligible ITC should not be rejected as per the relevant provisions of the law; and

(b) the amount of ineligible ITC should not be recovered as wrongly availed ITC under section 73 or section 74 of the CGST Act, as the case may be, along with interest and penalty, if any.

The above notice shall be adjudicated following the principles of natural justice and an order shall be issued, in FORM GST RFD- 06, under section 54 of the CGST Act, read with section 73 or section 74 of the CGST Act, as the case may be. If the adjudicating authority decides against the applicant in respect of both points (a) and (b) above, then FORM GST RFD- 06 shall have to be issued accordingly, and the amount of ineligible ITC, along with interest and penalty, if any, shall be entered by the officer in the electronic liability register of the applicant through issuance of FORM GST DRC- 07.

Alternatively, the applicant can voluntarily pay this amount, along with interest and penalty, as applicable, before service of the demand notice, and intimate the same to the proper officer in FORM GST DRC- 03 in accordance with sub-section (5) of section 73 or sub-section (5) of section 74 of the CGST Act, as the case may be, read with sub-rule (2) of rule 142 of the CGST Rules, 2017.

In such cases, the need for serving a demand notice for recovery of ineligible ITC will be obviated. In any case, the proper officer shall order for the rejected amount to be re-credited to the electronic credit ledger of the applicant using FORM GST PMT-03, only after the receipt of an undertaking from the applicant to the effect that he shall not file an appeal or in case he files an appeal, the same is finally decided against the applicant.

In case of rejection of a claim for refund, on account of any reason other than the ineligibility of credit ITC, the process described above shall be followed with the only difference that there shall be no proceedings for recovery of ineligible ITC under section 73 or section 74, as the case may be.

Restrictions to give refund of cash:

When the refund application has been filed by the claimant under any of the following reasons:

- excess payment of tax.
- tax paid on intra-State supply which is subsequently held to be inter State supply and vice versa.
- on account of assessment/provisional assessment/appeal/any other order.
- on account of "any other" ground or reason.

The tax in the above given reasons would have been normally paid by the applicant by debiting tax amount from both electronic credit ledger and electronic cash ledger. Accordingly, the refund to be paid in cash and credit shall be calculated in the same proportion in which the cash and credit ledger has been debited for discharging the total tax liability for the relevant period for which application for refund has been filed. Such amount, shall be accordingly paid by issuance of order in FORM GST RFD- 06 for amount refundable in cash and FORM GST PMT- 03 to re-credit the amount attributable to credit as ITC in the electronic credit ledger.

Interest for Delay in Processing the claim:

Section 56 of the CGST Act, 2017 clearly states that if any tax ordered to be refunded is not refunded within 60 days of the date of receipt of application, interest at the rate of 6 per cent as notified vide Notification No. 13/2017 – C.T. dated 28.06.2017 on the refund amount starting from the date immediately after the expiry of sixty days from the date of receipt of application (ARN) till the date of refund of such tax shall have to be paid to the applicant.

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