



ANALYSIS OF REFUNDS OF UNUTILIZED INPUT CREDIT UNDER GOODS AND SERVICE TAX ACT, 2017 AGAINST EXPORT AND SEZ SUPPLY

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ABSTRACTS:

This current article focuses on refund claims under Goods and Service Tax for various situations and scenarios. The refund is available in both Section 54 and Section 77 under the Goods and Service Tax Act, 2017. This paper intends to exclusively cover the refund applicability and procedure under GST in the areas of Zero-rated supply and inverted duty structure.

1. Introduction:

Goods and Service Tax was implemented in the year 2017 and this change in tax systems brought various changes in refund systems and its procedures. The refund process is made easy by the Goods and Services Act, of 2017. Moreover, there are changes in provisions of Zero rated supply in the GST Act, of 2017. Here, this paper is intended to discuss the refund under Zero-rated supply and inverted duty structure.

2. The situation leading to Refund Claims?

The relevant provision embodied in **Section 54 [Refund of Unutilized ITC]** of the CGST Act, 2017, the provision contained in **Section 77 [Tax wrongfully collected and paid]** of the CGST Act, 2017 and the requirement of submission of relevant documents as listed in Rule 1(2) of Refund Rules is an indicator of the various situations that may necessitate a refund claim.

- a. **Export** of goods or services
- b. Supplies to **SEZs** units and developers
- c. **Deemed exports**
- d. Refund of taxes on purchases made **by the UN or embassies** etc.
- e. Refund arising **on account of judgment**, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court

- f. Refund of accumulated Input Tax Credit on account of **inverted duty structure**
- g. Finalisation of **provisional assessment**
- h. Refund of **pre-deposit**
- i. **Excess payment** due to a mistake
- j. **Refunds to International tourists** of GST paid on goods in India and carried abroad at the time of their departure from India
- k. Refund on account of issuance of refund vouchers for **taxes paid on advances** against which, **goods or services have not been supplied**
- l. Refund of CGST & SGST paid **by treating the supply as intra-State supply which is subsequently held as inter-State supply and vice versa**

3. What is a refund of unutilized input tax credit under the GST Act?

Input Tax Credit is accumulated when the tax paid on inputs is more than the output tax liability. Such accumulation will have to be carried over to the next financial year till such time as it can be utilized by the registered person for payment of output tax liability. However, the Goods and Service Tax Law permits **refund of unutilized ITC in two scenarios**:

- a. **on account of zero-rated supplies or**
- b. **on account of inverted duty structure**, subject to certain exceptions.

4. What is Zero-Rated supply under GST Act?

- i. Under the Goods and Service Tax Act, **Exports and supplies to SEZ are zero-rated** as per section 16 of the IGST Act, 2017. Zero rated supply means that the GST component in entire supply chain **is tax-free**, i.e. there is no tax burdens either on the input or output side.

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- ii. **A refund of tax paid, is available** in respect of the goods themselves or, as the case may be, **the inputs or input services used in such goods however the same is not available for Capital Goods.**

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- iii. Moreover, Zero-rated sales are in contrast with Exempted supplies, where only output is exempted from tax but tax is suffered 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.**

iv. Zero-rated supply is dealt with under Section 16 of the IGST Act:

- a. Export of goods or services or both
- b. Supply of goods or services or both for an **authorised operation to SEZ**
- c. Such **supply should not be an exempted supply.**
- d. The following two options are available to claim a refund for zero-rated supply:

i. Without payment of Duty after obtaining the LTU:

Under this option, the assessee may claim refund of unutilized accumulated credit belonging to inputs and input services. However, the refund is not available for unutilized accumulated credit belonging to Capital Goods under this option.

II. **With the payment of tax** and claim refund of such tax paid

Under this option, the assessee may claim refund of duty paid against Zero-Rated supply. Here, the taxpayer is eligible to claim whatever is paid as the duty for the Zero-Rated supply and hence there is no requirement to identify whether the duty is paid against accumulated credit available for capital goods, inputs or input services. The only criterion is whether the duty is paid against with eligible accumulated input credit or not.

III. The taxpayer is allowed to avail these two options simultaneously. In other words, an exporter can exercise both the options during a particular month if he has resorted to exports on payment of IGST as well as without payment of duty under bond/LUT during the relevant period.

v. Note.1: As per Notification No.14/2022 Dt: 5th July 2022, the Value of exported Goods to be **lesser than the two values:**

- a. FOB values either in the Shipping Bill/ Bill of the export or
- b. Value declared in Tax invoice or Bill of supply

vi. Note.2: As per Notification No.14/2022 Dt: 5th July 2022, The Relevant date is defined for calculation of 2 years' time limitation for SEZ Supply-related refunds is the due date for furnishing of return under section 39 [Furnishing of GST Returns] in respect of such supplies;

vii. Note.3: As per Notification No.14/2022 Dt: 5th July 2022, Where a registered person deposits the amount of erroneous refund sanctioned to him along with interest and penalty, wherever applicable on his own account or being pointed out, the same shall be re-credited to the electronic credit ledger by the proper officer by an order made in Form GST PMT -03A within a period of 30 days.

viii. Note.4: Amendment in Finance Act, 2021 is **still not yet been notified** for section 16(3) of the IGST Act, that the registered person making a zero-rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received along with interest.

ix. Note.5: As per CBIC clarification, the IGST refund is not allowed to exporters after claiming the benefit of a higher duty drawback rate [CBIC clarification]. However, The Madras High Court **has** held that the refund of input tax credit (ITC) cannot be denied even if the taxpayer has claimed duty drawback.

x. Note.6: Intermediary services like a broker or an agent are not export of services and hence the refund provisions are not applicable for the same.

