

Recent Amendments in GST Refunds



PAKSH LEGAL

INNOVATE – DISCOVER – THRIVE

Various Clarifications made to facilitate easy Refund

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Reconciliation of calculation of refund claim under Inverted Duty Structure

Before
Amendment

- Maximum Refund Amount = $\{(\text{Turnover of inverted rated supply of goods and services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}\} - \{\text{tax payable on such inverted rated supply of goods and services}\}$

After Amendment

- Maximum Refund Amount = $\{(\text{Turnover of inverted rated supply of goods and services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}\} - \{\text{tax payable on such inverted rated supply of goods and services} \times (\text{Net ITC} \div \text{ITC availed on inputs and input services})\}.$

In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

Before
Amendment

- Maximum Refund Amount = $\{(\text{Turnover of inverted rated supply of goods and services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}\} - \{\text{tax payable on such inverted rated supply of goods and services}\}$

After
Amendment

- Maximum Refund Amount = $\{(\text{Turnover of inverted rated supply of goods and services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}\} - \{\text{tax payable on such inverted rated supply of goods and services} \times (\text{Net ITC} \div \text{ITC availed on inputs and input services})\}.$

Rationalization of calculation of refund claim under Inverted Duty Structure

S.No.	Details	Amount(INR)
1	Turnover	5,00,000
2	Tax on the above @5%	25,000
3	ITC availed on Inputs	1,00,000
4	ITC availed on Input Services	40,000
5	Refund entitlement Earlier	$= [1,00,000 \times (5,00,000/5,00,000)] - 25,000$ $= 75,000$
6	Refund entitlement now	$= [1,00,000 \times (5,00,000/5,00,000)] - (25,000 \times 1,00,000/1,40,000)$ $= 82,143$

Impact of Amendment

- As a result of the said change in the formula the **refund quantum has been increased** wherever there is involvement of input services. This decision is a welcome move by the Council

Impact of Amendment

- In case of **VKC FootstepsIndia Pvt. Lt. vs. Union of India and 2 other(s) – 2020-TIOL-1273-HC-AHM**
- it has been **argued that** the that the **second leg of the formula**, that is, “tax payable on such inverted rated supply of goods and services” **takes into account the entire tax payable on output supplies.**

Impact of Amendment

- In reality, the tax payable on output supplies would have been **discharged by utilizing the ITC on input goods and input services.**

Impact of Amendment

- However, the formula under Rule 89(5) presumes that nothing has been utilized from the ITC on input services and the entire tax on output supplies is discharged by utilizing ITC on input goods.

Impact of Amendment

- It was urged that although the stated objective of the formula is to grant refund of unutilised ITC accumulated on account of input goods, by deducting the entire sum of tax payable on output supplies, the quantum of such refund is reduced and the cascading effect of taxes is maximised.

Impact of Amendment

- The Supreme Court has well noted the above arguments and requested the GST Council to remove the anomaly in the impugned refund formula whereby the output tax is to be reduced after applying the proportion of ITC availed in respect of input goods and input services.

CBIC vide [Circular No. 135/2020-GST dated 31.03.2020](#), clarified that the taxpayers cannot claim refund in terms of clause (ii) of Section 54(3) of the CGST Act, 2017, in cases wherein **the input and output supplies remain the same, though attracting different tax rates at different point in time.**

Example

- There was a change in tax rate on cut and polished diamonds w.e.f. 25th January 2018. The tax rate was reduced from 3% to 0.25%. The input as on 25th January 2018 was purchased at the rate of 3% and sold at the rate of 0.25%.

Effect of Circular

- The taxpayer/ traders who purchased inputs at higher rate of tax and sold them at lower rate of tax will not be eligible to claim refund under Section 54(3)(ii) of the CGST Act, 2017.

Amendment

- Vide Circular No. 173/02/2022-GST dated 06-07-2022, it has been clarified that, in cases where the rate of tax of output supply is less than the rate of tax on inputs **at the same point of time** due to **supply of goods by the supplier under such concessional notification**, the credit accumulated on account of the same is admissible for refund.

