

## RECENT ISSUES EMERGING IN REFUNDS

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**CIRCULAR 135/05/2020 DATED 31-03-2020** **Bunching of refund claims across Financial Years**

The said restriction on the clubbing of tax periods across financial years for claiming refund thus has been continued vide **Paragraph 8** of the [\*\*Circular No. 125/44/2019-GST dated 18.11.2019\*\*](#), which is reproduced as under:

**“8. The applicant, at his option, may file a refund claim for a tax period or by clubbing successive tax periods. The period for which refund claim has been filed, however, cannot spread across different financial years. Registered persons having aggregate turnover of up to Rs. 1.5 crore in the preceding financial year or the current financial year opting to file FORM GSTR-1 on quarterly basis, can only apply for refund on a quarterly basis or clubbing successive quarter.....”**

**Hon'ble Delhi High Court** in Order dated 21.01.2020, in the case of **M/s Pitambra Books Pvt Ltd.**, vide para 13 of the said order has stayed the rigour of paragraph 8 of Circular No. 125/44/2019-GST dated 18.11.2019 and has also directed the Government to either open the online portal so as to enable the petitioner to file the tax refund electronically, or to accept the same manually within 4 weeks from the Order. Hon'ble Delhi High Court vide para 12 of the aforesaid Order has observed that **the Circulars can supplant but not supplement the law. Circulars might mitigate rigours of law by granting administrative relief beyond relevant provisions of the statute**, however, Central Government is not empowered to withdraw benefits or impose stricter conditions than postulated by the law. **No Restriction u/s 16(3) of IGST and 54(3) of CGST,2017**

Further, same issue has been raised in various other representations also, especially those received **from the merchant exporters** wherein merchant exporters have received the supplies of goods in the last quarter of a Financial Year and have made exports in the next Financial Year i.e. from April onwards. The restriction imposed vide para 8 of the master refund circular prohibits the refund of ITC accrued in such cases as well.

**Ref: Circular No. 125/44/2019 – GST Dated the 18th November, 2019**

Point number 8: “*The applicant, at his option, may file a refund claim for a tax period or by clubbing successive tax periods. The period for which refund claim has been filed, however, cannot spread across different financial years. Registered persons having aggregate turnover of up to Rs. 1.5 crore in the preceding financial year or the current financial year opting to file FORM GSTR-1 on quarterly basis, can only apply for refund on a quarterly basis or clubbing successive quarters as aforesaid.*

**Example with incorporating circular 135**

A Ltd has opted to file GSTR-1 on quarterly basis (having turnover less than 1.5 Crores in the PFY. The entity can apply for refund of quarter Jan-March 2020 along with the clubbing of subsequent quarter i.e. April-June 2020, even if the subsequent quarter falls in the next FY.

**On perusal of the provisions under sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 and sub-section (3) of section 54 of the CGST Act, there appears no bar in claiming refund by clubbing different months across successive Financial Years.**

## REFUND OF ACCUMULATED INPUT TAX CREDIT (ITC) ON ACCOUNT OF REDUCTION IN GST RATE

IT HAS BEEN BROUGHT TO THE NOTICE OF THE BOARD THAT SOME OF THE APPLICANTS ARE SEEKING REFUND OF UNUTILIZED ITC ON ACCOUNT OF INVERTED DUTY STRUCTURE WHERE THE INVERSION IS DUE TO CHANGE IN THE GST RATE ON THE SAME GOODS.

This can be explained through an illustration.

An applicant trading in goods has purchased, say goods "X" attracting 18% GST. However, subsequently, the rate of GST on "X" has been reduced to, say 12%. It is being claimed that accumulation of ITC in such a case is also covered as accumulation on account of inverted duty structure and such applicants have sought refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act.

It may be noted that 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.** It is hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would **not be applicable in cases where the input and the output supplies are the same.**

**Change in manner of refund of tax paid on supplies other than zero rated supplies**

Circular No. 125/44/2019-GST dated 18.11.2019, in para 3, categorizes the refund applications to be filed in FORM GST RFD-01 as under:

- a) Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;
- b) Refund of tax paid on export of services with payment of tax; .
- c) Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;
- d) Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax;
- e) Refund of unutilized ITC on account of accumulation due to inverted tax structure;
- f) Refund to supplier of tax paid on deemed export supplies;
- g) Refund to recipient of tax paid on deemed export supplies;
- h) Refund of excess balance in the electronic cash ledger;
- i) **Refund of excess payment of tax;**
- j) **Refund of tax paid on intra-State supply which is subsequently held to be inter State supply and vice versa;**
- k) **Refund on account of assessment/provisional assessment/appeal/any other order;**
- l) **Refund on account of “any other” ground or reason.**

For the refund of tax paid falling in categories **specified at S. No. (i) to (l) above** i.e. refund claims on supplies other than zero rated supplies, no separate debit of ITC from electronic credit ledger is required to be made by the applicant at the time of filing refund claim, being claim of tax already paid. However, the total tax would have been normally paid by the applicant by debiting tax amount from both electronic credit ledger and electronic cash ledger. **At present, in these cases, the amount of admissible refund, is paid in cash even when such payment of tax or any part thereof, has been made through ITC.**

As this could lead to allowing unintended encashment of credit balances, this issue has been engaging attention of the Government. Accordingly, vide notification No.16/2020-Central Tax dated 23.03.2020, sub-rule (4A) has been inserted in rule 86 of the CGST Rules, 2017 which reads as under:

*"(4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03."*

Further, vide the same notification, sub-rule (1A) has also been inserted in rule 92 of the CGST Rules, 2017. The same is reproduced hereunder:

*"(1A)Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under sub-section (5) of section 54 of the Act is due and payable to the applicant, he shall make an order in FORM RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue FORM GST PMT-03 re-crediting the said amount as Input Tax Credit in electronic credit ledger."*

The combined effect the abovementioned changes is that any such refund of tax paid on supplies other than zero rated supplies will now be admissible proportionately in the respective original mode of payment i.e. in cases of refund, where the tax to be refunded has been paid by debiting both electronic cash and credit ledgers (other than the refund of tax paid on zero-rated supplies or deemed export), 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.