5. **What is the refund of GST under an inverted-duty structure?**

i. A registered person may claim a refund of unutilized Input Tax Credit (ITC) at the end of any tax period where the credit is accumulated **on account of the rate of tax on inputs being higher than the rate of tax on output supplies.**

ii. The following **HSN goods are restricted to apply for a refund** under the inverted duty structure via Notification No.09/2022 CT (Rate) – Dt.13.07.2022 [prospective in nature]

iii.HSN Codes - **Chapter 15** – Various edible oil & fat, **2701**– Coal, briquettes, ovoid and similar solid fuel fuels manufactured from coal, **2702**- lignite, whether or not agglomerated, excluding jet, **2703** – Peat (including peat litter), whether or not agglomerated.

iv.The refund under the inverted duty structure is available for the cases **where inputs and outputs products have the same tax rate but the sales are made under a concessional rate notification**. However, changes in the rate of tax at different points in time do not cover refunds under an inverted duty structure.

v.As per Notification No.14/2022 Dt:5th July 2022, There is a Change in the formula for refund claims under the Inverted Duty Structure and this formula with effect from 5th July 2022 onwards. Ie, prospectively and not retrospectively.

vi.The illustration gives clear picture about the difference in refund amount between old formula and new formula:

Illustration:1

Turnover Details:

Particulars	Taxable Value	Rate	Tax
Turnover under inverted duty	40,00,000	5%	2,00,000
Other Taxable Turnover	10,00,000	18%	1,80,000
Total Turnover	50,00,000		3,80,000

Input Tax Credit Details:

Type of Credit	ITC Claimed in GSTR 3B
Inputs	2,50,000
Input Services	1,50,000
Capital Goods	50,000
Total ITC	4,50,000
Net ITC available only to inputs	2,50,000

Refund claim under Old Formula:

Particulars	Amount in Rs.
Inverted Turnover – A	40,00,000
Adjusted Total Turnover – B	50,00,000
Net ITC – C	2,50,000
$[A / B * C] = D$	2,00,000
Tax payable on Inverted Duty – E	2,00,000
Net Claim $[D - E]$	-NIL-

Refund claim under New Formula: [With effect from 5th July 2022 as per Circular no.181/13/2002 Dt.10th Nov 2022]

Particulars	Amount in Rs.
Inverted Turnover – A	40,00,000
Adjusted Total Turnover – B	50,00,000
Net ITC – C	2,50,000
$[A / B * C] = D$	2,00,000
Tax payable on Inverted Duty - E	2,00,000
ITC Availed on Inputs and Input services – F	4,00,000
$[C / F * E] = G$	1,25,000

6. What is the Time limit to apply refund under GST Act?

i. According to section 54 of the CGST Act, an application for claiming a refund of any tax or interest can be made before the expiry of two years from the **relevant date**. However, this time limit is not applicable for claiming a refund of cash available in the Electronic cash ledger according to section 39.

ii. What is the relevant date under GST Act?

The relevant date for **Goods exports out of India**, by mode of

Mode of Transport	Relevant Date
Sea or Air	The date on which the Ship or Aircraft in which such goods are loaded, leaves India.
Land	The date on which such goods pass the frontier
Post	The date of despatch of goods by the post office concerned

The relevant date for the Supply of **Goods regarded as Deemed Export**:

Types of Supply	Relevant Date
Deemed Export	The date on which the return relating to such deemed exports is furnished.

The relevant date for other than **Goods exports out of India and Deemed Export**:

Types of Supply	Relevant Date
Export Services	Receipt of Foreign payment or Issue of Invoice Whichever is later
Inverted Duty Structure	The due date for furnishing return under section 39 for the period in which such claim for refund arises.
Tax paid provisionally	Date of adjustment of tax after the final assessment thereof
In the case of a person, other than the supplier	Date of receipt of goods or services or both by such person
Tax becomes refundable as a consequence of judgement, decree, order or direction	Date of communication of judgement

Any other case

Date of payment of tax

- i. **Note.1:** As per Notification. No.13/2022 Dt: 5th July 2022.[With retrospective effect from 1st March 2020], **excludes the period from 1st March 2020 to 28th February 2022** to calculate the time limit for 2 years.
- ii. **Note.2:** As per Notification. No.15/2021 Dt:18.11.2021,the period between **Form GST RFD-01[Application] and Form GST RFD-03[Deficiency Memo] would now be excluded** from the counting time limit for filing refund applications

7. GST refund Process:

Form No	Process Details
RFD – 01	Application of GST refund – within 2 years from the relevant date
RFD – 02	Acknowledgement of GST refund application
RFD – 03	Any deficiencies noticed by the officer communicated through this form
RFD – 04	Grant of Provisional refund [90%] within 7 days from the date of acknowledgement
RFD – 05	The proper officer shall issue a Payment Order for both Tax and Interest
RFD – 06	Order of sanctioning refund
RFD – 07	Adjustment of refund if any outstanding due under the Act or existing law
RFD – 08	Notice to the applicant for adjustment of reply.
RFD – 09	Reply to the Notice RFD -08 within a period of 15 days
RFD – 10	Application of Refund of tax to a certain person.
RFD – 11	Statement of the inward supplies of goods or services or both by a certain person.

8. Conclusions:

The refund filing procedure is made online under the Goods and Service Tax Act, which in turn helps the exporter in getting the refund much easier and faster than the earlier manual system. The exporters are also now experience a smooth working flow in business since their working capital can be encashed by applying refund of the unutilized accumulated credit within a stipulated time.

Thanks

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