Legal Provision

- Under section 54, it has been said that where the taxpayer who has accumulation of ITC due to less tax rate on output supply than the tax rate on input, then such taxpayer can claim refund of the accumulated ITC. It only provides that whenever the ITC is accumulated due to tax rate on input being higher than the tax rate on outputs, the taxpayer can claim refund of such accumulated ITC. **There is no restriction in the section for same point of time.**

Judicial Precedents

- **Circulars are not binding on the taxpayer-** It has been a well settled law that the circulars issued by the CBIC or Revenue Department are not binding on the assessee/ taxpayers. The Hon'ble Supreme Court in the case of **Commissioner v. Minwool Rock Fibres Ltd. — 2012 (278) E.L.T. 581 (S.C.)** has held the same.

Judicial Precedents

- **Circulars cannot be contrary to Law:** The circulars are issued to clarify the ambiguities in law and provide assistance in the administration of law. However, the circulars cannot be used to override the statutory provisions nor can they be contrary to law. **The Hon'ble Supreme Court in the case of Commissioner v. Ratan Melting and Wire Industries — 2008 (12) S.T.R. 416 (S.C.)** held that a Circular contrary to the statutory provisions has no existence under law.



Judicial Precedents

- **Circular cannot impose condition not existing in law-** The circular cannot impose a condition or restriction which is not existing under law. The Hon'ble High Court of Bombay in the case of Alfa Laval (India) Ltd. v. Union of India – 2014 (309) E.L.T. 17 (Bom.) struck down a circular which imposed restriction/ limitation which were not existing under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 and had effect of whittling down the Rules .



Judicial Precedents

- **Administrative authorities cannot give their own interpretation to the statutory provision:** Under the guise of circular, the administrative authorities cannot give their own interpretation to the statutory provisions. Refer Hon'ble Supreme Court decision in the case of CTO vs. M/s Bombay Machinery Store (Civil Appeal Nos. 2217 of 2011 order dated 11th April 2020).

- Ministry of Power has represented that though **electricity is classified as “goods”** in GST, challenge was faced in **filing of Shipping Bill/ Bill of Export** in respect of export of electricity.
- However, the extant provisions under **Rule 89 of CGST Rules, 2017** provided for requirement of **furnishing the details of shipping bill/ bill of export** in respect of such refund of unutilized ITC in respect of export of goods.
- Accordingly, a **clause (ba) has been inserted in sub-rule (2) of rule 89** and a **Statement 3B** has been inserted in FORM GST RFD-01 of the CGST Rules, 2017 vide notification No. 14/2022-CT dated 5th July, 2022.

Before
Amendment

- **Rule 89(2)(b) of CGST Rules, 2017:**
- *“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, in a case where the refund is on account of export of goods”*

After
Amendment

- **Rule 89(2)(b) of CGST Rules, 2017 (as amended):**
- *“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, in a case where the refund is on account of export of goods , **other than electricity**”*

After
Amendment

- **Rule 89(2)(ba) of CGST Rules, 2017 has been inserted:**
- *(ba) a statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement, along with the copy of statement of scheduled energy for exported electricity by Generation Plants issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under clause (nnn) of sub-regulation 1 of Regulation 2 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and the copy of agreement detailing the tariff per unit, in case where refund is on account of export of electricity;*

Manner of filing refund of unutilized ITC on account of export of electricity

Filing of Refund Claim

- Till the time necessary changes are carried out on the portal, refund is to be filed under “**Any Other**” category electronically in **FORM GST RFD-01**, on the portal.
- In remark column of the application, “**Export of electricity- without payment of tax (accumulated ITC)**”.
- At this stage, the applicant is **not required to make any debit from the electronic credit ledger**.

Statement 3B

- Statement 3B (and not in statement 3) of FORM GST RFD-01 (in pdf format), containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement to be uploaded alongwith **FORM GST RFD-01**;

Schedule of Energy

- Copy of statement of schedule energy for electricity exported by the Generation Plants (in format attached as AnnexureI) issued as part of Regional Energy Account by Regional Power Committee Secretariat (“RPC”) under regulation 2 (1)(nnn) of the CERC (Indian Electricity Grid Code) Regulations,2010 is also to be uploaded

Manner of filing refund of unutilized ITC on account of export of electricity

Refund Formula

- Rule 89(4) provides for the formula for calculation of refund of unutilised ITC on account of zero-rated supplies which is reproduced as under:
- **Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover**

Statement 3B

- Statement 3B (and not in statement 3) of FORM GST RFD-01 (in pdf format), containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement to be uploaded along with **FORM GST RFD-01**;

Schedule of Energy

- Copy of statement of schedule energy for electricity exported by the Generation Plants (in format attached as Annexure I) issued as part of Regional Energy Account by Regional Power Committee Secretariat (“RPC”) under regulation 2 (1)(nnn) of the CERC (Indian Electricity Grid Code) Regulations, 2010 is also to be uploaded

Adjusted Total
Turnover

- Adjusted Total Turnover shall be calculated as per the clause (E) of sub-rule (4) of rule 89. Since electricity has been wholly exempted from the levy of GST, therefore, turnover of electricity supplied domestically would be excluded while calculating the adjusted total turnover.
- The proper officer shall invariably verify that no ITC has been availed on the inputs and inputs services utilized in making domestic supply of electricity.