## Example:

A Ltd applied for provisional assessment for the tax period of Jan 2020.

The entity applied for assessment at lower end of total liability amounting to Rs 10,000. The Department, however assessed the liability provisionally for Rs 12,000 at higher end. After two months i.e. in March 2020 the final order for the same was passed and the liability was computed as Rs 10,000.

The entity discharged the Rs 12,000 liability as Rs 8,000 from the debit of electronic credit ledger and the balance amounting to Rs 4,000 by debiting the electronic cash ledger.

The entity now files the refund of Rs 2,000.

As per circular 135, the refund shall now be allowed in the following manner:

$(2,000/12,000) \times 8,000 = 1,333$  to be refunded in credit ledger (FORM PMT-03)

$(2,000/12,000) \times 4,000 = 667$  to be refunded in cash (FORM RFD-06)

**Guidelines for refunds of Input Tax Credit under Section 54(3)**

In terms of para 36 of circular No. 125/44/2019-GST dated 18.11.2019, 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, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant.

The matter has been examined and it has been decided that 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.** Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent.

**Ref: Circular No. 125/44/2019 – GST Dated the 18th November, 2019**

Self-certified copies of invoices in relation to which the refund of ITC is being claimed and which are declared as eligible for ITC in Annexure – B, but which are not populated in FORM GSTR-2A, shall be uploaded by the applicant along with the application in FORM GST RFD 01. **It is emphasized that the proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are available in FORM GSTR-2A of the relevant period uploaded by the applicant.**

**Question: What about the refund application for the period of February, March, April, May, June, July and August, 2020? (notification No. 30/2020- Central Tax, dated 03.04.2020)**

New Requirement to mention HSN/SAC in Annexure 'B'

References have also been received from **the field formations** that HSN wise details of goods and services are not available in FORM GSTR-2A and therefore it becomes very difficult to distinguish ITC on capital goods and/or input services out of total ITC for a relevant tax period. It has been recommended that a column relating to HSN/SAC Code should be added in the statement of invoices relating to inward supply as provided in Annexure-B of the circular No. 125/44/2019- GST dated 18.11.2019 so as **to easily identify between the supplies of goods and services.**

The issue has been examined and considering that such a distinction is important in view of the provisions relating to refund where refund of credit on Capital goods and/or services is not permissible in certain cases, it has been decided to amend the said statement. **Accordingly, Annexure-B of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent.**

A suitably modified statement format is attached for applicants to upload the details of invoices reflecting in their FORM GSTR-2A. The applicant is, in addition to details already prescribed, now required to mention HSN/SAC code which is mentioned on the inward invoices. In cases where supplier is not mandated to mention HSN/SAC code on invoice, the applicant need not mention HSN/SAC code in respect of such an inward supply.

**Annexure-B**  
**Statement of invoices to be submitted with application for refund of unutilized ITC**

Sr. No	GSTIN of the Supplier	Name of the Supplier	Invoice Details			Category of input supplies		Central Tax	State Tax/ Union Territory Tax	Integrated Tax	Cess	Eligible for ITC	Amount of eligible ITC
			Invoice No.	Date	Value	Inputs/Input Services/capital goods	HSN/SAC					Yes/No/Partially	
1	2	3	4	5	6	7	8	9	10	11	12	13	14

## NOTIFICATION NO. 16/2020 DATED 23.03.2020

**Rule 89(4)(C) Substituted:- ( Refund)**

“Turnover of zero-rated supply of goods” means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or **the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less**, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;”.

**Ref: Circular No. 125/44/2019 – GST Dated the 18th November, 2019**

Where the refund of unutilized input tax credit on account of export of goods is claimed and the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, refund claims are not being processed.

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 should be examined and the **lower of the two values should be taken into account while calculating the eligible amount of refund.**

## Example

A Ltd exported the goods to USA as under:

Qty: 1,000 units

Unit Price: INR 100

Value in Shipping Bill: INR 90

Note: A Ltd. Is the 100% exporter and do not make any domestic supplies. However, XYZ Ltd is another supplier of similar product making domestic supply of the same product at INR 50.

Value of Zero rated supplies for the purpose of refund shall be

1,000 units x INR 75 (50 x 1.5 times)

**New Rule 96B Inserted:-**

"96B. **Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised.** –(1) Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant **but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded,** to the extent of non realization of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded **shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50:**

Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but the Reserve Bank of India writes off the requirement of realization of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

(2) Where the sale proceeds are **realised by the applicant, in full or part, after the amount of refund has been recovered** from him under sub-rule (1) and the applicant produces evidence about such realisation **within a period of three months** from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.”.

**"UNDERTAKING"**

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

*Signature-*

*Name –*

*Designation / Status".*



thank you!

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