FORM GST DRC-
03

- On scrutiny of application, if the proper officer is satisfied that the whole or any part of the **amount claimed is payable as refund**, he shall request the applicant, to debit the said amount from the 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**.

Pending refund of IGST on export of goods for risky exporters

Before
Amendment

- Refund on export of goods is generally suspended/withheld where the exporters are classified as risky exporters (due to verification by GST officers or violation of Customs laws)

Before
Amendment

- The refund could be withheld under the following situations:
- Request is received from jurisdictional Commissioner to withhold the tax or;
- proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962; or]

After
Amendment

- Now vide Notification No. 14/2022 –Central Tax dated 05-07-2022, it has been said that the refund **can be withheld** even when the Commissioner or officer authorized is of the opinion that **verification of credentials of the exporter**, including the **availment of ITC by the exporter**, is considered essential before grant of refund

After
Amendment

- In order to expedite the refund of these exporters, an amendment has been recommended to provide for transmission of such IGST refund claims on the GST portal in a system generated Form GST RFD-01 to jurisdictional authorities for processing
- The amendment would expedite the disposal of such IGST refund claims after due verification by GST officers, thus benefitting such exporters

After
Amendment

- As per the said amendment where the refund has been withheld, it can be processed in the following manner:
- (a) Where the refund is withheld as per clause (a) or clause (c) of sub-rule, such claim shall be **transmitted to the proper officer under FORM GS RFD-01 and intimation will be sent to the exporter** also and accordingly said refund application will be deemed to be application for refund filed on date of such transmission,
- (b) Where the refund is withheld in accordance with provisions of customs, such claim shall be **transmitted to the proper officer under FORM GS RFD-01 and intimation will be sent to the exporter** also and accordingly said refund application will be deemed to be application for refund filed on date of such transmission,
- (c) Now the application for refund in FORM GST RFD-01 transmitted electronically through the common portal in terms of sub-rules (5A) and (5B) shall be dealt in accordance with the provisions of rule 89

Pending refund of IGST on export of goods for risky exporters

Adjusted Total
Turnover

- Refund on export of goods is generally suspended/withheld where the exporters are classified as risky exporters (due to verification by GST officers or violation of Customs laws)

FORM GST
DRC-03

- In order to expedite the refund of these exporters, an amendment has been recommended to provide for transmission of such IGST refund claims on the GST portal in a system generated Form GST RFD-01 to jurisdictional authorities for processing

- The amendment would expedite the disposal of such IGST refund claims after due verification by GST officers, thus benefitting such exporters

Prescribing manner of re-credit in ECRL on repayment of erroneous refund

A new functionality of **GST PMT-03A** has been developed which allows proper officer to re-credit the amount in ECRL of the taxpayer on repayment of erroneous refund.

As per Rule 86 sub-rule (4B) of the CGST Rules, 2017, in respect of following categories of refund sanctioned erroneously, re-credit of amount in the electronic credit ledger can be done through FORM GST PMT-03A, wherever applicable:

- Refund of IGST obtained in contravention of sub-rule (10) of rule 96
- Refund of unutilized ITC on account of export of goods/services without payment of tax
- Refund of unutilized ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without payment of tax
- Refund of unutilised ITC due to inverted tax structure.

Refund claim by the recipient of deemed export supplies

“Deemed Exports” refers to supplies of goods manufactured in India (and not services) which are notified as deemed exports under Section 147 of the CGST/SGST Act, 2017. The supplies do not leave India. The payment for such supplies is received either in Indian rupees or in convertible foreign exchange.

CBIC vide its circular number [Circular No. 172/04/2022-GST dated 06-07-2022](#) has given the following clarifications

Issue

- Whether the Input Tax Credit (ITC) availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports would be subjected to **provisions of Section 17 of the CGST Act, 2017?**

Clarification

- The refund in respect of deemed export supplies is the refund of tax paid on such supplies. Considering the difficulty of tax paid on such supplies CBIC has issued Circular No. 147/03/2021-GST dated 12.03.2021 only for enabling them to claim such refunds on the portal.

Clarification

- The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, **is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017**. Therefore, the ITC so availed by the recipient of deemed export supplies **would not be subjected to provisions of Section 17 of the CGST Act, 2017**.

Issue

- Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the “Net ITC” for computation of refund of unutilised ITC under rule 89(4) & rule 89(5) of the CGST Rules, 2017

Clarification

- The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017.

Clarification

- Therefore, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the “Net ITC” for computation of refund of unutilized ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017

Before
Amendment

- As per Rule 89 (1) second proviso, an application for refund can be filed in respect of supplies to a SEZ unit / developer provided such supply of goods/services has been endorsed by the specified officer of the Zone.

Before
Amendment

- An extract of said proviso is as follows:
- ***“89. Application for refund of tax, interest, penalty, fees or any other amount***
- *(1).....*
- *Provided further that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the –*
- *(a) supplier of goods after such goods have been admitted in full in the Special Economic Zone 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 authorized operations as endorsed by the specified officer of the Zone:*

Explanation for specified officer in respect of supplies made to SEZ unit/developer

After Amendment

- Earlier the term specified officer was not defined under the CGST Rules, 2017.
- Therefore, an explanation is inserted under the said subrule that specified officer shall mean a “specified officer” or an “authorized officer” as defined under rule 2 of the Special Economic Zone Rules, 2006

After Amendment

- Accordingly, the said amendment is inserted after 4th proviso to said subrule :
- *[Explanation. - For the purposes of this sub-rule, “specified officer” means a “specified officer” or an “authorized officer” as defined under rule 2 of the Special Economic Zone Rules, 2006.]*

Explanation for value of goods exported for GST refund

Before Amendment

- It has been observed that many refunds of exporters were being struck due to difference in value of goods declared in the tax invoice and value of goods declared in corresponding shipping bill / bill of export.
- Accordingly, an explanation has been inserted vide Notification No. 14/2022-Central tax dated 15-07-2022 for calculation of value of goods exported out of India.

After Amendment

- The below mentioned explanation has been inserted under Rule 89(4):
- *“Explanation. – For the purposes of this sub-rule, the value of goods exported out of India shall be taken as –*
- *(i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or*
- *(ii) the value declared in tax invoice or bill of supply, **whichever is less**”*

Explanation for value of goods exported for GST refund

After Amendment

- Now as per the said amendment in case of refunds for unutilised Input Tax Credit where the goods have been exported out of India the value of goods will be lower of :
 - (a) FOB value declared in Shipping Bill/ Bill of Export:
 - (b) the value declared in tax invoice or bill of supply

Before Amendment

- After the introduction of GST, there was no specific exemption given for transactions pertaining to supplies to or by Duty Free Shops (DFS). Accordingly, few changes were inserted to allow refund of GST paid on goods supplied to international outbound passengers.
- One such change included insertion of Rule 95A from 01.07.2019 vide circular 106/25/2019 dated 29.06.2019 based on powers from Section 55 to allow refund of GST paid on indigenous goods procured and supplied to outgoing international tourists.
- For this purpose, 'outgoing international tourist' meant a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.
- However, as per this circular refund is not allowed of GST on imported goods (mostly duty-free procurements) and GST paid on input services/capital goods. The said circular clarified that no refund of input services will be granted which indicates that supplies were not treated as exports.

After Amendment

- However, there are few high court rulings such as [Flemingo Travel Retail Ltd Vs. UOI](#) , [Atin Krishna Vs. UOI \[2019 \(05\) LCX0024\]](#) as per which [said supplies of DFS amount to export](#) as per as per Section 2 (5) of IGST Act.
- Although nowhere including the press GST Council Meeting, the objective of removal of Rule 95A has been provided, it could be understood that the [objective of said amendment is to treat such supplies as export and allow refund of taxes at par with normal exports](#).
- Accordingly, vide notification no.14/2022-Central Tax dated 5.07.2022, Rule 95A of CGST Rules 2017 has been omitted effective form 1.07.2019 (from date of introduction).
- This indicates that government has accepted the fact that the supplies are exports and refund cannot be restricted only to goods

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